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## ELECTRICAL BOARD MEETING

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### TRANSCRIPT OF PROCEEDINGS

July 25, 2024

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DEPARTMENT OF LABOR AND INDUSTRIES  
STATE OF WASHINGTON

ELECTRICAL BOARD MEETING  
TRANSCRIPT OF PROCEEDINGS

July 25, 2024

Vancouver, Washington

Pages 1 through 113

**CERTIFIED  
TRANSCRIPT**

Reported by:

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1                   BE IT REMEMBERED that an Electrical Board  
2 meeting was held on Thursday, July 25, 2024, at 301 West  
3 6th Street, Vancouver, Washington, at 9:01 a.m., before  
4 CHAIRPERSON JASON JENKINS, BOARD MEMBERS BOBBY GRAY,  
5 KERRY COX, IVAN ISAACSON, MIKE NORD, DYLAN CUNNINGHAM,  
6 DON BAKER, and SECRETARY/CHIEF ELECTRICAL INSPECTOR WAYNE  
7 MOLESWORTH. Also present was ASSISTANT ATTORNEY GENERAL  
8 BEN BLOHOWIAK, representing the Board;

9                   WHEREUPON, the following proceedings  
10 were had, to wit:

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CHAIR JENKINS: All right. So I want to welcome everyone here to the Washington State Electrical Board meeting on July 25th. It is approximately 9:02 a.m. I would like to call the meeting to order.

The first item on our agenda here is the safety message, and I've kind of passed the buck again to our secretary, Wayne Molesworth.

Safety Message

SECRETARY MOLESWORTH: Good morning.





1       So one of the things that we run into this time of year  
2       is dealing with heat. This year is no exception, and  
3       it's probably worse than we've had in a long, long time,  
4       even on this side of the mountains.

5               When we're working in those types of situations, we  
6       have to be aware of a couple of different things: heat  
7       stress and heatstroke; right?

8               And so heatstroke or heat exhaustion are -- is a  
9       milder version, if you can call it milder. It's from  
10       overextending your work time in temperatures over  
11       80 degrees and lack of hydration and lack of taking some  
12       breaks and getting into a cool place.

13              If you start to see symptoms of heat exhaustion such  
14       as profuse sweating, dry, cold, clammy skin, you need to  
15       take that person and get them into a cool place and start  
16       to cool them down a little bit, get them a break, get  
17       them hydrated.

18              Because if it turns and it turns into heatstroke,  
19       now you stop sweating. You're going to enter into  
20       confusion, experience a little confusion. You'll  
21       experience balance problems.

22              And you -- if you drop into heatstroke, that's a  
23       medical emergency, and you need to be transported to a  
24       medical facility and be checked out by a doctor. It can  
25       be fatal.



1           And so the key is to prevent all that is just stay  
2 hydrated, take some breaks to cool down, and -- and keep  
3 an eye on your buddy. Right? Because sometimes you  
4 don't know it's happening to yourself.

5           You need to keep an eye on that person next to you  
6 that you're working with. They'll be able to tell you  
7 that you're having a problem. You'll be able to tell  
8 them that they're having a problem, but just be very  
9 aware at this time of year with the type of heat we have.

10          Also very important to me because I've almost lost  
11 all my hearing, so I don't want to lose my sight too, but  
12 this time of year, with the sun as bright as it is and  
13 we're outside working on reflective materials such as  
14 metal, sheetrock, white -- white floors -- even a plywood  
15 floor on a new house can reflect and burn your eyes.

16          And so make sure to wear your sunglasses. Make sure  
17 they're polarized so they give you the best protection  
18 possible.

19          Okay. And that is my safety topic for the day,  
20 Mr. Chairman.

21                           CHAIR JENKINS: Thank you very much.

22          I'm going to add one more thing to that. If you do  
23 have someone with heat exhaustion, make sure that they're  
24 drinking plenty of liquids, rest in cool shades.

25          If they start feeling the ill effect and if someone



1 goes into heatstroke, you need to cool their body  
2 temperature down as soon as possible.

3 SECRETARY MOLESWORTH: And I did  
4 forget that the best way to do that is with damp rags,  
5 towels, wrap them in them, and transport them. Right?  
6 Get them covered with water. That will cool them down  
7 quick.

8 CHAIR JENKINS: Thank you. That's all  
9 my safety training.

10 SECRETARY MOLESWORTH: Thank you for  
11 the reminder. May the board put this on the record? I'm  
12 assigning safety topic to the chair for next -- no. I'm  
13 just kidding. He had some good points.

14 CHAIR JENKINS: All right. Thank you  
15 very much.

16 I want to make sure I brought this up. Looks like  
17 we have some guests here today from Perry Tech and