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L & I Electrical Board Meeting

TRANSCRIPT OF PROCEEDINGS

July 28, 2022



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DEPARTMENT OF LABOR AND INDUSTRIES
STATE OF WASHINGTON

ELECTRICAL BOARD MEETING
TRANSCRIPT OF PROCEEDINGS

July 28, 2022
9:00 a.m.

Labor Industries Auditorium
Tumwater, WA

Pages 1 - 130

**CERTIFIED
ORIGINAL**

Before:

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1 BE IT REMEMBERED that an Electrical Board
2 Meeting was held at 9:00 a.m. on Thursday, July 28,
3 2022, at the Department of Labor and Industries, 7273
4 Linderson Way S.W., Tumwater, Washington.

5 Board Members present in-person were: Jason
6 Jenkins, Wayne Molesworth, Kerry Cox, Bobby Gray, Don
7 Baker, Mike Nord, Erick Lee, Jack Knottingham, and
8 James Tumelson.

9 Assistant Attorneys General present in-person
10 were Ben Blohowiak and Lisa Roth.

11 Board Members present via videoconferencing were
12 Lorin Lathrop, Dominic Burke, and Ivan Isaacson.

13 Assistant Attorney General present via
14 videoconferencing was Nancy Kellogg.

15 WHEREUPON, the following proceedings were
16 held, to wit:

17
18
19
20 P R O C E E D I N G S

21
22
23 CHAIRMAN JENKINS: It's 9:07 a.m. I'd like
24 to bring the Washington Electrical Board Meeting to
25 order. I want to say thank you for all attending.



1 I know this has been kind of a -- I don't want to say
2 new, but an old new system. We're all back and face
3 to face, and bear with us as we deal with technical
4 difficulties. We're trying to do a little bit of a
5 hybrid meeting. Hopefully this will be our last one
6 like this. Other locations probably won't allow this.
7 So, this is one of those one-offs.

8 So, we're going to get started. I want to -- I
9 guess we have a -- on our first item here we have a
10 safety message from the Department. Wayne, do you
11 have a person to bring up the safety message?

12 SECRETARY MOLESWORTH: I think I delegated
13 that responsibility to the Board Chair, Board Chair,
14 excuse me. Yeah, I'll give you a safety talk. So,
15 we're in the middle of a nice little heat wave as you
16 guys experience on the east side. It's probably much
17 worse here for you have than it is for those of us on
18 the east side of the mountains primarily because over
19 there we have it every -- every summer. Over here you
20 haven't had it as severe for such a long period. So,
21 you know, you really have to pay attention to staying
22 hydrated, finding cool places.

23 On the news the other day they talked about that
24 only about 40% of the residents on this side of the
25 mountains have air conditioning, and so that's a very



1 low number, and so you have that possibility of
2 working at home and getting heat exhaustion, even heat
3 stroke at times, and so you have to be very aware of
4 whether or not you've been working outside too long.
5 Those of you who are contractors have employees or
6 those of you that are employees know that we have a
7 heat standard at L & I, and, you know, it doesn't
8 allow you to work outside for a long period of time.
9 And you have to have water available and keep it with
10 you. I always have water with me. I'm getting
11 dehydrated today just because I need caffeine, but I
12 will hydrate later. So, stay hydrated. Stay in a
13 cool place.

14 If you do find somebody that appears to be
15 suffering symptoms of heat exhaustion or heat stroke,
16 cool them down as quickly as you can. A good way to
17 do that is with wet towels. You know, you can
18 actually submerge somebody in water to help cool them
19 down. The result -- People always go, "Oh, boy, that
20 could put them into shock." The result of heat stroke
21 is much worse than the result you're going to have
22 from cooling them down too quickly. But get them to
23 an emergency medical facility as quickly possible.

24 Heat exhaustion should also be looked at and
25 just because somebody comes out of a situation where



1 they've had a heat stroke or heat exhaustion make sure
2 and take them to the clinic to get checked out. It's
3 kind of like near water drowning, right, or it's like
4 it can have bad re-occurrence later that day; so, you
5 can still suffer the repercussions from it.

6 So, the main thing here is stay cool, stay
7 hydrated. And that's it for today.

8 CHAIRMAN JENKINS: All right. Thank you.
9 And, lastly, its been a while since we've been in this
10 building; so I was going to ask if there's any
11 emergency procedures that you have in case of fire or
12 something?

13 SECRETARY MOLESWORTH: Sure. So, here you
14 can -- the fastest route to get out is out the door,
15 down to the entryway, and out front or out back.
16 There's bathrooms out the door, down the hallway, and
17 around the corner a little bit. And so that's --
18 that's about as simple as it gets if we have an
19 emergency.

20 CHAIRMAN JENKINS: Perfect.

21 SECRETARY MOLESWORTH: But out to the front
22 entry, out the front or back door.

23 CHAIRMAN JENKINS: Thank you very much.
24 Next I'd like to do a roll call. If you're on the --
25 online here with us, then you will unmute your mics.



1 If you're a board member, we'll go around the room and
2 do a quick roll call.

3 So, Dominic Burke, are you here? I assume he
4 was a minute ago. It looks like he is, but... There
5 he is. Can you hear me? We'll come back.

6 Kerry Cox, Board Member Kerry Cox?

7 BOARD MEMBER COX: Present.

8 CHAIRMAN JENKINS: Board Member Bobby Gray?

9 BOARD MEMBER GRAY: Here.

10 CHAIRMAN JENKINS: Board Member Don Baker?

11 BOARD MEMBER BAKER: Present.

12 CHAIRMAN JENKINS: Board Member James

13 Tumelson?

14 BOARD MEMBER TUMELSON: Present.

15 CHAIRMAN JENKINS: Board Member Mike Nord?

16 BOARD MEMBER NORD: Present.

17 CHAIRMAN JENKINS: Board Member Jack

18 Knottingham?

19 BOARD MEMBER KNOTTINGHAM: Present.

20 CHAIRMAN JENKINS: And Board Member Erick

21 Lee?

22 BOARD MEMBER LEE: Here.

23 CHAIRMAN JENKINS: Did I miss anybody?

24 Anybody here that has not been called?

25 BOARD MEMBER ISAACSON: Board Member Ivan



1 Isaacson is here.

2 CHAIRMAN JENKINS: Great. Thank you. And
3 last call to Dominic, were you able to get in? It
4 looks like he's online, but not responding.

5 Moving on, we will still do -- For the record,
6 we do have a quorum; so, we'll be moving forward.
7 It's been a while since we've been together and I
8 promised last time that if we had new board members
9 that we would do a little who we are around the room.
10 So, we'll start off with, I guess, Kerry Cox. If
11 you'd state your name, what position you're sitting --
12 seating in, and any other information you'd like to
13 give us.

14 BOARD MEMBER COX: Kerry Cox, I sit in the
15 telecommunications contractor position, owner and
16 general manager of ITC Systems, a telecom and IT firm
17 out of Clarkston, Washington over where it's hot
18 today.

19 BOARD MEMBER GRAY: Bobby Gray, I'm the
20 administrator for Hoydar Electric. I sit in the
21 contractor's chair.

22 BOARD MEMBER BAKER: Don Baker, I'm the
23 administrator for EC Electric. I sit in the
24 contractor's chair.

25 BOARD MEMBER TUMELSON: James Tumelson,



1 building official. I sit in the non-voting member
2 building official role for the Electrical Board and
3 also a master electrician.

4 CHAIRMAN JENKINS: Thank you.

5 BOARD MEMBER NORD: Mike Nord, I represent
6 the Communications Workers of America and I represent
7 the telecom seat.

8 CHAIRMAN JENKINS: Jason Jenkins, the Chair.
9 I'm an electrician, sit in the electrician's seat.

10 BOARD MEMBER KNOTTINGHAM: Jack Knottingham,
11 I sit in the electrician's seat, master electrician.
12 I've been an admin since -- I'm sorry, ELO1 since '88,
13 admin since '91.

14 BOARD MEMBER LEE: Board Member Erick Lee,
15 electrician's seat.

16 CHAIRMAN JENKINS: And Ivan Isaacson.

17 BOARD MEMBER ISAACSON: Board Member Ivan
18 Isaacson, I sit in the manufacturer's seat. I'm a
19 regional sales manager for Leviton Manufacturing.

20 CHAIRMAN JENKINS: Thank you very much. And
21 Wayne.

22 SECRETARY MOLESWORTH: Wayne Molesworth, I'm
23 the Chief Electrical Inspector since June of 2020.
24 I'm the secretary for the Board. I have a couple of
25 people, Mr. Chairman, if I could introduce in the



1 audience today, we have some new inspectors in
2 training that have come to watch the Board process and
3 understand a little bit more about what the program
4 does as a whole. We have Darren Alred and Dennis
5 Straley, the two instructors. If you guys would just
6 stand for me really quick or -- There you go. We've
7 got four of their instructor trainees out here in the
8 audience. We also have Faith Jeffrey, who is the
9 Compliance Policy Manager for the program, and a new
10 auditor in training, Tyler Kent. We also have Mike
11 back here. Mike is our -- Cruthers is our supervisor
12 from Bellevue, and I'm glad to have him here today.
13 He's a real help to us in that area. Some of you
14 might know Mike.

15 THE COURT REPORTER: And what was his --
16 Mike's last name?

17 SECRETARY MOLESWORTH: Cruthers.

18 UNIDENTIFIED SPEAKER: Thank you, Mr.
19 Chairman.

20 SECRETARY MOLESWORTH: Did I miss anybody?

21 CHAIRMAN JENKINS: All right. Thank you
22 very much. At this point here we're moving on to item
23 number two, which is approval of the transcripts; so,
24 the Board would entertain a motion to approve the
25 Washington State Electrical Board minutes of April 28,



1 2022.

2 UNIDENTIFIED SPEAKER: Motion.

3 CHAIRMAN JENKINS: A motion. Do we have a
4 second?

5 UNIDENTIFIED SPEAKER: Second.

6 CHAIRMAN JENKINS: We have a second. Do we
7 have any discussion?

8 BOARD MEMBER KNOTTINGHAM: I notice that
9 starting on page 36 and continuing on to 51 it refers
10 to Wayne Molesworth as technical specialist. I think
11 that should be changed to Secretary of the Board.

12 CHAIRMAN JENKINS: So, we have a motion to
13 adjust the Electrical Board minutes to allow that
14 Wayne Molesworth be titled as the Secretary to the
15 Board.

16 BOARD MEMBER KNOTTINGHAM: Correct.

17 CHAIRMAN JENKINS: Do we have a second?

18 UNIDENTIFIED SPEAKER: Second.

19 CHAIRMAN JENKINS: Any discussion? All in
20 favor of the motion with the correction, all in favor
21 say aye.

22 (Chorus of ayes)

23 CHAIRMAN JENKINS: Any opposed?

24 BOARD MEMBER ISAACSON: Aye.

25 CHAIRMAN JENKINS: Is that opposed or is

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1 that are you in the opposed position? Ivan Isaacson,
2 is that an opposed position?

3 BOARD MEMBER ISAACSON: Uh, no, it's for.

4 CHAIRMAN JENKINS: Oh, perfect. So, we --
5 The motion passes.

6 Moving on to item number three for appeals. We
7 start off with, just for the record, Randy's Heating,
8 ECHBO01063, ECHBO01065, ECHBO01066, and ECHBO01067.
9 It has been continued to the October meeting.

10 Also continued to the October meeting is the
11 Potelco, Incorporated, with Jeff Lampman and Bret
12 Montgomery. It's items EZINS01437, EZINS01438, EZINS
13 01439.

14 Also continued to the October meeting is the NCR
15 Corporation case, which is ELYOD02202 and ELYOD02203.

16 And so we are down to the next case, which is
17 the Presentment of Order, the Advanced Drilling, LLC,
18 and Robert Laymon, ESIMZ00384, ESIMZ00385. Is Robert
19 Layman here today? And is counsel on the Robert
20 Laymon case here also?

21 MR. LAYMON: Who?

22 CHAIRMAN JENKINS: The counsel.

23 MR. LAYMON: Not represented.

24 CHAIRMAN JENKINS: Is the Layman -- Is the
25 Assistant Attorney General available?



1 MS. KELLOGG: Yes. Nancy Kellogg.

2 CHAIRMAN JENKINS: Thank you very much: I'm
3 getting my words messed up here. So, does either of
4 you plan -- would you like to add any comments for the
5 record? Would you like me to add any comments to the
6 record?

7 MR. LAYMON: For the record?

8 CHAIRMAN JENKINS: For the record.

9 MR. LAYMON: Absolutely.

10 CHAIRMAN JENKINS: All right. If you want
11 to step up to the seat here, please state your name
12 and spell it for the court reporter, and we'll give
13 you about 10 minutes to add any comments you'd like to
14 for the record.

15 MR. LAYMON: My name is Robert Douglass
16 Laymon, R-o-b-e-r-t, D-o-u-g-l-a-s-s, L-a-y-o-n.

17 CHAIRMAN JENKINS: Okay. Go ahead and
18 continue.

19 MR. LAYMON: I'm not hearing that.

20 CHAIRMAN JENKINS: Go ahead and continue.

21 MR. LAYMON: I'm just here today to try and
22 clarify the fact that you guys are accusing me of
23 doing work that I didn't even need a permit to do.
24 I've been through this case for days. I've proved
25 that I didn't do the work you're accusing me of doing.



1 Apparently you guys have a cute little rule that if
2 you don't know who did the work then I'm guilty
3 anyway. But what I'm guilty of, what you guys are
4 saying I'm guilty of is work that I didn't need a
5 permit to do. It's a pre-existing circuit that I can
6 build from the front to the back, and if I thought for
7 a second I needed to prove that I did need a permit to
8 do work that I didn't do I would explain to you that I
9 didn't need a permit to rebuild a circuit.

10 Whoever rebuilt that circuit rebuilt it; it
11 wasn't me. But you guys have a cute little rule that
12 accuses me of doing it anyway. But you can accuse me
13 of doing it, that's fine. I didn't need a permit to
14 rebuild a circuit, a pre-existing circuit. I didn't
15 need a permit for that, simply don't. Now you guys
16 are fining me for something I didn't need a permit
17 for.

18 You're saying I didn't list my permits. Yeah, I
19 didn't do the work. I didn't list my permits. If I
20 hadn't done the work, I wouldn't have needed a permit,
21 I wouldn't need to do the list. It's -- This whole
22 thing is ridiculous. It's insanity. I didn't need to
23 do the work. I wouldn't need a permit to do it.
24 You're accusing me with your cute little rule of, "We
25 don't know who did it, so you're guilty." That's



1 fine, say I'm guilty. I still didn't need a permit to
2 reconstruct an existing circuit from front to back.
3 It's not necessary. It's not permissible. I mean I
4 didn't need a permit, didn't need to post a permit,
5 didn't need to get a permit. Go ahead and accuse me
6 of doing work I didn't do, fine. I still didn't need
7 a permit to do it. It's ridiculous. It's insane.
8 That's all I got to say.

9 CHAIRMAN JENKINS: Thank you very much for
10 your opinion on this. And do we have any -- Thank you
11 very much. You can step down. Ms. Nancy Kellogg, did
12 you have any comments you wanted to make?

13 MS. KELLOGG: Yes. The Board ruled on page
14 12 of the transcript. Let me get the date on that,
15 10/28/21 it appears to be unanimous to vacate all
16 findings of fact 4.9 and to change part of point --
17 4.6 and 4.20, and the final order that I have proposed
18 does exactly that.

19 This case involved two issues. One of them was
20 the connecting of the controller, which Mr. Laymon
21 disputes. The second was connecting the pump to the
22 electrical current in order to test the pump and flush
23 out the chlorine, and Mr. Layman admits to that. Both
24 of these are a basis for citations. So, even if you
25 disregard the section on the controller that Mr.



1 Laymon is most concerned about, there was still a
2 violation by connecting the pump to the electrical
3 current without a permit and without appropriate
4 licensing and certification. Thank you.

5 CHAIRMAN JENKINS: Thank you very much.
6 Thank you both for your comments on this case. After
7 reviewing both of the proposals, I'll be signing the
8 Department's proposal because it best reflects the
9 work that needs to be done by this board. So, thank
10 you very much.

11 So, moving on to the Leonard Tobin case, which
12 is ECHBO00970, ECHBO00971, ECHBO00972, ECHBO00973, and
13 ECHBO00974, is Leonard Tobin here available?

14 MR. TOBIN: Yes, I am.

15 CHAIRMAN JENKINS: All right. Thank you.
16 And is the AAG, I believe Lisa Roth, here available?

17 MS. ROTH: Present.

18 CHAIRMAN JENKINS: Thank you very much.
19 Good morning, my name is Jason Jenkins. I'm the Chair
20 of the Electrical Board. And the matter before us
21 today is an appeal of the matter of Leonard Tobin
22 versus the Department of Labor and Industries, Docket
23 No. 10-2020-LI-01534. This hearing is being held
24 pursuant to due and proper notice to all interested
25 parties in Tumwater, Washington on July 28th at



1 approximately 9:24 a.m.

2 This is an appeal of the proposed decision and
3 order issued by the Office of Administrative Hearings
4 on September 14, 2021. It is my understanding and
5 decision -- my understanding that the decision upheld
6 the citation and notices, ECHBO000970, ECHBO00971,
7 ECHBO00972, ECHBO00973, and ECHBO009974 issued by the
8 Department of Labor and Industries on July 8, 2020,
9 and it's further my understanding the Appellant has
10 timely appealed the decision to the Electrical Board.

11 At this time the Appellant, Leonard Tobin, is
12 present and representing by himself.

13 MR. TOBIN: Yes, sir.

14 CHAIRMAN JENKINS: And the Department is
15 present and represented by Assistant Attorney General
16 Lisa Roth.

17 MS. ROTH: Yes.

18 CHAIRMAN JENKINS: Correct? The Electrical
19 Board is a legal body authorized in the legislature
20 not only to advise the Department regarding the
21 electrical program, but to hear appeals when the
22 Department issues citations or takes some otherwise
23 adverse action regarding electrical licensing,
24 certification, or compliance. The Electrical Board is
25 a completely separate entity from the Department and



1 as such will independently review the action taken by
2 the Department.

3 When the Department has issued penalties the
4 hearing is assigned to Office of Administrative
5 Hearings to conduct the hearing pursuant to the
6 Administrative Procedures Act. The ALJ is who
7 conducts the hearing and issues the proposed decision
8 and order. If either party appeals, that decision is
9 subject to review by the Electrical Board.

10 Please keep in mind that while our review is
11 de novo, for example we sit in the same position as
12 the administrative law judge and will review the
13 entire record regardless of whether a certain piece of
14 evidence is referenced by the ALJ, we are bound by the
15 evidence in the record and no new evidence can be
16 submitted at this hearing.

17 Each party will be given approximately 15
18 minutes today to argue the merits of your case. Any
19 board member may ask questions and the time may be
20 extended at the discretion of the Board. Any
21 conclusion -- At the conclusion of the hearing, excuse
22 me, the board will determine if the findings and
23 conclusions reached by the ALJ is supported by the
24 findings by the fact and the rules pertaining to
25 electrical installations.



1 Are there any questions before we begin?

2 MS. ROTH: No.

3 MR. TOBIN: No.

4 CHAIRMAN JENKINS: Mr. Tobin being the
5 appearing -- appealing party you have the burden of
6 proof to establish the proposed decision is incorrect;
7 therefore, we will hear from you first. So, please,
8 if you can speak your name and spell it for the court
9 reporter, I'd appreciate that.

10 MR. TOBIN: Leonard Tobin, L-e-o-n-a-r-d
11 T-o-b-i-n.

12 CHAIRMAN JENKINS: You may begin.

13 MR. TOBIN: Okay. I was accused of
14 violating RCW 19.28.061(5)(a), failure of the
15 administrator or master electrician to be a sole
16 proprietor, partner, member, or supervisory employee
17 of the firm from 2018 to 2019. I'm going to reference
18 a few RCW and WAC rules, and a few court cases in my
19 next 15 minutes because I've been led to believe that
20 you're going to make a ruling right now. I'm going to
21 make those verbal references brief, but if any board
22 member wants copies, I can give you a copy of this so
23 that you can check my references.

24 Let's see. It's important to point out that
25 there is no evidence presented by the Department that



1 disputes that I was a Master Electrician or that I met
2 my obligations as Randy's Heating's designated Master
3 Electrician as set forth in RCW 19.28.0615(b) through
4 (f). The only dispute at issue is was I a member of
5 the firm or a full time supervisory employee on paper
6 during the quarters in question.

7 It was referenced in the contract titled
8 professional service agreement between Randy's Heating
9 and myself that Randy's Heating was to make me a
10 member of the firm. Randy's Heating failed to do
11 that. I can't make myself a member of somebody else's
12 company, only they can do that.

13 The professional service agreement referenced me
14 being a member of the firm and a 1099 employee.
15 According to that agreement, amended W-2s, and RCW
16 50.04.080, 50.04.100, and RCW 50A.05.010(5)(a), I was
17 a full time employee of Randy's Heating during all the
18 quarters in question. It is also significant that
19 Randy's Heating determined my schedule. I supervised
20 and performed all the electrical work in question.
21 Randy's Heating determined where, when, and what
22 projects were assigned to me. I supervised all
23 necessary electrical work in compliance with RCW
24 19.26.061. I ensured the proper safety procedures
25 were used. I ensured that all electrical labels,



1 permits, and licenses that were required to perform
2 electrical work were used. I saw that any corrected
3 notices were complied with.

4 Regardless of how Randy's Heating or I
5 classified my employment status, I was, in fact, a
6 full time and supervisory employee of Randy's Heating
7 during all of the relevant periods and performed all
8 of the requirements of a Master Electrician for
9 Randy's Heating pursuant to RCW 50.04.100 and RCW
10 19.28.061.

11 In all appeals of RCW 19.28 and WAC 296-46B
12 heard before the Office of Administrative Hearings the
13 Department has the burden to prove the allegations by
14 a preponderance of the evidence. WAC
15 296.46B-995(20(c)). I submit to you their arguments
16 are conjecture.

17 The Department is responsible for implementing
18 and enforcing the provisions of RCW 19.28 and WAC
19 296-46B. The Department is authorized to adopt
20 reasonable rules in the furtherance of safety to life
21 and property; however, the Department is not
22 authorized to change Washington state definitions of
23 words like employee. Washington statutory definition
24 of employment can be found at RCW 50.04.100 and it
25 says it means personal service for whatever nature



1 unlimited by the relationship of master and servant as
2 known to the common law or any other legal
3 relationship performed for wages under any contract
4 calling for the performance of personal services,
5 written or oral, expressed, or implied. That was our
6 professional service agreement.

7 Employment exists if the worker performs
8 personal services for the employer and employer pays
9 wages for those services or pays under any contract
10 calling for personal services. This is on the case of
11 Penik vs. Employment Security Department, also
12 Skrivanich vs. Davis. I'm going to pull one thing
13 from there, "Contractual language such as a provision
14 describing drivers as independent contractors is not
15 dispositive. Instead the court considers all the
16 facts related to the work situation."

17 The government can't have it both ways. The
18 court says employment is defined by the facts despite
19 wording in a contract, and the Department wants
20 employment to be defined by contract the way they
21 interpret it.

22 Using Washington State Department of Employment
23 Security to verify whether I was paid by W-2 and,
24 therefore, an employee was a mistake made by the
25 Department. Form W-2 does not determine employment



1 status as defined in RCW 50.04.140(1)(a) through (c).

2 As a matter of fact, the US Code 26 US Code
3 section 3401(c) used by the IRS defines employee as an
4 officer, employee, or elected official of the United
5 States, a state, or political subdivision thereof.

6 The federal definition of employee is the exact
7 opposite of the Washington state definition found at
8 RCW 50A.05.010(5)b), which states, "Employee does not
9 include employees of the United States of America."

10 It is unreasonable for the Department to assume a
11 Washington state employee not paid by form W-2 is not
12 an employee.

13 The failure of Randy's Heating to classify me as
14 an employee is not proof of a violation of 19.28.061.
15 The Department should be expected to do further work
16 to verify a person's employment status for the purpose
17 of RCW 19.28.061. The existence of a contract is not
18 dispositive; therefore, the Department should have
19 considered all other factors before making its
20 determination that I was not an employee.

21 WACs 296-46B-975 and 296-46B-930 are
22 verification rules that should be used by the
23 Department to verify employment status as it relates
24 to satisfying the requirements of RCW 19.28.061, not
25 to make an ultimate determination regarding whether a



1 person is an employee or not.

2 The Department solely relied on Washington
3 Employment Security Department for verification
4 purposes and failed to consider that, 1) The IRS has
5 an exact opposite definition of employee than
6 Washington state law; 2) I provided services to
7 Randy's Heating; 3) Randy's Heating paid me for those
8 services; and 4) my work schedule and assignments were
9 controlled by Randy's Heating. Points two through
10 four are the conditions that determine whether someone
11 is an employee in Washington state, not point one.

12 Applying standards of WAC 296-46B-930 in
13 determining whether I was a full time employee, the
14 Department should have considered that I received a
15 regular salary, had supervisory responsibility for the
16 electrical work, and carried out the duties shown in
17 RCW 19.28.061.

18 The fact that Randy's Heating amended its
19 information returns reflecting the employment
20 classification of me with Randy's Heating under duress
21 from, and as instructed by Mr. Chavez of the
22 Department, should have been given significant
23 consideration.

24 The Washington Employment Security Department,
25 the Washington Department of Revenue, Washington



1 Department of L & I, and the IRS all allow for a
2 company such as Randy's Heating to voluntarily amend
3 returns to correct them. Randy's Heating amended the
4 returns -- Randy's Heating's amended returns changed
5 my classification within the company. The amended
6 returns did not rewrite history. They are not
7 evidence that I was not an employee. They are further
8 evidence that I was an employee. The fact that
9 Randy's Heating voluntarily made theses changes and
10 provided that information to the Department should
11 have been evidence enough to prompt the Department to
12 inquire further into my employment status. The
13 returns did establish I was a paid -- I was paid a
14 wage similar to other employees of Randy's Heating.

15 The Department attempted to further muddy the
16 waters by arguing I didn't provide records as required
17 by WAC 296-46B-975; however, the Department's position
18 is misleading. WAC 296-46B-975(8) states that every
19 employer or contractor, not the employee, must
20 maintain pay records, time cards, or similar records
21 to verify the work relationship of the administrator
22 with the company so that the Department may obtain the
23 information it needs to verify the relationship.

24 In this matter Randy's Heating provided amended
25 information returns that establish my work



1 relationship. Randy's Heating could have provided
2 other information if the Department had requested that
3 of it.

4 It is worth noting that despite my fulfillment
5 of all the duties set forth in 19.28.061(5)(b) through
6 (f) and RCW 19.28.061(6) states, "The Department shall
7 not change the administrator's duty under subsection
8 (5) of this section", the Department wants to add
9 "making myself a member of Randy's firm" and payroll
10 record keeping to my duties as Master Electrician. It
11 is obvious that the contractor is the only one capable
12 of adding a person as a member of the firm. The
13 Master Electrician cannot appoint himself a member of
14 the firm that he does not own. It is also equally
15 clear the contractor is responsible for payroll and
16 record keeping. Payroll and record keeping are not
17 duties of the Master Electrician. As a matter of
18 fact, the Master Electrician is dependent upon the
19 contractor to do the payroll and share the records
20 with the Department.

21 In closing, the Department's actions were
22 arbitrary and capricious. The Washington State
23 Supreme Court has defined arbitrary or capricious
24 agency as action that is willful and unreasonable and
25 taken without regard to the attending facts or



1 circumstances. That is according to a court case,
2 Washington Independent Telephone Association vs.
3 Washington Utilities and Transportation Commission.

4 The Department willfully issued five citations
5 without regard to the attending facts and
6 circumstances. When fairly considered, the evidence I
7 have submitted carries greater weight and is the more
8 convincing as to its truth than the arguments of the
9 Department, particularly when considered in the light
10 of the arbitrary and capricious actions of the
11 Department. Accordingly, I respectfully request the
12 Electrical Board enter findings of not committed for
13 the five citations you issued to me.

14 CHAIRMAN JENKINS: Thank you very much for
15 your time. AAG Lisa Roth.

16 MS. ROTH: Good morning, members of the
17 Electrical Board and Secretary Molesworth. The
18 Department respectfully asks that Electrical Board
19 uphold and affirm the initial order dated September
20 14, 2021, wherein the ALJ found by a preponderance of
21 evidence that Mr. Tobin did violate RCW
22 19.28.061(5)(a) by failing as the Master Electrician
23 to be a sole proprietor member, or partner, or
24 supervisory employee of firm. In this case the firm
25 was Randy's Heating. And this was for a time period



1 of the second quarter of 2018 starting May 15, 2018 to
2 the second quarter of 2019 ending May 23, 2019.

3 The RCW 19.28.061(5)(a) requires, and in this
4 case we're dealing with Master Electricians, Mr. Tobin
5 was listed as Ran-- by Randy's Heating as Master
6 Electrician, and the statute requires that the Master
7 Electrician be a full time supervisory employee or a
8 member of the firm and -- and be available during
9 working hours to carry out the business of an
10 administrator.

11 In this case the evidence presented established
12 by a preponderance that Mr. Tobin was not a member of
13 the firm of Randy's Heating. Washington
14 Administrative Code section 296-46B-100 defines member
15 of the firm as the individual on file with the
16 Secretary of State for corporations. The regulations
17 have already addressed this issue. They've defined
18 what is a member of a firm, and throughout the time
19 period of the violations Mr. Tobin was never listed on
20 the Secretary of State documents as a member of
21 Randy's Heating.

22 It is -- It is true that Mr. Tobin could not, on
23 his own volition, change the Secretary of State
24 documents, but he could have checked the Secretary of
25 State documents to ascertain whether or not he was



1 listed as a member of the firm as required by the
2 rules, and perhaps he didn't know that was required,
3 and perhaps he just didn't check, he had that
4 opportunity, he did have control in ascertaining his
5 status, and he was not ever a member of the firm
6 during the period of the violation.

7 So, the next question is: Was Mr. Tobin a full
8 time supervisory employee? The evidence shows by a
9 preponderance or showed by a preponderance that he was
10 not a full time supervisory employee. So, the issue
11 is not simply whether or not he was an employee, it's
12 whether he was a full time supervisory employee.

13 Now, WAC 296-46B-930 indicates that the
14 Department of Labor and Industries can determine
15 whether an individual is a full time supervisory
16 employee by considering whether they are on the full
17 time payroll and whether they receive regular wages or
18 salary. In this case there was no evidence presented
19 that Mr. Tobin was a full time -- on a full time
20 payroll by Randy Heating -- Randy's Heating, and
21 neither was there evidence that he was receiving a
22 regular salary or wages.

23 The Department in this case did obtain the
24 Employment Security Department records and for the
25 time period in question from, again, the second



1 quarter of 2018 to the second quarter of 2019. During
2 that time period Mr. Tobin was never listed as an
3 employee of Randy's Heating, LLC. It is true that
4 after the violation period Randy's Heating amended the
5 Employment Security Department records, but that
6 doesn't hear or remedy the fact that during the
7 violation period Mr. Tobin was not an employee or a
8 full time supervisory employee of Randy's Electric.

9 Now, further evidence would indicate that --
10 indicates that Mr. Tobin was also not a full time
11 supervisor for Randy's. Supervision is defined by WAC
12 296-46B-100 or the word supervision is defined as the
13 supervising electricians on the same job site as a
14 trainee being supervised. So, the full time
15 supervisory employee has to also be, as well as a
16 member of the firm, also has to be available during
17 working hours to carry out the duties of the
18 administrator.

19 In this case Employment Security Department
20 records also show that from February, excuse me, from
21 the second quarter of 2018 to the second quarter of
22 2019 Mr. Tobin had another job. He was employed by
23 Edlen's Electrical, and in the third and fourth
24 quarter of 2018, and the first and second quarters of
25 2019, he was working more than 400 hours per quarter



1 for this other company. In the second quarter of 2018
2 he was working less, 293 hours for that quarter for
3 Edlen. So, the evidence shows that a question one
4 could ask is is it more likely than not that Mr. Tobin
5 was a full time supervisory employee for Randy's when
6 he was working at least for all but one quarter more
7 than 400 hours a quarter for another company, and the
8 evidence -- again, the Department's burden is only to
9 show more likely than not, and, based on that, that
10 would indicate more likely than not he was not
11 available full time during working hours to be the --
12 to carry out the duties of an administrator.

13 So, Mr. Tobin also entered into a professional
14 service agreement. There were two. One was dated
15 2016 and the other dated 2019. In that agreement the
16 contractor did indicate that Leonard Tobin was a
17 self-employed member; however, that is not -- the
18 terms of that contract is not dispositive. As I've
19 already indicated, the rules require that the members
20 of the firm be listed on file with the Secretary of
21 State and Mr. Tobin was not.

22 So, based on all of the evidence presented, the
23 Department has met it's burden of proof and we would
24 respectfully ask the Electrical Board to affirm.
25 Thank you.



1 CHAIRMAN JENKINS: Thank you very much. All
2 right. Any questions from Board Members?

3 BOARD MEMBER COX: Mr. Chairman, if I may
4 address the Appellant, Mr. Tobin. On an average day
5 did you go to Randy's Heating office?

6 MR. TOBIN: Randy's Heating was a start-up
7 company. We were trying to get off the ground. In
8 the beginning when we first started we didn't have
9 electrical work. I only went when we had work to do.
10 My job at Edlen is a trade show and so it's sporadic,
11 so Randy would let me -- we built up a list of things
12 for me to do, projects, and then when things got slow
13 at Edlen then I would go across the water and complete
14 those projects. It wasn't a -- It wasn't a normal
15 work week. There was times that I would work both
16 jobs the same day many times.

17 BOARD MEMBER COX: So, what time when you
18 went to Randy's what time was that in the morning and
19 did you have a -- or was it an afternoon that you
20 would go there?

21 CHAIRMAN JENKINS: That's not a part of
22 our -- that's not part of our evidence or material.
23 That question can't be --

24 BOARD MEMBER COX: All right. Strike that.

25 BOARD MEMBER NORD: Mr. Chair, I do have a



1 question, but prior to asking that question I need
2 counsel from the Attorney General. There's reference
3 made in the package to being a 1099 and W-2 employee.
4 There's reference to amended tax and wage reports. Am
5 I allowed to ask questions regarding the 1099 and the
6 W-2?

7 MR. BLOHOWIAK: Yes, so as long as it's
8 within the confines of the evidence --

9 BOARD MEMBER NORD: That's where I'm a
10 little fuzzy.

11 MR. BLOHOWIAK: It's --

12 (Speaking at the same time)

13 MR. BLOHOWIAK: It's -

14 BOARD MEMBER NORD: Let me ask my question
15 and you ask -- let me know if I can continue down that
16 road.

17 MR. BLOHOWIAK: Okay.

18 BOARD MEMBER NORD: The question I have
19 after reviewing this is I see that there's filed
20 amendments to Washington state taxes, but it's my
21 understanding if you're a 1099 employee you're not
22 paying federal or social security taxes because that
23 is an employee tax that's shared by the employer and
24 the employee. So, if you're reclassified as a W-2
25 employee somehow, I don't see any reference in here



1 that federal taxes were ever accounted for.

2 MR. TOBIN: They were all paid by Randy.

3 BOARD MEMBER NORD: Am I allowed to go down
4 that road?

5 MR. TOBIN: The W-2 or the W-2s that Randy
6 filed it shows that he paid them and the amount.

7 BOARD MEMBER NORD: I didn't see it; so,
8 that's where it's fuzzy. I see state, but I don't see
9 the (inaudible)

10 THE COURT REPORTER: I can't hear your
11 conversation; so, either you're off the record or you
12 need to speak up just a little more so I can hear you.
13 Thank you.

14 MR. BLOHOWIAK: Yeah, sorry. So, you need
15 to -- you can keep the question whether it's in there
16 or not paid there, but other evidence regarding that
17 would be outside the scope of what we have to work
18 with from the OAH.

19 BOARD MEMBER NORD: That's what I thought.
20 I have no further questions.

21 CHAIRMAN JENKINS: Any other questions?

22 BOARD MEMBER BAKER: Mr. Chair.

23 CHAIRMAN JENKINS: Yes.

24 BOARD MEMBER BAKER: Questions and comments.
25 I'm a little passionate about this. I read the case.



1 I have the same credentials as you. So, Mr. Tobin,
2 you gave the definition of employment in the middle of
3 your brief there. Would you mind going back and
4 referencing that again maybe.

5 MR. TOBIN: The Washington state definition
6 of employment?

7 BOARD MEMBER BAKER: Yeah, yeah. I found
8 that interesting. If you could repeat that.

9 MR. TOBIN: It is RCW 50.04.100, Employment
10 means personal service of whatever nature unlimited by
11 the relationship of master and servant as known to the
12 common law or any other legal relationship performed
13 for wages or under any contract calling for the
14 performance of personal services, written or oral,
15 expressed or implied.

16 BOARD MEMBER BAKER: Thank you. So, as an
17 administrator for a firm, you know, being in a
18 supervisory employment position it's really hard to
19 define that, especially in 2019 and '20 when I sat at
20 home at my computer while a thousand employees, 01
21 electricians and 06s, are out there working in the
22 field. There is a tier and there's a structure to an
23 organization that provides that supervision to those
24 employees. I was a full time employee. I was
25 available. I dealt with any compliance issues. But



1 I'm not holding the hands of those electricians every
2 day. And I share that because I think it's really
3 difficult when you start thinking about, you know,
4 does somebody meet that role as a supervisory
5 employee, what does that look like from one firm to
6 another.

7 It appears to me as I read through this that
8 your definition you just shared of employment that he
9 did meet that. He was compensated. I don't
10 understand all the legalities of a 1099 versus a W-2.
11 I don't understand all those, but when I looked at the
12 situations and I read through this brief it appeared
13 to me that he was an employee, he was being
14 compensated, he was providing a service, as he
15 testified to, and I don't think there's enough
16 information in here for me to determine whether or not
17 it was in a supervisory role or not. I see that they
18 pulled his permits, I see they've got inspections, so
19 he was satisfying the role as the administrator for
20 the firm. I struggle with upholding the law judge's
21 ruling on this case, just to be honest with the Board.

22 MR. TOBIN: May I add something?

23 MR. BLOHOWIAK: One moment, Mr. Tobin. And
24 I just want to clarify this for the Board Members, RCW
25 50.04.100 is the statute provisions related to



1 unemployment. The definition for employment it varies
2 throughout the RCWs and in different categories. So,
3 I just want to advise the Board that that is just one
4 place in the Washington State Revised Code that
5 defines employment, and so that the board members need
6 to be aware of that when they're making their decision
7 today.

8 BOARD MEMBER BAKER: Yeah, I appreciate you
9 sharing that. I'm not planting my flag on that
10 definition, but as I read through this brief I see
11 terms and conditions of employment that I recognize,
12 you know, a contract that was put in place,
13 compensation that was paid, the firm -- the firm being
14 in compliance with permitting and inspections; so, I
15 can see that that relationship was in place. Whether
16 or not an employee is a 1099 or was it a W-2 I don't
17 know that that defines whether or not they're an
18 employee or not, but he was compensated, and if we are
19 going to hang -- if we're going to hang him over,
20 well, you weren't a supervisory employee, I would
21 strongly oppose that because we learned through Covid
22 that as a supervisor you were not present a lot of the
23 times. You're still performing those duties and those
24 roles, but you're not boots on the ground necessarily.
25 You're not necessarily in front of those employees



1 every day.

2 The point that he had another job and, you know,
3 worked 400 hours in a particular quarter for another
4 employer that's a stumbling block for me, right.

5 There's only -- In a 40 hour work week there's only
6 516 hours in a quarter; so, that's a lot of time to be
7 spending with another employer. But, again, I don't
8 know what those shifts looked like. I don't know if
9 he was working night shifts at one place and day
10 shifts another.

11 MR. TOBIN: That's exactly what I was doing
12 weekend.

13 BOARD MEMBER BAKER: So, I have a hard time
14 saying that because you had another job you weren't a
15 supervisory employee for another firm. I don't think
16 that's strong evidence for me.

17 I am just -- I'm just sharing with you my
18 thoughts, Board. I struggle -- I struggle with these
19 citations and I struggle with the penalties associated
20 with them when there's a lot of appearance that he was
21 satisfying that role as the administrator.

22 CHAIRMAN JENKINS: Thank you. I've got a
23 question for AAG Roth. Can you explain as to how your
24 definition of employment is being defined?

25 MS. ROTH: In this case the Department is



1 relying on its -- on the RCWs, specifically the rules,
2 the electrical rules that I referenced, so WAC
3 296-46B -- just a moment -- 930 describes the criteria
4 the Department has to look at in determining whether
5 or not an individual is a full time supervisory
6 employee. The rules state the Department shall
7 consider whether they're on a full time payroll and
8 whether the individual received salary or wages and
9 similar to other employees, and so the Department did
10 consider that specific criteria.

11 The other issue, which is really important, is
12 to look at the definition of supervision. It means
13 the supervising electricians on the same job site as
14 the trainee being supervised. The importance and
15 point of these particular rules is to ensure that the
16 supervise-- that the full time supervisory employee or
17 the member of the firm is available during working
18 hours to carry out the duties, that they must -- they
19 don't have to be working 40 hours a week, but they
20 have to be available during working hours, which are
21 typically 9:00 to 5:00, which that's not defined by
22 the rules. It's just during working hours and the
23 statute says during work hours. So, for the safety of
24 the public and to ensure that these rules are complied
25 with, there is this definition of full time



1 supervisory employee. And, frankly, in this
2 particular case when Randy's Heating did go back and
3 amend the Employment Security Department records, they
4 amended it to state that Mr. Tobin was work being 520
5 hours a quarter for Randy's and so then he's working
6 520 hours a quarter for Randy's and another 400+ hours
7 for most quarters for the other company. So, the
8 evidence is clear at least by a preponderance, and
9 that's our standard proof, by a preponderance, that
10 it's more likely than not Mr. Tobin was not available
11 during working hours and was not performing the full
12 time supervisory employee function during working
13 hours. Thank you.

14 CHAIRMAN JENKINS: Thank you very much.

15 MR. TOBIN: May I respond to that?

16 CHAIRMAN JENKINS: One second. I was going
17 to grant this, that the context here we're dealing
18 with as far as being a supervisory position and that's
19 kind of the same thing I was looking at at the State,
20 going to be a full time employee, to be a full time
21 supervisory position he has to be available during the
22 entire time that Randy's Heating is working, and in
23 looking at page 229 of our packet, that's the -- it's
24 the best summary I can find, this lays out all the
25 hours that's been reported, and I noted the packet



1 talks about how the 520 hours was an arbitrary number
2 tossed back by Randy's Electric -- Randy's -- sorry,
3 Randy's Heating in order to supply us that number.
4 But even then when I look at the Edlen Electric, as
5 mentioned multiple times now, the 293 hours in quarter
6 two, the 458 in quarter three, this is a full time
7 job.

8 MR. TOBIN: This is --

9 CHAIRMAN JENKINS: He's working 33 hours a
10 week.

11 MR. TOBIN: We're not --

12 (Speaking at the same time)

13 CHAIRMAN JENKINS: This is that time for us
14 to talk.

15 MR. TOBIN: I'm sorry.

16 CHAIRMAN JENKINS: So, I'm looking at 458
17 hours, that's a full time position, without you
18 working every single hour that week. That's -- that's
19 you're not available to another position, which would
20 have been the Randy's Heating. You're working less on
21 the job site. And so that's why I'm -- The actual
22 hours, as mentioned throughout the case, the 520 is, I
23 don't know, he says he arbitrarily threw a number on
24 it, that's in actual testimony. And, so, if that's
25 the case, we don't know how many hours he actually



1 worked for him. We don't know if he was available
2 during all the work hours available, which by given to
3 us that the heating company has been operating every
4 day and then he shows up at different times of day to
5 finish some portion of it, was he there for any of the
6 other stuff that needed to be done? I'm arguing that
7 it's not shown. It's not shown in this document.
8 That's the problem I have with that.

9 UNIDENTIFIED SPEAKER: Like I --

10 CHAIRMAN JENKINS: I look at different
11 spots, see what the -- Maybe I can go back and show
12 it.

13 BOARD MEMBER BAKER: Like I said, the Edlen
14 Electric position is a stumbling block for me. But,
15 as you said, the evidence isn't there to show that he
16 was available for Randy's; it's also not there saying
17 that he wasn't. You know, we don't know what hours he
18 was working here. I'm an administrator. I'm
19 available right now.

20 BOARD MEMBER TOBIN: Thank you.

21 BOARD MEMBER BAKER: I'm available,
22 technology has gotten us to that place, and as an
23 administrator, and there's a few administrators in the
24 room, you're not out supervising trainees. You're not
25 out supervising 01s. The 01s are supervising the



1 trainees. And there's a structure in place that
2 administrators are to make sure that compliance is
3 being held or responding to the Department
4 appropriately and permits are being pulled. You know,
5 we're not necessarily supervising field installations.
6 We can, but that's not the primary function of the
7 administrator. We're making sure we're in compliance,
8 and we're responding to the Department appropriately,
9 and following all the guidelines, and the company's
10 following the guidelines.

11 I have a hard time with the evidence that are
12 here saying that he didn't do that. Again, the Edlen
13 Electric position doesn't help his case, but it's
14 possible that he was working a swing. It's possible
15 that Randy's was working a different shift. I don't
16 know. He may have been available. But clearly I'm
17 struggling. Clearly I'm struggling with the citations
18 and the penalties associated with them because he had
19 a contract, because he was compensated. I appreciate
20 the fact that Randy's is the one that was pointed out
21 to them they had a mistake in how they were doing it.
22 They went and corrected it. They weren't trying to
23 hide or, you know, run from it, it appears anyway.

24 CHAIRMAN JENKINS: To add to my earlier
25 statement, too, I was going through this, and if you



1 go back to -- multiple pages show this, but I'm on
2 page 222 of our book, of our packet, and in the
3 amended wage report for justification or reasoning of
4 why they had to fix things it's, "Because we were
5 paying him as a subcontractor." And you being a
6 subcontractor for a company does not make you a
7 supervisor of the company. You're being subcontracted
8 out. It also gives the administrator a loop hole, say
9 something went sideways, something went wrong, we'll
10 them take out of liability because, "Hey, I was the
11 subcontractor. I wasn't the administrator because I
12 wasn't paid as one. I was a subcontractor for him."
13 And then after all the jobs are done, you'll come back
14 and, "Oh, no, I was an employee. Everything went
15 well. We're good." I -- I just -- It just seems like
16 it was a side job trying to be a supervisor for this
17 contractor, not there for the entire business, but
18 just added income. That's all shown on the page we
19 were at, as far as I'm thinking about it. That's why
20 where I hang my hat, I guess.

21 BOARD MEMBER KNOTTINGHAM: Can I ask a
22 question?

23 CHAIRMAN JENKINS: Yes.

24 BOARD MEMBER KNOTTINGHAM: Board Member
25 Knottingham. There is a -- and I don't have the page



1 number, but you were paid \$500.00 a month, plus \$50.00
2 per job, and then on page 38 of the other report it
3 says that they ask if anybody else did electrical
4 work, did anybody else perform electrical work for
5 Randy's Heating in the same time frame, and you
6 answered no.

7 MR. TOBIN: So, I was the only electrician.
8 I did all the work. I was on every job with Randy.
9 When he was available, he helped me, which was most of
10 the time. I was not -- they're trying to I say wasn't
11 available during Randy's Heating working hours. My
12 working hours were the electrical working hours,
13 period.

14 BOARD MEMBER KNOTTINGHAM: You were paid for
15 the job.

16 MR. TOBIN: I was paid --

17 BOARD MEMBER KNOTTINGHAM: \$50.00 per job?

18 MR. TOBIN: I was --

19 BOARD MEMBER KNOTTINGHAM: I'm sorry, per
20 permit that was pulled, correct?

21 MR. TOBIN: I was paid more than what is
22 described there because I was also paid for doing the
23 work. What we did there was we -- How would you say
24 it? We pulled, and at the time an administrator's
25 license was -- we thought was worth about \$1,000.00 a



1 month just for the license part, but the -- him just
2 starting out, he couldn't -- he couldn't afford that
3 and that's why we went with the structure that you
4 described as far as the administrative part. Then he
5 paid me by the job for work I did as far as the
6 physical work.

7 BOARD MEMBER KNOTTINGHAM: So, what portion
8 was paid for the supervision administration or the
9 administrator master?

10 MR. TOBIN: I'm sorry?

11 BOARD MEMBER KNOTTINGHAM: You said that
12 \$1,000.00 is what you figured a master or an
13 administrator was worth?

14 MR. TOBIN: Yes, for signing that with the
15 company.

16 BOARD MEMBER KNOTTINGHAM: Is that what the
17 other employees were being paid?

18 MR. TOBIN: There were no other
19 electricians.

20 BOARD MEMBER KNOTTINGHAM: Just Randy?

21 MR. TOBIN: Randy was an apprentice, yes.

22 CHAIRMAN JENKINS: Any question from the
23 Board?

24 BOARD MEMBER NORD: On page 229 of our
25 packet Randy's Heating for the first, second, third,



1 fourth quarter of 2018 references that Mr. Tobin
2 received \$14,038.54 each quarter in compensation for
3 520 hours. That works out to \$26.99 an hour. Were
4 you also paid that other on top of that, monthly
5 (inaudible)

6 THE COURT REPORTER: The monthly what? I'm
7 sorry, the monthly what?

8 BOARD MEMBER NORD: Monthly and by permit.
9 So, my question is: I see here that you worked 520
10 hours each quarter in 2018.

11 MR. TOBIN: I did not.

12 BOARD MEMBER NORD: Well, this is the
13 document that you --

14 MR. TOBIN: I'm just being honest with you.
15 I did not work 520 hours.

16 BOARD MEMBER NORD: Okay, so this document
17 is false?

18 MR. TOBIN: Well, he did that after Mr.
19 Chavez told him to change his --

20 BOARD MEMBER NORD: Well, my question is:
21 Is this fraudulent?

22 MR. TOBIN: I don't think so.

23 BOARD MEMBER NORD: Well, you just told me
24 it's not correct.

25 MR. TOBIN: The hours -- What he's doing



1 there is he's trying to say I'm salaried.

2 BOARD MEMBER NORD: So --

3 MR. TOBIN: He didn't have the hours.

4 BOARD MEMBER NORD: So, he filed incorrect
5 documents with the State of Washington?

6 MR. TOBIN: I don't know that. I didn't
7 file those documents.

8 BOARD MEMBER COX: Question for Board Member
9 Nord. Is the employee, is he responsible for that or
10 is he a contractor?

11 BOARD MEMBER NORD: Well, this is where I'm
12 trying to get an answer to my question. Did he
13 receive the \$26.99 per hour for the 520 hours stated,
14 plus that, what was it, \$500.00 a month, plus \$50.00
15 per permit, did you receive both compensations?

16 MR. TOBIN: I would receive a direct deposit
17 biweekly, if I recall, and it was all lumped into
18 that.

19 BOARD MEMBER NORD: So, do you know what you
20 were exactly paid and how you were paid?

21 MR. TOBIN: I'd have to go back and look at
22 bank statements to see how much I was paid.

23 BOARD MEMBER NORD: Because the problem that
24 I have is looking at the documents I have they don't
25 make sense.



1 MR. TOBIN: I agree.

2 BOARD MEMBER NORD: And this is what your
3 employer has reported to the state.

4 MR. TOBIN: Yeah.

5 BOARD MEMBER NORD: After the fact, yeah.

6 BOARD MEMBER COX: So, Mike, I wonder if
7 we're getting into the minutia of things and it's
8 obviously he was compensated.

9 BOARD MEMBER NORD: But we don't know how?

10 BOARD MEMBER COX: Right, he was compensated
11 for it.

12 BOARD MEMBER NORD: So, was he compensated
13 as an employee?

14 MR. TOBIN: Yes. Are you asking me?

15 BOARD MEMBER COX: I think Board Member Nord
16 and I are having a discussion.

17 BOARD MEMBER NORD: Yeah, we're --

18 MR. TOBIN: Thank you.

19 BOARD MEMBER NORD: Do you know --

20 BOARD MEMBER COX: I do, and I'm -- I'm in
21 the same position here because he is getting
22 compensated --

23 BOARD MEMBER NORD: Absolutely.

24 BOARD MEMBER COX: -- for this.

25 BOARD MEMBER NORD: Absolutely.



1 BOARD MEMBER COX: Now, is this an
2 Employment Security Department technicality,
3 absolutely.

4 BOARD MEMBER NORD: I agree.

5 BOARD MEMBER COX: Is this really an issue
6 for something we may be hearing in October with
7 Randy's Heating?

8 BOARD MEMBER NORD: That's another point.

9 BOARD MEMBER COX: Okay. This man was
10 looking for work, found work with a fella that was
11 starting a company. This is an HVAC guy. He's
12 bending tin. He's putting in A/C and heating units.
13 He needs to do the electrical work portion of it and
14 needs an employee to do that, enter Mr. Tobin, and
15 they create an employment contract to do what he needs
16 to do. Randy would like to most likely be his own
17 electrician, and it's in the transcripts here it is
18 testified that Mr. Tobin supervised Randy in whatever
19 electrical work he needed, and that's what triggered
20 Inspector Chavez to question this whole affair
21 because --

22 BOARD MEMBER NORD: I agree with you
23 because it looks to me like the supervision was done,
24 he got a licensed electrician to do proper level
25 work --



1 BOARD MEMBER COX: Yes.

2 MR. NORD: The problem is how the owner of
3 the company and that licensed electrician entered into
4 their employment agreement and how the compensation
5 was --

6 BOARD MEMBER COX: Right.

7 BOARD MEMBER NORD: -- going along with
8 Don's argument.

9 (Speaking at the same time)

10 MR. COX: Right. But is that -- We're
11 penalizing him that his employer made a mistake,
12 didn't do things right as an employer, especially a
13 start-up who may have been a tin man, I'm just
14 assuming, work for another HVAC firm somewhere, and
15 said, "Hey, I'd like to start my own company." He did
16 it. You're working a few hours to get started. I
17 know when I started my company about 30 years ago it
18 wasn't 40 hours a week, it was you do what you can do,
19 and in the evenings I did other things in the evenings
20 because I had to have an income.

21 BOARD MEMBER NORD: Absolutely, I agree with
22 you.

23 BOARD MEMBER COX: Okay. So, are we -- are
24 we -- is the State penalizing Mr. Tobin on an ESD
25 technicality that is the responsibility of his



1 employer, of the contractor, and Mr. Tobin as a master
2 electrician is doing all the duties that he is called
3 to do in the WAC and bylaws, the RCWs, he's called to
4 do these supervisor duties, everything I read in here
5 is that he did that. This is just simply a money game
6 of who's doing what.

7 BOARD MEMBER NORD: Well, to go along with
8 that, if what I read in here is correct, he did
9 fulfill every obligation as an 01, as a supervisory
10 employee, as an administrator, yes. What it appears
11 to be is a misclassification as an officer of the
12 company, that's what I don't understand in here.
13 That's where I'm kind of -- I don't know if I can go
14 down that line of questioning.

15 BOARD MEMBER COX: Well, the other issue,
16 too, is -- and this is at least the second, if not the
17 third appeal I've heard in my tenure on the board
18 where an administrator is being cited for something
19 that an employer should have done and the contractor
20 should have done.

21 BOARD MEMBER NORD: I agree.

22 BOARD MEMBER COX: So, I believe there may
23 be some bills that need to be put forth and worked on
24 to try to correct some of these technicalities that
25 are penalizing our administrators instead of the --



1 but that's for another subject. The idea of going
2 back all the periods of time that Mr. Tobin was
3 working for Randy's Heating, I mean I'd liken that to
4 getting pulled over for speeding. An officer pulls up
5 my record and says, "Oh, I see you've got a speeding
6 ticket three years ago, so you must be a speeder. So,
7 every time, you know you go out driving, you must
8 speed, so I'm going to write you a ticket for every
9 time you've been on the road." That doesn't make
10 sense. It's like write me for the violation that
11 happened, not go back for two or three years of
12 operation.

13 So, I -- I think the point of this is did this
14 administrator do his duty as an administrator? Did he
15 supervise employees, which was Randy, did he pull the
16 permits, did he make sure that the inspections were
17 called for, and from what I see in the transcripts --

18 BOARD MEMBER NORD: And I agree.

19 BOARD MEMBER COX: I mean that's where I am
20 on this. I think this is an ESD issue for the -- for
21 Randy's Heating.

22 BOARD MEMBER NORD: So, by pulling the
23 permits, by supervising the work, by doing the work,
24 he has fulfilled his obligations as an administrator,
25 we're in agreement on that.



1 BOARD MEMBER COX: Yes.

2 BOARD MEMBER NORD: The only thing that we
3 don't know based upon working the math and what we see
4 here is how the employer and the administrator what
5 their agreement was and how he is a -- is he an
6 officer of the company, is he an employee, is he
7 somehow on board with the changes that were done in
8 paperwork to Employment Security, what was the actual
9 compensation for, what --

10 BOARD MEMBER BAKER: Well, we know -- We
11 know he's not an officer of the company and we don't
12 even need to bring that up again because he's not an
13 officer of the company. So, the question really is
14 was he a supervisory employee. I believe he was.
15 Regardless of his side hustle with the other company
16 or vice versa, he was compensated, he had an agreement
17 to be compensated, he performed the duties.

18 BOARD MEMBER NORD: Well, going along with
19 that argument, I would say that Randy's Heating was --

20 MR. TOBIN: I --

21 BOARD MEMBER NORD: -- that they were
22 performing work on a customer's --

23 BOARD MEMBER BAKER: If --

24 (Speaking at the same time)

25 BOARD MEMBER NORD: -- they worked weekends,



1 nights, stuff like that.

2 MR. TOBIN: I did.

3 BOARD MEMBER NORD: Okay. So, you were
4 readily available at all times that work was being
5 done by Randy's Heating?

6 MR. TOBIN: Yes.

7 BOARD MEMBER COX: And In my previous
8 conversation with Director Sacks from my duties --

9 MR. BLOHOWIAK: Board Member Cox, I just
10 want to -- Your conversations with the Director of the
11 Department of Labor and Industries are not part of our
12 packet.

13 BOARD MEMBER COX: Very good. Thank you,
14 counsel.

15 MR. BLOHOWIAK: And, so, you know, we're
16 keeping it to the facts there.

17 BOARD MEMBER COX: Very good.

18 MR. BLOHOWIAK: So, thank you.

19 CHAIRMAN JENKINS: I guess our questioning
20 right now I think is the employment portion of it, and
21 my -- the part that I still have a hard time with is
22 Article 296.46B.100 and determining whether -- I'm
23 sorry, WAC rules, 296-46B --

24 THE COURT REPORTER: I'm sorry, can you
25 speak up just a little bit?



1 CHAIRMAN JENKINS: I'm sorry, it's WAC
2 296-46B line 30, and in there it says, "Determining
3 whether an individual is a full time supervisory
4 employee, the Department will consider the following
5 individual -- whether the following individual is on
6 the electrical contractor's full time payroll,
7 receives a regular salary or similar wage as to other
8 employees, has supervisory responsibility for work by
9 the electrical contractor, electrical
10 telecommunication contractor, and carries out the
11 duties of the chapter", and I would argue that during
12 the time that he was actually there, yeah, he was a
13 supervisor doing the job, but was he there as a full
14 time employee doing all the work I'm saying I
15 disagree.

16 I'm seeing that the contractor is -- what's it
17 called, the heating company, his operation is
18 happening throughout the day and throughout most of
19 the day, and I understand your opinion about cell
20 phones, but he is working for another contractor, and
21 so is he available there to take care of supervising
22 and supervisor's conditions while the other company is
23 operating? I'm saying no, he was working another job,
24 and me being the other company I'd be pretty upset
25 that I had an employee being a supervisor for a



1 separate contractor working on my job still trying to
2 work on the other job.

3 MR. TOBIN: May I address that?

4 CHAIRMAN JENKINS: No, not yet. So, that's
5 my -- that's my comment. I hadn't seen a full time
6 employee on one end, and as he a full time -- is he a
7 full time employee of the heating company? I'm saying
8 no. He might be full time in his mind during the
9 electrical portions of it, but is he a full time
10 employee of the heating company, no, he's not.

11 BOARD MEMBER BAKER: And I believe what
12 makes him a full time employee is the agreement that
13 they had of \$500.00 a month to be their administrator.
14 That makes him a full time employee. Now, what you're
15 questioning is what's the day-to-day operations for
16 that -- for that company. Does he need to be there
17 9:00 to 5:00 every day or -- because this is a heating
18 company, right, they don't necessarily have electrical
19 needs every day, but when they do have electrical
20 needs they got somebody on staff full time that can
21 take care of that and supervise their employees for
22 the electrical installations.

23 BOARD MEMBER KNOTTINGHAM: I believe he was
24 paid under a 1099 and that's an independent
25 contractor, isn't it?



1 BOARD MEMBER BAKER: Correct.

2 BOARD MEMBER KNOTTINGHAM: That's not an
3 employee. That's an independent contractor. He's
4 operating and that's the way he's getting paid for his
5 administrative duties. He's not an employee by the
6 1099.

7 BOARD MEMBER BAKER: So, I stated that
8 earlier I don't understand the difference between a
9 1099. But, in my mind, in layman's terms I see that
10 as a condition of employment. There's an agreement
11 there. I think it meets the spirit of an employment
12 agreement in my mind. He provided a personal service.
13 He was compensated for those services.

14 BOARD MEMBER KNOTTINGHAM: I believe 1099's
15 are used a lot of times for misclassification of wages
16 for ways for people to get around paying taxes.
17 There's a lot of reasons for it.

18 BOARD MEMBER BAKER: Yeah.

19 BOARD MEMBER KNOTTINGHAM: And there's
20 legitimate reasons.

21 BOARD MEMBER BAKER: I know contractors
22 that have employees that they're under a 1099.

23 BOARD MEMBER COX: And that -- Again, that's
24 an ESD issue which when a contractor, Randy's heating,
25 was informed by the Department that it needed to be --



1 it couldn't be that, couldn't be a 1099, he did the
2 right thing and corrected that. He corrected the
3 mistake.

4 BOARD MEMBER NORD: When he --

5 BOARD MEMBER COX: The mistake --

6 (Speaking at the same time)

7 BOARD MEMBER NORD: Right, is he properly
8 licensed and prop-- you know, following the Revised
9 Code of Washington and the WACs, and they administerd
10 that, and according to what Chairman Jenkins just read
11 Mr. Tobin met that criteria. Now, whether it's a 1099
12 or a W-2, that's for the payroll side of the
13 contractor to work out with ESD, you know.

14 BOARD MEMBER KNOTTINGHAM: So, Randy did
15 amend it, tried to correct it, but he didn't correct
16 it. 520 hours for each quarter, you know, it
17 wasn't -- it wasn't accurate. It wasn't close to
18 being accurate according to the testimony from Mr.
19 Tobin. He paid more than he needs to.

20 BOARD MEMBER COX: That's not Mr. Tobin's
21 issue to fix. This is between a licensed contractor,
22 a licensed employer, registered employer in the State
23 of Washington properly filing the documents. Did the
24 contractor just throw some numbers together, and, to
25 Board Member Nord's point, none of it's fraudulent,



1 but he just throws some numbers together to get what
2 the State needed to make the changes, we don't know
3 that. We don't know if these are accurate documents.
4 We know that the documents in front of us that the
5 State has received these have been provided by the
6 Department. That's not for Mr. Tobin, the person
7 who's essentially being penalized for what his
8 employer did or didn't do. He still carried out what
9 Chairman Jenkins just read in that WAC, which was to
10 supervise and make sure he carried out his
11 administrative duties.

12 BOARD MEMBER NORD: Well, can I point out
13 that on page 248 -- 228 there's a records custodian
14 affidavit that said, "I also certify that the enclosed
15 employment history is a true and accurate statement of
16 information found in the Department's wage file
17 regarding the above-named individual for the time
18 period of January 1, 2018 to June 30, 2019." So, in
19 order for this records custodian to make this
20 statement for the state, to have to be paid to the
21 state, this is a correct and non-fraudulent number, I
22 have conflicting information.

23 BOARD MEMBER COX: Right, but who provided
24 that to the state, was it Mr. Tobin or was it --

25 BOARD MEMBER NORD: We don't know.



1 BOARD MEMBER COX: We don't know that. But
2 I assume it's the employer.

3 BOARD MEMBER NORD: We can't assume.

4 BOARD MEMBER COX: Exactly. But as a
5 business owner my employees don't send this kind of
6 information to the State. My front desk people do.

7 BOARD MEMBER NORD: Correct. But as an
8 employer you would have a discussion with the
9 employee.

10 MR. COX: Yes, I would.

11 BOARD MEMBER NORD: I know as a treasurer
12 of a labor organization if I file a 1099 I'm not
13 paying social security taxes, okay. If I go back and
14 I make a correction to federal or a state tax
15 document, an official document, I have to ensure that
16 I discussed it with the employee and we're on board
17 together with what it correctly should be because when
18 I recertify that and I say absolutely this is the way
19 it is it's going to affect his bottom line as far as
20 what he's paying the taxes for. And once again in
21 this all we have is a record to the state. We do not
22 have records to the federal government. So, we do not
23 actually know whether he had been reclassified as a
24 1099 to an employee or is he still a subcontractor.

25 BOARD MEMBER COX: Agreed.



1 CHAIRMAN JENKINS: Also as a supervisor with
2 your licensing as a supervising employee it's your
3 requirement, your job to know what you're doing as far
4 as legal goes to know that you are being classified.
5 You're supposed to be checking this. It's part of
6 your licensure, certification with the State of
7 Washington. You are a supervisor, you've gone through
8 and made sure everything was correct, and you make
9 sure everything is done and applied correctly. That
10 is part of when you become a supervisor, when you get
11 that, what do you call it, supervising journeyman.
12 And so his responsibility is to make sure that this is
13 done correctly, and at this point he was -- has gone
14 through the contract acting as a subcontractor, and
15 doing that he should have made the subcontracting
16 business with insurance, and liability, and actually
17 started doing work for this contractor as a
18 subcontractor, as he was paid, but he was
19 circumventing that by saying, "I'm an employee kind
20 of, but I'm a subcontractor so I can avoid this and
21 that." I don't know the motive behind that and it's
22 not part of this packet, so I don't know, but
23 circumventing that and then when it was called on the
24 carpet all of a sudden he now becomes an employee to
25 suffice one or the other. My thought was you can't



1 have both and you can't go back and correct something
2 that you've knowingly or unknowingly done in the past.

3 This has been done, he created this issue, and
4 now we're trying to correct something that's -- I go
5 back to my earlier statement about having a problem on
6 a job site, having a fire, having some -- some damage.
7 As the owner of the business approached Mr. Tobin and
8 says, "Hey, look, this happened. You're a
9 supervisor", there would be an easy way to say, "No,
10 I'm not a supervisor. I'm an employee. I'm a
11 subcontractor", or vice versa. Randy's Electric
12 saying, "Hey, no, that's -- Man, that's not me.
13 That's not my contract." You have a subcontractor
14 doing that, or whose insurance, who's liability is
15 taking care of all this? During that time frame,
16 nobody. It could have been sloughed off either way
17 and really it's the public that's in hazard during
18 that time frame, and so -- and I think it's a
19 violation, and by allowing that it may open future
20 situations with other people trying to do I want to
21 call it side work working for a contractor, yet
22 they're not there, when they're there they think they
23 should be, it just creates, opens a situation where I,
24 "No, I think this is a side job doing side work", and
25 avoiding whatever they're trying to avoid in this



1 contract, otherwise it would have been done correctly
2 as an employee.

3 Just to bring it back into reality, we have the
4 documentation on page 218. This is one of the
5 multiple pages, actually it's on page 219 of our
6 packet, and let's look at it. He has recognized
7 employees of the company and during that time frame
8 he's not on this list. They both knew during that
9 time frame he was not an employee. And Mr. Tobin has
10 a supervising license; he knows he has to be either
11 part of the firm or an employee or he's not upholding
12 his license, he's not upholding the certification he
13 has. So, he's in violation of not knowing because
14 he's not doing his job either way. And I get it, it's
15 painful. It's -- This was truly not intended, I get
16 that, but the reality is it's still a violation, in my
17 opinion. And our job here is to make sure that we
18 uphold the law. We are not here to give allowances
19 because of our opinions. It has to be according to
20 state law.

21 BOARD MEMBER COX: So, if we go down that
22 route, how do we come up with going back two or three
23 years of what's done in the past? So why not at the
24 time that the violation is noticed, or considered, or
25 other otherwise investigated by the Department, why do



1 we not provide citations for that instance? Why are
2 we going back to every quarter that he worked? We
3 can't correct it in the future, how do we go back and
4 fight for it in the past?

5 MR. BLOHOWIAK: Board Member Cox, I think
6 what you're talking about is more of a legislative
7 question, a policy question, you know, how do we look
8 at fixing this issue going forward. The reality is
9 these are the laws that we have now. This is the
10 information that you have to work with now. The
11 Board, you know, gets the legislative update, has
12 opportunities to provide input on revised codes and
13 statutes, and, so, if that's something that the Board
14 wants to work towards changing in the future there's
15 opportunities to do that, but the Board just isn't in
16 a place to make those types of rulings.

17 BOARD MEMBER COX: I'm not trying to make a
18 ruling, counsel. I'm simply trying to clarify it.
19 So, with that statement in mind, can you quote me the
20 RCW that says Labor and Industries' electrical program
21 shall go back, how ever this applies in this
22 particular case, do we have -- do we have a statute
23 that says rather than citing for right now we go back
24 and cite every previous quarter, can you provide me
25 with that?



1 MR. BLOHOWIAK: Board Member Cox, I'm not
2 counsel for the Department or for Mr. Tobin in this
3 case. I'm counsel for the Board.

4 BOARD MEMBER COX: Understood.

5 MR. BLOHOWIAK: And so I was providing
6 advice on, you know, how do we rectify this. If you
7 have concerns about it going forward I think your
8 question would be best directed to Ms. Roth.

9 BOARD MEMBER COX: Would that be --

10 MR. BLOHOWIAK: If you're curious about the
11 exact nature of those citations, she may have more
12 information for you regarding that. I don't think
13 it's appropriate for me to provide that specific
14 advice. I was just simply commenting on if you have
15 larger questions about, you know, the ethics of this
16 and how it looks, there's mechanisms for the Board to
17 do that, but we do have to confine ourselves to the
18 law that's on the books today.

19 BOARD MEMBER COX: That's on the books, very
20 good. So, if I may direct my attention to -- If I can
21 look over the cart... I beg your pardon. Can you
22 please provide me with the Washington statute that
23 allows or directs the Department, the electrical
24 program, to go back previous quarters rather than
25 having a citation for the moment in time, if that



1 makes sense?

2 MS. ROTH: I -- I understand the question.
3 I can get you the cite. I just need to go into my
4 phone and look at this reg. to find the specific
5 regulation, but the Department can go back two years.

6 BOARD MEMBER COX: Two years, okay. So,
7 there is a statute then that --

8 MS. ROTH: It's either a statute or it's a
9 Washington Administrative Code. I have to look for
10 it. Sorry that I can't tell you the number right now,
11 but there is -- The Washington state law does allow
12 the Department to go back.

13 BOARD MEMBER COX: Okay. Board Secretary --

14 SECRETARY MOLESWORTH: So, if I may just
15 clarify, I'm still unsure of my ability to speak up
16 during these proceedings, but Board Member Cox, the
17 two year period is at the time that the Department is
18 made aware, we can go back, you know, that far. So,
19 we can go back two years and write citations, but
20 there's no specific RCW or a WAC that says we should
21 do that. It's at the discretion of the agency
22 depending on the individual case that we're looking
23 at, and most of the time we do. Those instances are
24 still a violation of the law at that particular time
25 and the agency's responsibility is to protect the



1 contractors out there, which are you guys, and make
2 sure that everybody is abiding by the guidelines set
3 forth in these RCWs.

4 I'd agree with counsel that if there's need for
5 change for the RCWs we need to look at that, but what
6 we have right now is how we enforce it because
7 that's -- that's our responsibility to the public.

8 BOARD MEMBER COX: I simply wanted to make
9 sure that there wasn't an overreach by the Department
10 if there was a statute in place that allowed that.

11 SECRETARY MOLESWORTH: Exactly.

12 BOARD MEMBER COX: That's obviously being
13 clarified. Thank you.

14 BOARD MEMBER KNOTTINGHAM: If the violation
15 has occurred we need to go back two years, are you
16 restricted to doing those quarterly or could you issue
17 a citation for each day that it --

18 SECRETARY MOLESWORTH: We can issue those
19 citations each day that they occur on each permit.
20 So, if there was not a permit purchased or they were
21 in violation during that period we can go on a daily
22 basis per permit because there are violations on
23 different locations.

24 BOARD MEMBER KNOTTINGHAM: Why do we do a
25 quarter then?



1 SECRETARY MOLESWORTH: We're actually giving
2 you a little bit of education along with compliance.
3 We're giving them a break virtually is that we're
4 going to -- we're not going to -- for better words,
5 we're not going to drop the hammer on somebody. We're
6 going to make sure that we educate and make sure that
7 we change the behavior for that contractor. In this
8 instance, as we showed, they did it correctly, but he
9 changed his behavior because he knew he had to change
10 some things, right?

11 BOARD MEMBER KNOTTINGHAM: Correct.

12 SECRETARY MOLESWORTH: And so the whole
13 reason for compliance is to change behavior, and but
14 we have to do it in order to, you know, also protect
15 the citizens and the other contractors that are
16 abiding by those things. Does that answer your
17 question?

18 BOARD MEMBER KNOTTINGHAM: Yes.

19 BOARD MEMBER NORD: I have a question for
20 the Attorney General. On our board packet pages 220
21 through 226 on the amended tax and wage reports each
22 one of these Form 5208Bs the amount reported as a
23 subcontractor is considerably less than what the
24 corrected amount as an employee is for each quarter.
25 Do we have any idea, was he shorted money as a



1 subcontractor that was made up in considerable amounts
2 as an employee?

3 MS. ROTH: We don't know. Mr. Tobin did
4 not provide bank account statements. We didn't have
5 evidence records that showed the actual amount he
6 earned on a monthly, weekly, or quarterly basis. What
7 we had in the evidence is the contract that talks
8 about there's a 2016 contract that was \$500.00 a
9 month, plus \$50.00 per license. There was a 2019
10 contract that was \$1,000.00 a month. It didn't
11 specify the amount to be paid by license. I think
12 that was an omission in the contract. And then we
13 have the other evidence, the other records presented,
14 which were his 1099s that showed what he received
15 each -- each year.

16 BOARD MEMBER NORD: So, correct me if I'm
17 wrong, but without Mr. Tobin or the Randy's Heating
18 submitting his evidence along with the amended tax and
19 wage reports, his amended 1099 and W-2s to ensure this
20 is correct, we do not even know if this information is
21 correct. Is this a guesstimate also like 520 hours is
22 a guesstimate? Is this actually true and accurate?

23 MS. ROTH: Well, the -- Well, the evidence
24 presented, and as the ALJ found, there was not proof
25 that Mr. Tobin was receiving full time -- was on a



1 full time payroll. So, we have 1099s that give an
2 amount, for example, on page 220 of forty-nine
3 thousand in a given year, and then we have the amended
4 Employment Security Department records that show a
5 quarterly amount of fourteen thousand, which -- which,
6 if you multiply that, those amounts, it doesn't equal
7 what was on the 1099. So, what we have is a lack of
8 evidence and full time payroll or having a regular
9 salary or wage similar to other employees.

10 BOARD MEMBER NORD: So, once again, we can't
11 trust these records.

12 MS. ROTH: The ALJ did not find them to be
13 persuasive or reliable.

14 BOARD MEMBER NORD: Thank you.

15 MS. ROTH: Thank you.

16 BOARD MEMBER BAKER: I'm on page -- What
17 page am I on? I guess it's page eight of the
18 Electrical Board packet. And, again, it's that right
19 there. And, again, I'm focused on whether or not he
20 was an employee of the firm or not. For me this whole
21 thing hinges on whether or not he was an employee of
22 the firm. 12.4.4, the Department of Labor and
23 Industries and Leonard Tobin, Appellant, differed on
24 material points. The undersigned administrative law
25 judge finds the Department's facts persuasive.



1 Several facts support the Department's version of the
2 events. Section A.: In 2016 Randy's Electric hired
3 Tobin as a self-employed member and a 1099 employee
4 receiving \$500.00 per month and \$50.00 per job
5 requiring an electrical permit. A 1099 employee, in
6 my mind that makes him an employee. Help me get past
7 that, guys. It makes him an employee.

8 MR. BLOHOWIAK: Yes, Board Member Gray?

9 BOARD MEMBER GRAY: Thank you, Mr. Chair.
10 For me, and I've been sitting here thinking about
11 responding to Board Member Baker because I agree. I
12 understand his argument and I don't disagree with that
13 at all. A person can be -- in my mind can be a full
14 time employee of multiple employers. I've seen that
15 and so I believe that can happen. So, I can -- I can
16 get past that. If a person, though, is a 1099, they
17 are a subcontractor. They may be an employee, but
18 they're not an employee of the contractor that they're
19 working for. So, Mr. Tobin, during the period of time
20 he was a 1099 subcontractor, he was an employee of
21 himself. He wasn't an employee, a direct full time
22 employee of Randy's Heating or whatever the other
23 company was.

24 Now, it appears to me that that was just an
25 oversight perhaps on Mr. Tobin's part and on Randy's



1 Heating's part, and it seemed like it was just a bit
2 of a misunderstanding on what they had to do,
3 technicalities related, and when they went to Labor
4 and Industry or when Labor and Industry went to them
5 and explained that that doesn't work, then they tried
6 to correct that. So, the question for me not is the
7 fact that was he not an employee of Randy's, because
8 clearly he wasn't. A 1099 subcontractor is not an
9 employee of the person they're contracted to. And so
10 the question then, does that cover the sins if they
11 tried to go do the right thing and go back in the past
12 and correct what they had done wrong. To me, that's
13 the question that has to be answered, and, if, we're
14 not going to be accepting of that, that that was done
15 with good intent and therefore we can look past what
16 you did wrong before, then I think we can overturn the
17 administrative law judge's ruling. Otherwise, I think
18 we're going to have to uphold it because I think
19 clearly the law is pretty clear he was not a full time
20 employee of Randy's during this period of time, and so
21 that's -- that's kind of how I resolve it in my mind.
22 Thank you, Mr. Chair.

23 CHAIRMAN JENKINS: Thank you.

24 MR. BLOHOWIAK: And I would just like to
25 clarify for the Board, again the Electrical Board



1 cannot provide any sort of equitable relief. You
2 simply have to consider the evidence and the law at
3 the time, and, if you find -- you have to determine
4 whether or not Mr. Tobin was or was not an employee
5 for the periods at issue and make your decisions off
6 of that and if the facts support that.

7 The intentions of parties and their feelings
8 regarding one another are not necessarily relevant to
9 this discussion, it's just the nature of the authority
10 that the Board has, and you have to take the facts as
11 they were presented at the Office of Administrative
12 Hearings and apply the law to them, and going beyond
13 that and inferring intent, you know, if it's not
14 within the packets you've been provided, it isn't
15 appropriate. And, so, I just want to -- just want to
16 advise the Board on that and to make sure that you
17 keep your focus narrowed to the facts that are -- were
18 allowed at the hearing and the law that the
19 administrative law judge applied. So, I'm just trying
20 to keep it focused.

21 CHAIRMAN JENKINS: Thank you very much.
22 Before I miss this, are there any questions from
23 anybody online right now? Can you hear everything and
24 do you have any input? Okay. Yes.

25 BOARD MEMBER TUMELSON: James Tumelson.



1 Your question to Mr. Baker, at the bottom of page 220
2 what I -- I was reading this while you were speaking,
3 did not know that Leonard Tobin was an employee. We
4 were not paying him or we were paying him as a
5 subcontractor. We're trying to correct our mistake.
6 I mean, I'm not intending to over-simplify anything,
7 but if there was an admittance of a mistake and what
8 the intent was is to rectify that, I'm just at a loss
9 of where does that put the situation, you know. It
10 appears to me that there's an admittance of a mistake.
11 I don't know if 1099 makes you an employee or not. It
12 sounds like it may not. It sounds like that was the
13 intent, but it also, you know, from what I'm
14 gathering, it sounds like if you're a 1099, you're not
15 technically an employee, you're a subcontractor,
16 period.

17 BOARD MEMBER NORD: And if you look at the
18 dates, all these amended tax and wage reports were
19 done long after the fact. They appear to be done
20 after the citations were issued. So, had the
21 citations not been issued would any of this ever have
22 been done?

23 CHAIRMAN JENKINS: And my comments to Mike
24 was it's -- I think you mentioned -- I mean Kerry,
25 Board Member Kerry Cox where he talked about breaking



1 the law earlier and going back and trying to fix it,
2 and I'll use that speeding thing again, so you're
3 caught speeding, "I didn't mean to. My odometer is
4 off.", whatever the conditions are, it would be the
5 police officer's allowance to yea or nay and supply
6 the verdict on that. We don't have that kind of
7 allowance to make a, "Well, I know the law says you
8 were over 55, it's speeding, so we will let it go this
9 time." Our job is to see you speeding 55 or more,
10 yeah, then, it's you. It's upholding the law. And I
11 don't like it as much as anybody else does, but the
12 intent was there and he didn't intend to make it
13 incorrect, but it was incorrect during that time
14 frame. I think they've all said that. They've tried
15 to correct it. They tried to fix it and say, "Well,
16 this is incorrect and we know it. Yep, we want to fix
17 it." Okay, well, you still broke the law during the
18 time frame, and the responsibility is really on the
19 contractor and the supervisor during that time frame
20 to make sure they've done it correctly.

21 Honestly, if I was a supervisor for a contractor
22 and, then, "No, we're going to make you an assigned
23 supervisor," I would probably, especially I have to
24 assume now because I'm more biased now because of
25 this, but it would be my job to check and make sure if



1 I was on the record that I was doing what I was
2 supposed to be doing. That's my job. And that was
3 the missing part of this. So, that's where I stand.

4 Any other input from the Board? Anything else?
5 The Chair would entertain a motion. At this point the
6 Chair would entertain a motion to affirm the ALJ's
7 decisions on this case?

8 UNIDENTIFIED SPEAKER: So moved.

9 CHAIRMAN JENKINS: We need a second?

10 UNIDENTIFIED SPEAKER: Second.

11 CHAIRMAN JENKINS: Any discussion? Okay,
12 hearing none, all in favor for the Board to affirm the
13 decisions made by the ALJ in this case please signify
14 by raising your hand. One, two, three, four.
15 Opposed? One, two, three.

16 BOARD MEMBER BURKE: Aye.

17 CHAIRMAN JENKINS: An aye is from --

18 BOARD MEMBER BURKE. Dominic.

19 CHAIRMAN JENKINS: Dominic. So, it's four
20 and four. Did anyone count? Did that seem correct?
21 Four and four, which makes me the deciding vote, and I
22 affirm that the OHJ -- OAH decisions were correct.
23 So, given that, the five to four voting number, I
24 affirm that the ALJ's decisions on case number
25 ECHBO00970, ECHBO00971, ECHBO00972, and ECHBO00973,



1 and ECHBO00974 be upheld. Thank you very much for
2 your time.

3 MS. ROTH: Thank you for --

4 BOARD MEMBER BAKER: My understanding is the
5 Board has the ability to make adjustments to the
6 penalty fee; is that correct?

7 CHAIRMAN JENKINS: That I do not know.

8 MR. BLOHOWIAK: I will have to do some
9 research to figure that out exactly.

10 BOARD MEMBER BAKER: Before we settle the
11 matter could you research that? I believe we've done
12 that in the past.

13 CHAIRMAN JENKINS: Would now be time to take
14 a break? Court Reporter?

15 THE COURT REPORTER: Oh, yes, thank you. I
16 would appreciate that.

17 CHAIRMAN JENKINS: While we're kind of
18 looking into this, let's take a 10 minute recess, take
19 a 15 minute recess. We will re-adourn at 11:05.

20 (Recess taken)

21 CHAIRMAN JENKINS: Okay, it is now 11:11, a
22 little while longer than I wanted it to be, but I'll
23 put the Electrical Board back in session. So, before
24 we left to our break we asked counsel to look into the
25 possibility of reducing the fees associated with this



1 case.

2 MR. BLOHOWIAK: So, I've taken a look at
3 it. Because the Board voted to adopt and affirm the
4 entirety of the administrative law judge's order the
5 fees are set. Now, there are procedural mechanisms
6 for the Board to go back and revisit that; however, I
7 would caution that each of those reductions, if you
8 want to make them, would have to be supported by
9 substantial evidence which is -- and whether or not
10 those violations did or did not occur and are
11 supported by facts in the record. They can't be made
12 based on, you know, the parties' intent, whether you
13 disagree with how the statutes and the rules are
14 phrased. It does have to be supported by the
15 evidence. And, so, if the Board members believe that
16 there are facts and evidence within the record that
17 would support those reductions, I can work with the
18 Chair and the Board through the process coming back to
19 that. I just -- Again, you have to be able to point
20 to specific parts in the record and in the record from
21 the Office of Administrative Hearings and put them on
22 the record here today for those reductions, and then
23 each of those would go to a vote amongst the Board
24 Members, as well.

25 CHAIRMAN JENKINS: Does anybody have



1 questions about that?

2 BOARD MEMBER COX: Chairman Jenkins, is the
3 \$1,000.00 fine, and this may be one for the chief, is
4 the \$1,000.00 fine the minimum fine for that
5 violation?

6 SECRETARY MOLESWORTH: Mr. Cox, it depends
7 on how you look at that, the number of violations that
8 we had, and that type of thing, and I would say that,
9 yes, it is. Statutorily, I think that there is a
10 lesser penalty that can be applied, I'm just not sure
11 it's applicable here, and I will make a decision as to
12 whether or not there's lesser penalties.

13 BOARD MEMBER KNOTTINGHAM: Could I make a
14 comment? If you look at WAC 296-46B-915, which is the
15 civil penalty schedule, and then 12 on which is
16 violation of basic duties of the administrator, the
17 first offense is \$1,000.00, second is \$1,500, and each
18 offense after is \$3,000.00.

19 BOARD MEMBER COX: Okay. Thank you.

20 SECRETARY MOLESWORTH: So, all of these
21 would be treated as a first offense.

22 BOARD MEMBER COX: Okay.

23 SECRETARY MOLESWORTH: A minimum amount.

24 BOARD MEMBER COX: Thank you for that
25 clarification.



1 CHAIRMAN JENKINS: Thank you. Any other
2 questions does anybody have for counsel or others?
3 All right. Hearing none...

4 MR. TOBIN: I have a question. Erick, what
5 happened to recusing yourself?

6 MR. BLOHOWIAK: I don't that is an
7 appropriate conversation to have on the record.
8 Recusal is in the board member's discretion, and so
9 the board member has made that determination to not
10 recuse himself, and so we're not going to -- not going
11 to question that here today. The Board has made it's
12 ruling. Thanks, Mr. Tobin and Ms. Roth, for their
13 time today. Thank you.

14 And I'm not going to step on the Chair's toes,
15 but, Ms. Roth, but if you would please prepare a
16 proposed decision and order for the Board to review.

17 MS. ROTH: Thank you.

18 MR. BLOHOWIAK: And present it at the next
19 meeting.

20 MS. ROTH: And present at the next meeting?

21 MR. BLOHOWIAK: Yes.

22 MS. ROTH: Thank you.

23 MR. BLOHOWIAK: Yes. The Chair -- Sorry, I
24 apologize to the court reporter here, the Chair and I
25 were discussing if you come to and draft a proposed



1 order and come to an agreement before the meeting,
2 you're certainly welcome to submit that, you know,
3 electronically or in other means. You don't have to
4 come and present at the October meeting, if you come
5 to some sort of agreement with Mr. Tobin before then.

6 MS. ROTH: Okay. Thank you. Thank you for
7 your time.

8 CHAIRMAN JENKINS: Thank you very much.
9 Thank you, Mr. Tobin. At this point here we're on
10 number or letter (f) on our documents, on our agenda
11 for Pacific Northwest Electrical, Denial of Variance
12 #18.06, Anacortes Marina Wiring Method, and this is --
13 the matter -- this matter will require the Board to
14 hold an original hearing. This means the Board's --
15 the Board will hear live testimony, review exhibits in
16 real time. This is a much different type of hearing
17 than appeals the Board reviews on record from the
18 OHA -- OAH, I'm sorry. As a result, this will require
19 the Board to have special dissent meetings to
20 facilitate this hearing.

21 It is my understanding counsel for both parties
22 are present, and I further understand that the parties
23 were asked to consult and bring dates for both a
24 hearing on motions and for hearing on the merits. Ms.
25 Kellogg, is that correct?



1 MS. KELLOGG: I'm sorry, I did not
2 understand that.

3 CHAIRMAN JENKINS: I'm sorry. Are you
4 available to discuss dates for the Pacific Northwest
5 Electrical, LLC case?

6 MS. KELLOGG: I am.

7 CHAIRMAN JENKINS: Okay. Is counsel for
8 Pacific Northwest Electrical currently present? Once
9 again, is counsel for the Pacific Northwest
10 Electrical, LLC, currently present?

11 Ms. Nancy Kellogg, did you discuss earlier about
12 times and dates that they were okay with?

13 MS. KELLOGG: I did not.

14 CHAIRMAN JENKINS: Oh, okay. All right, so
15 what we need to do today is we set a special date
16 where we can have at least the quorum present, and
17 this is, my understanding, would be okay if it's a
18 telecommunications meeting; is that correct?

19 MR. BLOHOWIAK: Yeah. Just, again, I don't
20 want to step on the Chair's toes, but just to provide
21 some additional context to the Board, this is an
22 original hearing before the Board, before the
23 Electrical Board, so there will be live witness
24 testimony, the rules of evidence will apply, and so
25 working with the Chair, it's the Chair's intent, and



1 the Board has the authority to do this, to request a
2 judge from the Office of Administrative Hearings to
3 come and preside over the evidentiary matters only,
4 because there will be objections as to hearsay
5 potentially and other evidentiary objections which the
6 Board and their expertise in the electrical field may
7 not be well-versed in the rules of evidence and the
8 legal mechanics of that to rule on those, and so we'll
9 be using the authority provided to us by the
10 legislature to bring in an administrative law judge to
11 oversee that.

12 I'm speaking with counsel for this case. It's
13 my understanding that there may be some early motions
14 to exclude specific types of evidence, they're called
15 motions in limine, and so today we'll find a date for
16 those. The Board will ultimately -- The Board will
17 listen to those arguments. The ALJ, it's my advice to
18 the Board, will rule on those. It's purely going to
19 be evidentiary issues, but you will be able to ask
20 questions at all of these proceedings. But it's the
21 Chair's hope and my advice to the Board to let the
22 judge rule on the evidence and then, you know, ask the
23 questions that you need to ask, but leave that -- the
24 legal questions of what evidence is admissible and
25 what is not to the administrative law judge, they do



1 that every day, and rules of evidence are very
2 complicated.

3 So, today we are just asking the board members
4 to have their calendars out because these will be
5 lengthy proceedings; so, we're going to special set
6 these meetings and follow the procedures to set those,
7 but they will be outside the normal schedule just
8 because of the nature of this particular case.

9 So, I'll turn it back over to the Chair, and I'm
10 very sorry to jump in there and just kind of talk over
11 you, Mr. Jenkins. I just want to make sure everybody
12 understands what's going on.

13 BOARD MEMBER BAKER: Is it the intent that
14 this is going to take place in person or virtually?

15 MR. BLOHOWIAK: So, the first hearing on
16 the motions is simply going to be legal arguments over
17 whether or not certain evidence may or may not be
18 admissible at the actual hearing on the merits. I
19 believe that can be just as effective doing that
20 electronically to make sure that it's easier for the
21 Board to get a quorum, understanding that everybody
22 has got busy schedules. But the hearing on the merits
23 will there be live testimony? There'll be exhibits to
24 review, but those -- that day or two, depending on the
25 number of witnesses, those would be live and in-person



1 so the board members can see the witnesses, can review
2 the exhibits, can ask the questions they need to ask,
3 but just -- they anticipate that legal motions, I
4 believe, unless they're -- and the Chair can answer
5 for, you know, objections or motions, but those can be
6 effective be it teleconferencing or Teams, as we've
7 done in the past, if the Board feels that's
8 appropriate, just simply to make scheduling easier.

9 CHAIRMAN JENKINS: So, what I'm saying and
10 what I'm understanding with that, from this whole
11 matter, is we need to a schedule single day sometime
12 in this fall, and eventually this all works the -- I
13 don't know if it's called a schedule, but we would
14 have actually two or maybe more days even starting
15 2023, so in early part of 2023, does that sound
16 correct for you also, Ms. Nancy Kellogg?

17 MS. KELLOGG: Chair Jenkins, may I suggest
18 that I approach opposing counsel to get dates when he
19 will be available, a range of dates, and then bring
20 them to the Board because otherwise you may come up
21 with a date and opposing counsel, since he's not here,
22 would not be able to attend.

23 CHAIRMAN JENKINS: One second, please. All
24 right. Thank you. Ms. Nancy Kellogg, what we'll do
25 is just ask if you can speak with counsel for Pacific



1 Northwest Electrical and they can come up with some
2 dates, and what we'll do is we will e-mail the
3 proposed dates to the Board and see if we can come up
4 with -- I'm assuming just one day -- a date for the
5 first one in order to facilitate our needs, does that
6 sound good to you?

7 MS. KELLOGG: Thank you.

8 CHAIRMAN JENKINS: Okay. So, the rest of
9 the board members expect once again an e-mail to agree
10 or disagree with some dates. Yes.

11 BOARD MEMBER COX: Question, Chairman
12 Jenkins. So, I see this is a denial of variance. I'm
13 assuming this was a variance request of the
14 Department. The Department denied it and this is a
15 hearing of the Board?

16 CHAIRMAN JENKINS: From what I read, I hear
17 that to. I don't have the case. I don't read the
18 case. So, there's nothing there yet.

19 MR. BLOHOWIAK: Yea, we're just very early
20 on in the process. The packets haven't been put
21 together. We really just need to get these dates
22 scheduled just because the parties know what this is
23 going to look like and it's very different from what
24 the Board has done in the past.

25 MS. KELLOGG: May I address that issue,



1 Chair Jenkins?

2 CHAIRMAN JENKINS: Yes, you may.

3 MS. KELLOGG: I think it's important to let
4 the Board know the Department's position, and the
5 superior court's position, and actually the prior
6 Board Advisor's position. The variance is not to be
7 decided. The board has no authority to decide a
8 variance and unfortunately that's what happened last
9 time. What the board does have authority to hear is
10 wiring methods and whether or not they meet the law
11 under 19.28.021; so, that will be the issue before the
12 board. And I can do a preliminary statement, if it
13 would be helpful.

14 MR. BLOHOWIAK: Ms. Kellogg, this is Ben
15 Blohowiak again. I think once we get dates from you
16 and opposing counsel if there was to be -- if the
17 parties want to do some sort of like trial brief for
18 the board, that may be helpful, but if you think that
19 that can be done through the arguments at the motion
20 hearing, and opening statements, and closing
21 statement, that's also appropriate, but we can
22 certainly have those conversations off the record and
23 if we need to schedule a time for that we certainly
24 can.

25 MS. KELLOGG: Okay. Thank you.



1 CHAIRMAN JENKINS: Thank you very much. So,
2 given that, I think we're now on to our next number,
3 Departmental/Legislative Updates with Lorin Lathrop,
4 and rule making updates for the WAC and for also the
5 adoption of 2023 NEC. Mr. Lorin Lathrop, are you
6 available?

7 BOARD MEMBER LATHROP: I am, Chair Jenkins.

8 CHAIRMAN JENKINS: All right. The floor is
9 yours.

10 BOARD MEMBER LATHROP: Thank you, Chair
11 Jenkins. This is Lorin Lathrop, electrical technical
12 specialist working for the Department, and a quick
13 update for the board members: We are entertaining two
14 different rule makings as we get started here this
15 fall. The first one is a change to WAC 296-46B-995,
16 which is how electricians are qualified to take the
17 exam to become certified. With the coming
18 apprenticeship rules in July of 2023 we're trying to
19 address some of the issues that we had to make the
20 process or creating ways to get scheduled for exams
21 easier while we have provision from the law to make
22 that goal simpler. At this point we are still working
23 with our legal counsel about all that we will need to
24 do and will want to do to make this the best
25 transition we can for stakeholders, and we're hoping



1 to file a CR101 sometime in August, but, again, that
2 is based on information we're getting from our legal
3 counsel. The -- I will (inaudible)

4 THE COURT REPORTER: I'm sorry, I didn't
5 catch what he just said.

6 CHAIRMAN JENKINS: Can you repeat your last
7 comment, please.

8 BOARD MEMBER LATHROP: I said I would pause
9 there for just a second before we move to the next
10 problem, the rule making.

11 CHAIRMAN JENKINS: Thank you.

12 BOARD MEMBER LATHROP If anyone has a
13 question.

14 CHAIRMAN JENKINS: Thank you very much. I
15 think -- Does anybody have any questions or concerns
16 concerning the -- I guess you'd say the CR101 opening
17 up for the WAC 296-46B- 995? Hearing none, you may
18 continue, if you'd like.

19 BOARD MEMBER LATHROP: The second set of
20 rule making that the Department is looking at is for
21 the opening of the WAC to adopt the 2023 NEC. The
22 2023 NEC goes to publishing in the next month or so
23 and we're looking at opening up the process, that is
24 to adopt that code at the end of 2023.

25 Our other reason for that is because we want to



1 encourage as much stakeholder participation as
2 possible that people will have more time to get their
3 hands on the new code to look at the changes and have
4 a more robust and realistic discussion that we do the
5 best adoption of the national electrical code and the
6 additions to the WAC that we can. The hope for that
7 is at the end of this year we will have the CR101
8 filed, as well, with the process meeting waiting until
9 December of 2023.

10 CHAIRMAN JENKINS: So, if I hear you
11 correctly, we're going to be opening the CR101 in
12 December of 2023; is that correct?

13 BOARD MEMBER LATHROP: The process would be
14 finished in December of 2023 with the adoption of the
15 code at the end of 2023, but we would be opening up
16 the CR101 December of 2022.

17 CHAIRMAN JENKINS: Thank you. Okay. Does
18 anybody have any questions for Mr. Lathrop, for Lorin
19 Lathrop?

20 SECRETARY MOLESWORTH: I would like to --
21 Lorin, if you could take a look and make sure that the
22 number that you quoted on that, 296-46B-995, is it
23 intended to be 945?

24 BOARD MEMBER LATHROP: I believe you are
25 correct. I believe you're correct. I -- Yes, I



1 believe it should be 945, excuse me.

2 CHAIRMAN JENKINS: All right. Any questions
3 for Lorin Lathrop? Yes.

4 BOARD MEMBER GRAY: Thank you, Mr. Chair.
5 Is the target for adoption and implementation to be
6 July 1st? Isn't that typically the target for us is
7 July 1st?

8 CHAIRMAN JENKINS: Lorin, do you want to
9 answer that?

10 BOARD MEMBER LATHROP: Yes. So,
11 historically I went back through our electrical
12 current newsletter and historically 2002 to 2005 and
13 the 2008 code we adopted them somewhere from November
14 to December of the year they came out. So, if they
15 came out, the 2002, for example, and we adopt it, it
16 came out in the beginning of 2002, we did not adopt it
17 until November or December. For the 2014, the '17,
18 and the '20 code you're correct, we adopted them in
19 July 1st of that year. So, what we'd like to do is
20 move it back that six months or so, give or take, so
21 that we can more adequately evaluate the code, make
22 sure that we don't have a lot of changes that we think
23 that we need to make or unintended consequences,
24 things that aren't working. With the 2020 code we
25 were always kind of chasing our tails with some of the



1 issues with supply and demand and unforeseen
2 circumstances due to Covid. So, we are trying to
3 avoid that dilemma again. So, the implementation date
4 would be in December of 2023 to January 2024, right in
5 that window at some point that makes the most sense.
6 We'll have more details exactly of what that schedule
7 will look like at the October meeting for the board.
8 Thank you.

9 CHAIRMAN JENKINS: Thank you. Any questions
10 from the board? All right. Well, thank you very much
11 for your time. I appreciate that, Mr. Lorin Lathrop.

12 Secretary's Report, Wayne Molesworth, are you
13 available?

14 SECRETARY MOLESWORTH: I'm available, Mr.
15 Chairman.

16 CHAIRMAN JENKINS: Thank you.

17 SECRETARY MOLESWORTH: Board members, I'll
18 read the Secretary's report into the record. The
19 budget, the budget report includes primarily data for
20 fiscal year 2022 from July 1, 2021 through 30, 2022.
21 Due to end of fiscal year accounting, June 2022 data
22 is incomplete. As bills continue to be processed, we
23 expect an additional 200,000 to 300,000 in
24 expenditures for June 2022 that is not reflected in
25 this report and it will reduce the electrical fund



1 reported below by that amount. A more accurate fund
2 balance will be reported in the October meeting.

3 The electrical fund balance on June 30, 2022 was
4 \$15,285,168.00, which is about seven times the average
5 monthly operating expenditures. The average monthly
6 operating expenditures for the fourth quarter of
7 fiscal year 2022 were \$2,220.182.00 compared to
8 \$2,435,894.00 for the same period last year, which is
9 a decrease of about 9.7%. Average monthly revenue for
10 fiscal year 2022 was \$2,901,242.00 compared to
11 \$2,690,944.00 for the same period last year, an
12 increase of 7.8%.

13 June 2022 Customer Service, we had five -- or
14 51,326 permits were sold last quarter. 98.9% or
15 50,761 were processed online, which is a .4% decrease
16 from last quarter. 99.9% of the contractor permits
17 were sold online, which is consistent with the
18 previous quarter. Homeowners online sales for this
19 quarter is 88.1%, which is a 7% decrease from the
20 previous quarter. Online inspection requests were
21 78.8%, which is a 2% decrease from last quarter.
22 During this quarter customers made 93.4% of all
23 electrical license renewals online which is a 2.5%
24 decrease interest last quarter.

25 The key performance measures for this time frame



1 are percent of inspections performed within 24 hours
2 of request, the goal is 86%. Fiscal year 2021 was
3 79%. Fiscal 2022, 77%.

4 Percent of inspections performed within 48 hours
5 of request were 90% last year and 89% this year.

6 Total inspections performed 272,731 for fiscal
7 year 2021, 261,919 for fiscal year 2022.

8 Virtual electrical inspections, VEI, performed
9 last year, 12,149 inspections. For this year,
10 inspected 27,342 inspections. That's over a doubly
11 increased it by 100%.

12 Number of focused citations and warnings,
13 contractor licensing, worker citation, no permit,
14 failing to supervise trainees, anticipated total
15 number is 4,136. And the field did -- last year did
16 1,731. ECORE did 4,370 for a total of 6,101 focused
17 citations. This year the field did 1,430 and ECORE
18 did 3,764 for a total of 5,194, or 5,194 total focused
19 citations.

20 Inspection stops per inspector day, this is a
21 workload indicator only, was 11 last year at this time
22 and 11.7 during this time frame this year.

23 Serious electrical corrections that would result
24 in disconnection, we had 41,436 in fiscal year 2021
25 and this year we had 37,023.



1 Turn around time for average plan set reviewed,
2 last year in 2012 it was 1.6 weeks and 2022 three
3 days. Electric plan review is doing a wonderful job,
4 and the plan reviewers, sorry.

5 Plan pages reviewed, 4,973 last year at this
6 time and 4,391 this current year. Was there a
7 question? Okay.

8 Percent of warnings by focused violation type:
9 Licensing 1%; Certification 36%; Permits were 53%;
10 Trainee supervision 10%; all focused 9.4%.

11 CHAIRMAN JENKINS: Board Member Bobby Gray,
12 did you have a question?

13 BOARD MEMBER GRAY: Thank you, Mr. Chair.
14 It's my understanding that we had a significant loss
15 in inspectors due to the mandatory vaccination
16 mandates. Have we seen the effects of that in these
17 numbers here because I see, for example, there's more
18 inspections per stop or per day than perhaps we were
19 in the past. Is that being offset by the number of
20 virtual inspections we're doing? And I'm also seeing
21 a significant reduction in the number of serious
22 corrections there. So, is there anything significant
23 in those numbers we can read into that?

24 SECRETARY MOLESWORTH: So, what you have to
25 consider a little bit with the number of inspections



1 being done in our 48 hour response time, which is our
2 mandate, is that with our vacancies we have around 28
3 vacant electrical inspector positions. That's quite a
4 few. That's being offset by the VEI inspections,
5 which they're doing 18 inspections a day per
6 inspector, and so last count last month I think was
7 35,000 or 3,500 inspections VEI did and so that's what
8 is helping keep that 48 hour response time up where it
9 is because there's no comparison to the field VEI.
10 Nobody is doing anything wrong. It's the VEI doesn't
11 have to drive the mileage, they don't have to make
12 access calls, and so they plan their inspections and
13 the customer actually makes their own appointments,
14 and so everything goes just bing, bing, bing, right.
15 So, that's what keeping our 48 hour response times up.

16 What was the other part of your question?

17 BOARD MEMBER GRAY: Well, I see it looks
18 like, and I don't know if it's significant or not, but
19 there was a drop in the number of serious corrections
20 that were identified and I'm just curious if the fact
21 that either we're -- and I don't want to imply that
22 the virtual inspections are not as maybe robust as the
23 face-to-face type of inspections, but is it just a
24 coincidence that's happening or is there something
25 else you can point to that would show why we're not



1 seeing as many serious violations as perhaps we were
2 in the past?

3 SECRETARY MOLESWORTH: So, that's a tough
4 question, right, because there are so many factors
5 that go into that. It could be that those types of
6 jobs and those corrections are not there anymore.
7 Maybe we're doing our job and we're correcting those,
8 right? We hope. So, but I don't think it's because
9 VEI isn't as robust because we limit the types of
10 inspections that they do and they're very focused on a
11 different type of work so we can keep up with it,
12 right. You don't see as many of those types of
13 corrections on the type of jobs that VEI actually does
14 as you would from a field inspection position. So, I
15 don't have a real good answer for you on why we see
16 that difference.

17 One of the things we've been trying to get
18 people to do and we have to take a look at what are
19 those corrections that are -- you know, could be
20 dangerous to property and personnel and that can
21 result in disconnection, we have actually had some --
22 asked the inspectors to look at some of the
23 corrections, decide if they've got that relationship
24 with the contractor, have them fix them and let them
25 know when it's done, right. And that's not for



1 serious things like grounding, sizing of conductors,
2 and that type of thing, it's more for if you missed an
3 outlet in the hallway and every other outlet in that
4 house was perfect can you call that contractor and say
5 replace that or add an outlet right there, and our
6 opinion is, yes, we can do that, right, if you have
7 that relationship with the contractor and it looks
8 good. That might be playing a part in that. But
9 we've had to make some adjustments because of the
10 vacancy rate on that line and people are doing a
11 little bit more of that. I will take a look to see
12 hopefully we're not doing that on serious type
13 corrections. But it's just one more way we're
14 managing our workload at this point.

15 BOARD MEMBER GRAY: So, if this, I guess
16 what could be perceived as positive trends here if
17 they continue, is there -- your strategy going to be
18 continue to try to replace those vacancies or are you
19 looking to maybe make it more efficient so perhaps you
20 don't need to replace all of the vacancies.

21 SECRETARY MOLESWORTH: Well, you know,
22 that's another real good question because I think the
23 vacancies we need them in the field. I think that
24 you've got to have a relationship between field
25 inspectors and VEI inspectors, and they compliment



1 each other, and the reason for that is because the
2 compliance -- there needs to be a little bit more
3 compliance in the field, and without those other
4 vacants or without filling those other vacancies
5 you're not going to have that. So, I think we need to
6 fill it for a couple of different reasons. Number
7 one, who would do the compliance. Number two, making
8 sure that we're actually seeing the work that's out
9 there. We're going to focus on that a little bit more
10 in the future. I've already had a few discussions,
11 but, you know, how many people go into a big box store
12 and buy electrical equipment with no intent to have it
13 inspected. We want to focus on that, right? We need
14 more inspectors to focus on that and focus on the
15 compliance that leads to that.

16 There's a lot of work that gets done in this
17 state that we don't actually -- are not aware of,
18 right, so to speak. So, I think it's important that
19 we fill those vacancies and we continue to change our
20 approach to how we're doing inspections to become more
21 effective and more efficient.

22 CHAIRMAN JENKINS: Board Member Don Baker.

23 BOARD MEMBER BAKER: Along the same lines
24 there with Bobby, a 10% decrease in expenditures, is
25 there a story behind that? It seems like a



1 significant number. Maybe it's not. I don't know.

2 SECRETARY MOLESWORTH: Well, when you have
3 vacant -- 28 vacancies out of that fund, that's quite
4 a dent, right.

5 BOARD MEMBER BAKER: So, it's salaries?

6 SECRETARY MOLESWORTH: It's salaries mostly.
7 We have cut back on a lot of the travel, right, that
8 we were doing, travel for training, travel for -- You
9 know, I don't travel as much as I should. Hopefully I
10 can in the future to go visit different offices and be
11 more visible out in the field. But there's a lot of
12 things that in the past couple years of have reduced
13 our expenditures in those areas. But mostly it's the
14 vacancies.

15 BOARD MEMBER BAKER: So, I'm assuming you go
16 through a budget process for the upcoming year. Do
17 you set your budget based on actuals from the previous
18 year or do you keep those numbers where they need to
19 be in anticipation of filling those vacancies?

20 SECRETARY MOLESWORTH: So, those are --
21 those are looked at over a year period. So, it's
22 anticipated over the year. So, once we hit August,
23 last year's August will drop off, and so it looks at
24 that budget and those expenditures when it's
25 anticipating what it's going to be down the line. So



1 far I've not seen where that's inaccurate and its been
2 very accurate in what our budget has done, you know,
3 plus or minus about one or two percent at the most,
4 right.

5 So, somebody is pointing at the screen.
6 Is there a question on the screen?

7 CHAIRMAN JENKINS: No, we have a blank.

8 SECRETARY MOLESWORTH: Okay. Sorry.

9 BOARD MEMBER BAKER: You mentioned you limit
10 your virtual inspections and my understanding is that
11 limitation is very limited. It's service finals.
12 Could you explain elevators? I don't think you do
13 virtual elevator inspections.

14 SECRETARY MOLESWORTH: No. And there's some
15 things that we will do, depending on, you know, like
16 let's take an elevator for example. If we've got a
17 situation where we can't get an inspector out there
18 and there are people that need to use it we'll have
19 one of the more experienced VEI inspectors schedule
20 that and we will take a look at it, right. But a lot
21 of stuff that we look at has to be to where we can be
22 in and out of that inspection within 15 minutes
23 because that's their schedule for how they do their
24 inspections. Some of them drag a little bit longer
25 and we just move that appointment back a little bit.



1 But we're actually expanding a little bit on the scope
2 of the work they look at. Now they're becoming more
3 comfortable with that. And we might even have a
4 chance to take a look at if we take one or two of the
5 calendars and expand the length of inspection times
6 that are available on the appointments, you know, what
7 would that look like.

8 Brian Stenerson is the supervisor for VEI and
9 he's done a great job of moving that program forward
10 and looking at these different scopes. And we're in
11 the process right now of hiring one more VEI
12 inspector, so...

13 BOARD MEMBER BAKER: So, last question. I
14 want to make sure we get this on the record. Every
15 time we have a meeting where are we at with
16 compensation for our electrical inspectors and closing
17 the gap between your inspection force and the industry
18 just in the event that somebody in a position of
19 importance actually reads the minutes? We have a gap
20 with our electrical inspectors and our compensation
21 package that we've been trying to correct for at least
22 10 years, which has created part of the disparity with
23 28 vacancies, and the slow -- When I look at your key
24 performance indicators I see a trend going the wrong
25 direction. For the record, the chief is nodding his



1 head affirmatively he agrees. So, where are we at
2 with getting our inspectors a proper compensation
3 package so you have a better chance of retaining and
4 recruiting quality individuals?

5 SECRETARY MOLESWORTH: First of all, nodding
6 my head was recognizing your comment, so... So,
7 unfortunately, I am limited. Because we have
8 represented staff in the office, I'm limited by the
9 Free Labor Standards Act as to how much I can talk
10 about that in this forum. We do have things moving
11 forward where we may be successful, you know, but to
12 what level I can't tell you. I'm encouraged. You
13 know, I've been involved in packages in the past for
14 other programs, and really I'm getting a little bit
15 farther than I even should because I don't want to
16 give anybody any false hope that we'll be successful
17 in that, that we have to allow their representation to
18 bring them that information. And so I'd be happy to
19 talk with you later. Unfortunately, I can't do it on
20 the record.

21 BOARD MEMBER BAKER: I'd love to be part of
22 the solution.

23 SECRETARY MOLESWORTH: What's that?

24 BOARD MEMBER BAKER: I'd love to be part of
25 the solution.



1 SECRETARY MOLESWORTH: I'd love for you all
2 to be part of the solution.

3 BOARD MEMBER BURKE: This is Board Member
4 Dominic. I just wanted to add to the record that this
5 is a safety issue.

6 SECRETARY MOLESWORTH: Absolutely. And it's
7 a -- Dominic, in many ways it's a safety issue because
8 our guys are working a lot of overtime, too, and
9 that's part of those -- part of that record, and so
10 we're keeping up because of that, and some working
11 more than they probably should for their own personal
12 health. So, we're working on that.

13 BOARD MEMBER BURKE: As a business owner,
14 you know, when you know about a safety issue and you
15 don't do anything about it it's negligence. So, I
16 want it in the meeting minutes every meeting that by
17 this not moving forward we're creating safety issues,
18 so...

19 UNIDENTIFIED SPEAKER: Love you, Dominic.

20 CHAIRMAN JENKINS: It's also said that I
21 think the whole board has been in concert with that
22 and that we all are whatever we can do to advance this
23 and make this a positive motion just ask the question
24 and we'll do what we can.

25 SECRETARY MOLESWORTH: And I think I can



1 say, or I'll just get in trouble, that we have had
2 full support all the way up through Joel. Joel has
3 actually gone physically to OFM, talked with the
4 Director of OFM, had several conversations, and I'm
5 encouraged by what I've heard back from those.

6 Dominic, your comment better not be sending me
7 to prison.

8 So, we are trying our hardest to change those.
9 Sometimes they're out of our hands because we don't
10 get to make that decision; the legislature gets to
11 make that decision. You get there by talking to Mr.
12 Governor Jay Inslee and your representatives, right,
13 making sure they're --

14 BOARD MEMBER BURKE: Your hands are tied,
15 just as ours are, so I'm hoping people read these
16 minutes and I hope they take heed to them because
17 we're doing our whole -- we're doing the electrical
18 industry a disservice right now.

19 SECRETARY MOLESWORTH: Absolutely.

20 BOARD MEMBER BURKE: And we need their help.
21 We need the legislative help, so...

22 SECRETARY MOLESWORTH: So, you guys may
23 notice that we've had vacancies for a long time, and
24 I'm going to mention something here because I want you
25 to know my stand on this is that I am a little worried



1 about the industry and I want to make sure that the
2 guys we're hiring are the guys that we need out there
3 doing the inspections. It doesn't do us any good to
4 fill the seats with people that don't know what
5 they're looking at, and so we have to make sure --
6 We've got some guys in the room right now that are --
7 that we've hired that go out there and do that job,
8 but we get a lot of people that can't tell me the
9 definition of some very basic terms that we need to
10 have to be able to explain our corrections to our
11 people. That comes from a lack of wages, right, not
12 sufficient compensation, and so we'll get there. But
13 any help you guys can give us in any way would help.

14 I think that we've got something going right now
15 that I think will be positive and some other things in
16 the works, so...

17 CHAIRMAN JENKINS: All right. Thank you.
18 Anymore comments from the Board?

19 BOARD MEMBER COX: Maybe a point of
20 correction. In the Secretary's third statement he
21 stated as bills continue to be processed we expect an
22 additional 200,000 to 300,000 in expenditures. I'm
23 assuming that he intended it to mean \$200,000.00 to
24 \$300,000.00, so just for the record.

25 SECRETARY MOLESWORTH: Oh, what did I say?



1 BOARD MEMBER COX: You did say 200,000 to
2 300,000, without indicating if that was units, or
3 euros, or --

4 SECRETARY MOLESWORTH: Oh, okay.

5 BOARD MEMBER COX: But it is dollars.

6 SECRETARY MOLESWORTH: \$200,000.00, you're
7 exactly right. Thank you, Mr. Cox. And those are
8 from -- they're for wage increases that we have
9 experienced and things like that to cover those costs,
10 so...

11 BOARD MEMBER COX: I also noticed that there
12 was a continuation report on the back side of this we
13 didn't get to.

14 SECRETARY MOLESWORTH: Yep. I'm headed that
15 direction, but thank you very much. Licensing and
16 Citations: Service locations have opened across the
17 state, but experience intermittent closures due to
18 staffing issues. We are working closely with those
19 officers to streamline work and continue to have an
20 open line of communication to help ensure timely turn-
21 around while maintaining high accuracy processing
22 documents.

23 We have seven full time licensing staff
24 positions and two full time citations desk staff
25 positions. Two licensing staff members are currently



1 helping other work areas within the program that are
2 short-staffed. We are in the process of hiring for
3 one position in licensing and one position in
4 citations due to retirement and advancement
5 opportunities within Labor and Industries.

6 Licensing has seen an uptick in backlog due to
7 the reduction of staff. We expect the back log to
8 decrease as employees are hired, trained, and moved
9 back to their regular assignments. The oldest
10 document in the backlog as of June 17, 2022 was -- or
11 as of yesterday was June 17, 2022.

12 Quite a difference from eight weeks, and some of
13 the things that you guys were hearing and that our
14 stakeholders were hearing is that it was taking that
15 long. We put an emphasis on processing documents
16 because those are people waiting to take exams. They
17 need to get credit for their training hours and
18 wanting to move on with their careers. Just as
19 important, if not more in cases, is getting our
20 inspections done.

21 We've gone to the regions because of the numbers
22 on the front where we talk about number of documents
23 we process on the internet. We've gone to the regions
24 and asked for some FTEs back from the regions so that
25 we can staff internally to make sure that we have



1 staff in the central office to process those documents
2 in a timely manner.

3 I also want to tell you that the licensing staff
4 has done a great job of creating new processes that
5 allow them the time to actually clean up their
6 backlog. There was a time when there were 1,300
7 documents behind, and currently I think they're down
8 to maybe, I'm guessing at this number, somewhere
9 around a couple hundred, right, and so they've really
10 shortened up their processing time and they've done a
11 great job of creating some of those processes.

12 Testing lab report, no new testing labs.

13 Do we have any questions from the board?

14 CHAIRMAN JENKINS: Any other questions from
15 the board? I think we've exhausted them all.

16 SECRETARY MOLESWORTH: They got tired of me
17 stumbling over my words.

18 CHAIRMAN JENKINS: All right. Given that,
19 thank you very much for your time, I appreciate that.

20 Let's move on to our item number six,
21 Certification/CEUs and Quarterly Report. Technical
22 Specialist Larry Vance, the floor is yours.

23 TECHNICAL SPECIALIST VANCE: Thank you,
24 Chairman Jenkins. For the record, my name is Larry
25 Vance. I'm a technical specialist for the Department



1 of Labor and Industries. Today I'm going to give you
2 a little information about the first time pass rate
3 for the 01 exam. It's consistent with previous years
4 reported. There was 1,004 attempts, first time
5 attempts. About 53% of the folks that passed the
6 attempt at the open book exam passed the open book
7 exam on the first try and that is also consistent with
8 years of previous data. So, you look at that -- you
9 look at that number and we talk about the first time
10 attempts, but how many people became certified? So,
11 you were all sent this information, but if you do a
12 little bit of math there and look at the number of
13 people that passed the exam for that calendar year,
14 there was 851. This is just a snapshot. I mean had
15 this data been pulled for the next day it might have
16 been 50 people that went in there and passed the exam,
17 so it might be 900. It could have been a 200 person
18 apprenticeship class that went in there and spiked it,
19 we don't know. But I'm just kind of throwing that
20 number out there.

21 And something else I'd share would be we've had
22 a lot of conversations internally about, you know, the
23 supply of electricians. Where are all these
24 electricians at? Everybody always want to know, where
25 are the electricians at. So, if you look at the data



1 there's about 18,000. There's about 18,000 01
2 electricians certified by the State of Washington.
3 Great.

4 So, then, well, let's sort them by where do they
5 live, and we find that there's about 4,000 of them
6 that live out of state, have out-of-state addresses.
7 Okay. So, then you look at who's not -- who's out of
8 state but who's not in Oregon or Idaho, our border
9 states, that's about 1,000 folks, okay. So those
10 would be your true travelers or something to that
11 effect.

12 So, you've taken that 18,000 and you've boiled
13 it down to 14,000, so that's -- you can say that
14 there's 14,000 living somewhere in the state of
15 Washington. But then looking around this room I see a
16 whole bunch of electricians that are counted in that
17 number that aren't out there working, they're doing
18 something else. So, you take that 14,000 number and
19 you boil it down further, and I'd entertain a guess as
20 to how many electricians that there are like me that
21 hold a certification, but I'm not out there
22 productively installing. I don't know if that number
23 is 2,000. I don't think I'd be too far out of the
24 realm if I said 2,000. I might not be too far out of
25 the realm if I said 4,000.



1 So, now all of a sudden you're down to 10,000
2 electricians in the state, 11,000 electricians in the
3 state. And then the next question comes, "Well, are
4 they all working? Where are they working?", and then
5 that gets really -- you know, there's just not a lot
6 of data out there. But this kind of rolls into the
7 apprenticeship conversation and everything, you know,
8 "Well, how many apprentices -- how many apprentices
9 are there going to be when the dust settles?" and that
10 sort of thing. So, it wouldn't be -- it wouldn't be
11 the number of apprentices based on the number of
12 certified electricians in this state. It would be the
13 number of apprentices that the industry would need to
14 support the number of actual electricians working in
15 the state, right, and enough to replace -- I'm always
16 reminded by the apprenticeship section that
17 apprenticeship starts with a job, you know. There may
18 be a lot of people out there that want to be an
19 apprentice, but they don't have a job and so they sign
20 up to be an apprentice. You know, we hear things
21 about waiting lists and that sort of thing. But these
22 are the folks that don't have jobs. These are people
23 that are looking for something. So, I just thought
24 I'd kind of throw the wonky budget numbers out there
25 just for fun.



1 We continue -- The other report I send out, we
2 continue to have our exam available nationally and
3 there is a large number of people that take an exam
4 before they come to Washington and they're just --
5 they come with -- that ability with psi is very
6 valuable for people to be able to get certified where
7 they live before they come to the state where they can
8 just come to the state and go to work. So, that's
9 been very valuable. Any questions?

10 CHAIRMAN JENKINS: Bobby Gray.

11 BOARD MEMBER GRAY: Thank you, Mr. Chair.
12 Maybe just one regarding the adoption of the next code
13 cycle. So, I assume that will trigger some automatic
14 review of the current exam and update it?

15 TECHNICAL SPECIALIST VANCE: It does. It
16 does several things. It's a huge amount of work. Not
17 only do we have to update the exam, go through and
18 review the exam questions and update anything that's
19 changed, maybe add a few more questions, we also have
20 to go in and update our correction database that our
21 inspectors use. So, we've got about a 3,500 item pick
22 list and we have to go in their and edit that pick
23 list. So, generally, the exam -- I wish Lorin were --
24 Is Lorin still on here? I was going to say that Lorin
25 will get that all updated, but I guess I can't say



1 that because he's not on here. It's generally about
2 we try to get it done within a year, within a year of
3 adoption that the exam will, you know, be reviewed and
4 be updated. But, you know, the code does change, but
5 it's only just -- it's a very slight change that
6 doesn't really affect the overall question bank of the
7 exam.

8 BOARD MEMBER GRAY: Is that something that
9 perhaps could be considered to be contracted out to
10 maybe a previous technical specialist that --

11 (Laughter)

12 TECHNICAL SPECIALIST VANCE: That's a
13 brilliant idea, Board Member Gray. I would certainly
14 think that that would be something that should be
15 considered, yes.

16 SECRETARY MOLESWORTH: Whether or not he
17 would do it is the other question.

18 CHAIRMAN JENKINS: So, a quick question.
19 Maybe you don't know this answer. It might be more
20 for Mr. Lathrop. What's our typical sort of time from
21 the adoption of the code versus the test ready for the
22 new code cycle?

23 TECHNICAL SPECIALIST VANCE: On a rocket
24 ship and see ya. We tried it. We tried to get --
25 It's just a resource issue. So, you got to get -- No



1 matter what, when the new code becomes effective the
2 correction database for the inspectors has to be ready
3 that day. So, that's kind of your first wave. And
4 then the next thing we start working on is going
5 through all of the WAC, RCW, and the code questions in
6 our -- in our exam, and that's thousands of questions,
7 and so that's kind of the next thing. And, then,
8 again, since -- You know, the exam, the open book exam
9 is not based on what's new; it's based on foundational
10 issues in the code. So, it's not a -- we're not
11 creating any kind of safety risk by not having an
12 exactly updated exam, so to speak.

13 CHAIRMAN JENKINS: So, as far as
14 expectations, since we've mentioned it, the code will
15 hopefully be adopted by December-ish two point
16 twenty-three, maybe as late as January. We're looking
17 at about the same time, maybe a little earlier in the
18 following year, getting the exams ready.

19 TECHNICAL SPECIALIST VANCE: Yeah. And we
20 will keep everybody up to date through our news letter
21 and, you know, that sort of thing. It's just with --
22 as Lorin mentioned, with the 2020 code there were so
23 many things that were affected by supply chain or
24 continue to be affected by supply chain. There were
25 some things where they maybe didn't have somebody in



1 the room needed when they -- when they -- you know,
2 certain things -- certain things were updated in the
3 code, manufacturer problems. So, like Lorin said, we
4 are trying to just give a little bit.

5 We kind of found there's -- there are great
6 disadvantages to being one of the first to adopt it.
7 I mean you're diving with both feet into the fire and
8 you get to notify all of the other enforcement
9 agencies about your struggles, and they sit back and
10 they watch, and they -- you know, as they approach
11 adoption they're able to maneuver by your -- by your
12 experience, and we like to -- we want to have -- with
13 all that's going on, we want to have everybody,
14 contractors, electricians, we want everybody to have
15 time to look at the 2023. That's one of the things
16 that we don't get. We put out -- We advertise for
17 code proposals, but we don't get it. It's kind of --
18 It's troubling because we don't want to be enforcing
19 the code through -- you know, with a pen writing
20 corrections. That's not the way we want to roll out a
21 code. So, we want to give people six months more time
22 and have people have time after publication to immerse
23 themselves in it. So, hopefully people do that.

24 CHAIRMAN JENKINS: Thank you. Any questions
25 from the board?



1 BOARD MEMBER COX: I have a question for
2 Larry. On your commentary on the where are the
3 electricians, specifically your comments about
4 apprenticeship programs and the apprentice doesn't
5 have a job when they enter in, can you clarify?
6 Obviously you're getting that from your data numbers,
7 but can you clarify that statement that they don't
8 have a job?

9 TECHNICAL SPECIALIST VANCE: Well, we hear
10 things -- We hear things out there where people say
11 there's apprentice -- there's apprentice waiting
12 lists, apprenticeship doesn't have capacity. Well,
13 it's not about capacity. Those apprentices don't have
14 jobs. They're not a registered apprentice yet.
15 They're somebody that's waiting to become -- they're
16 waiting for a job and waiting to become a registered
17 apprentice. So, it's not a matter of a lack of
18 capacity in the apprenticeship because apprenticeships
19 only train apprentices who have jobs. That's the key.
20 So, we hear things. We hear things where, you know,
21 "I went to Brand X apprenticeship, and I'm on their
22 waiting list, and I can't become an apprentice because
23 they don't -- they don't have room for me right now."
24 The reason they don't have room for you right now is
25 that you don't have -- they only train people who have



1 jobs. They only train apprentices who have jobs that
2 are employed, so...

3 BOARD MEMBER COX: In the electrical trade.

4 TECHNICAL SPECIALIST VANCE: Right.

5 BOARD MEMBER COX: Okay.

6 TECHNICAL SPECIALIST VANCE: Right. So,
7 there's kind of this thing out here, it's there's so
8 many -- there's -- we spend a part of our day every
9 day talking about the difference of what an apprentice
10 is and what a trainee is, and an apprentice is
11 somebody that's in a registered apprenticeship program
12 and they also have them to have a training
13 certificate. So, every apprentice is a trainee. And
14 then a trainee is just somebody that's got a trainee
15 card and they can work. They can gain -- they gain
16 work experience on the job and they can take basic
17 classroom instruction courses or whatever unstructured
18 education they want to take. But there's a very big
19 difference between an apprentice and what a trainee
20 is, and some -- all apprentices are trainees, so...

21 BOARD MEMBER COX: The reason for my
22 question is I had an individual who was a friend of
23 one of my children that was employed at one of our
24 local factories and wasn't satisfied with his wage,
25 and many I talk to I try to encourage the



1 apprenticeship program to get into the trade because
2 we want electricians, we want tradesmen and women in
3 those trades, and so I looked through the -- at the
4 time there were three different programs, picked one
5 of the better ones out of Vancouver and gave him the
6 packet of materials. So, he was already employed
7 looking to improve his lifestyle by becoming a
8 certified electrician trying through an apprenticeship
9 program. So, I'm just curious about your comment on
10 they don't have a job, because he did, and he was
11 wanting to move and find out what was involved in
12 going to the apprenticeship program.

13 TECHNICAL SPECIALIST VANCE: Right.

14 BOARD MEMBER COX: I wanted to make sure
15 there aren't hinderances to the apprenticeship to
16 getting new folks in the apprenticeship program if
17 they aren't already a trainee in the industry, they're
18 coming from a different line of work, whether that's
19 factory work or minimum wage work, to get them into
20 the trades where he's still a young person that has --
21 you know, has an aptitude for that.

22 TECHNICAL SPECIALIST VANCE: Right. So, the
23 relationship is is that apprentices are employed by
24 what's known as training agents. Training agents are
25 electrical contractors who employ apprentice and



1 journey level workers. So, you can be -- if you're
2 working for a contractor who is not a training agent,
3 you don't have a path to becoming an apprentice other
4 than if you leave that contractor's employ and go to
5 work for a contractor that is a training agent.

6 So, and what that individual that you speak of,
7 he left the Clarkston area, I imagine, and went to the
8 Vancouver area and he is now probably on a list with
9 an apprenticeship there, possibly, waiting for a job
10 in the electrical construction trade, or maybe he went
11 out -- it varies at how people in between business
12 owners that are involved with a collective bargaining
13 agreement and open shop contractors as to how -- what
14 the kind of the funnel going into apprenticeship looks
15 like, do you apply to the apprenticeship or do you
16 just go get a job with a contractor who is a trainee
17 and how do you end up -- how do you end up in an
18 apprenticeship role and it varies. But when that
19 person gets a job with a training agent and becomes a
20 registered apprentice, because they'll have to be, a
21 training agent can only -- in a given occupation,
22 which is like the 01 journey level is an occupation,
23 the residential 02 is a separate occupation, so you
24 could have 01 apprentices and be running trainee 02s
25 as long as you're not a training agent for the 02



1 standard for that apprenticeship.

2 So, long story short, that person will -- you
3 know, they'll be an apprentice once they have a job
4 and once they become a registered trainee, registered
5 apprentice, once they register in the program. So,
6 it's all -- This is a lot to unpack for people though
7 because you've got all of the trainees out there.
8 You've got about 2,800 contractors, 2,800 01
9 contractors. Now, there's not a very big percentage
10 of that 2,800 contractors right now that are training
11 agents, I think about 800, somewhere in there. That's
12 just kind of a spit ball. It was about 700. I think
13 it might be about 800 now. But there's also a lot of
14 very small shops out there that there's an 01
15 electrician that went out and started a shop, they may
16 have two, three employees, and what they do is they do
17 primarily residential work, primarily. I mean that's
18 the bread and butter. That's the -- I mean if you
19 look at all electrical work that's done in the State
20 of Washington it is residential work. So, that
21 doesn't mean that that 01 general electrical
22 contractor needs to become a training agent and needs
23 to have apprentices, you know, working to become 01
24 electricians because they really only need to become
25 residential specialty electricians because that's the

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1 market we're in.

2 So, it's a lot, and it's coming. And this rule
3 making coming up in WAC 296-46B-945 that's going to
4 lay out kind of two years of pathways to get to become
5 qualified for the 01 exam without completing an
6 apprenticeship. You know, it's going to get some
7 people through. And then after that the
8 apprenticeship requirement comes in. So, we've been
9 talking about since the law passed in 2018. Every
10 trainee gets a notification when they become a
11 trainee, when they review. I mean every time a
12 trainee interacts with us in some way, pays its money,
13 renews, does anything, they get a letter that tells
14 them that this is coming. And you'll notice that
15 they're up there in the front up there. There's some
16 green cards coming through the door there. We've had
17 about 20,000 of those. On one side is information for
18 the contractors. On the other side it's information
19 for trainees. Our electrical inspectors have passed
20 out, I don't know, somewhere around 20,000 of those.
21 I think we're close to out of them, I'm not sure, but
22 I mean from what I hear from the inspectors we're
23 just -- they're pretty much, "Ah, yeah, we know about
24 that." You know, the word is out about this, and what
25 there is is that there's just kind of it's -- it's

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1 everybody trying to time it so that they don't have
2 any kind of an economic disadvantage because maybe
3 they've got folks that are now apprentices and there's
4 some cost to an apprenticeship. So, everybody --
5 everybody is looking at the bottom line and they want
6 to make sure that, you know, they wait until the last
7 minute, and that's one of the things that we're
8 struggling with with this.

9 And it's going to be a really interesting two
10 years between 2023 and 2025. That's when our good
11 cause capability exists. It's going to be very
12 interesting between now and July 1, 2023, when the
13 actual requirement comes into play. That rule making
14 is timed so that we have the good cause rules in place
15 before July 1, 2023, when the apprenticeship
16 requirement comes into play.

17 So, we're working on it. Our apprenticeship
18 section is working on it. We just have some --
19 there's some folks out there that are reluctant that
20 apprenticeship is something that they want to
21 participate in. So, it's just a lot of it is
22 misinformation. A lot of it is just -- it's amazing
23 the things that we're -- but we're -- I think we're up
24 for the task, so, yeah.

25 CHAIRMAN JENKINS: Any questions from the



1 board, from anyone online? We have two up there. All
2 right. That being said, thank you very much for your
3 time. We appreciate that. Thank you.

4 TECHNICAL SPECIALIST VANCE: Thank you.

5 CHAIRMAN JENKINS: All right. So, we're on
6 item number seven. We're at the public comment
7 regarding items not on the agenda. Do we have anybody
8 here? Anybody on the list? All right. Anybody
9 online that's public waiting for a time to speak to
10 the board? Going once. Once again, anybody online
11 that's here to speak to the board? Going twice. And
12 once again, anybody on the -- online that's looking to
13 speak to the board? All right.

14 Last thing, can I step in here, our next
15 meeting that we need to adjust for where we're going
16 to be meeting at. Typically we try to do our -- to
17 move around the state to do these meetings, and right
18 now this particular location is nice because it has
19 this electronic stuff, but it's not going to be the
20 same anywhere else we go; so, this is probably the
21 last time we'll allow a hybrid meeting. And we also
22 saw some hiccups that we saw in the very beginning,
23 which it's going to be nice to have all in-person.

24 So, I'm looking for anybody's suggestion. I
25 know I'd like to see the next one in Vancouver, but



1 that's just being selfish because I live close there.
2 And I know we have Spokane, a couple Spokane votes,
3 but any place else? Anybody else's input?

4 BOARD MEMBER GRAY: We haven't had one in
5 Wenatchee, have we?

6 CHAIRMAN JENKINS: Interesting. Well, I'll
7 be honest, I've never had a meeting in Vancouver
8 either. I've suggested it multiple times, but we've
9 never had one there; so, maybe we can add that to the
10 list of where we can meet. But unless I get any
11 really bad opposition out of Vancouver, just because I
12 can do that, it's --

13 SECRETARY MOLESWORTH: It feels like an
14 abuse of power.

15 BOARD MEMBER BAKER: The only comment I'll
16 make is in the past we've tried to get east to satisfy
17 the folks that are coming over from the east side and
18 give people on the east side access, so...

19 CHAIRMAN JENKINS: I agree with that and I
20 think what we should do is -- I think we have a
21 schedule. Do you happen to have the schedule from
22 last year, non-Covid time?

23 MS. RIVERA: I have it in an e-mail. I'll
24 send that --

25 CHAIRMAN JENKINS: Bear with me one second,



1 please.

2 BOARD MEMBER KNOTTINGHAM: Remember quite a
3 few years ago we decided to not go to Spokane in the
4 winter time due to the fog and the difficult travel.

5 BOARD MEMBER COX: Instead go in the summer
6 when it's 110 degrees.

7 BOARD MEMBER BURKE: At least you can get
8 there.

9 SECRETARY MOLESWORTH: It's beautiful in
10 Spokane.

11 CHAIRMAN JENKINS: On our previous e-mail
12 our previous locations, we've been January in here in
13 Tumwater, and the next one was in April, it was
14 Spokane, and in July it was Vancouver, I don't
15 remember having that one, but October was back to
16 Pasco. Is there any objections or any thoughts with
17 the board members? Do you want to keep that maybe
18 next year's, January Tacoma, then Spokane, then
19 Vancouver, and Pasco, does that sound okay to the
20 board members? And lastly, next again, the next one
21 in October of this year we'll stay on this side of the
22 mountains, are you okay with that?

23 SECRETARY MOLESWORTH: Mr. Chair, can I
24 make a suggestion that since this was our first
25 attempt at in-person and hybrid that maybe we consider



1 the last meeting of this year in October to maybe be
2 here again just to have that again and make that other
3 announcement that we'll go full time in-person
4 starting on our first meeting next year.

5 CHAIRMAN JENKINS: You don't like that
6 Vancouver idea, do you? That's all right. I'm okay
7 with that, too.

8 UNIDENTIFIED SPEAKER: I like Vancouver.

9 CHAIRMAN JENKINS: We've got one Tumwater
10 and three Vancouvers. Anybody else? Well, let's go
11 for Vancouver this time around on the next meeting.
12 If we find a problem with that because I know our
13 location is kind of -- sometimes we have a hard time
14 finding locations that have been discussed, and if
15 that can't happen I will make sure we send out some
16 notification as soon as we find out it can't be done
17 there, and I believe this is our secondary location,
18 sound good?

19 Given that, the Chair would entertain a motion
20 to end the July 2022 meeting.

21 SECRETARY MOLESWORTH: Motion.

22 CHAIRMAN JENKINS: We've got a motion. Do
23 we have a second?

24 UNIDENTIFIED SPEAKER: Second.

25 CHAIRMAN JENKINS: Any discussion? All in



1 favor signify by saying aye.

2 (Chorus of ayes)

3 CHAIRMAN JENKINS: Any opposed? Hearing
4 none, the motion passes.

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7 (Concluded at 12:25 p.m.)

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C E R T I F I C A T E

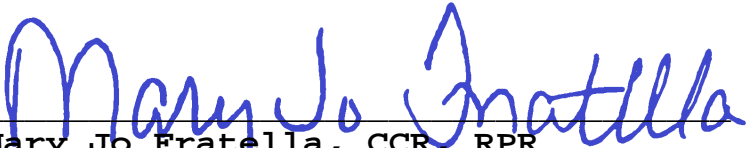
I, Mary Jo Fratella, a Certified Court Reporter in
and for the State of Washington, residing at Covington,
authorized to administer oaths and affirmations pursuant
to RCW 5.28.010, do hereby certify:

That the foregoing meeting occurred before me on
July 28, 2022, and was by me stenographically reported and
thereafter transcribed by means of computer-aided
transcription;

That the foregoing transcript contains a full, true,
and accurate record of the proceedings given and occurring
at the time and place of said meeting consisting of pages
1 through 130;

I do further certify that I am in no way related to
any party in the matter, nor to any of counsel, nor do I
have a financial interest in this matter or the outcome
thereof;

IN WITNESS WHEREOF, I have hereunto set my hand this
15th day of August, 2022.


Mary Jo Fratella, CCR, RPR
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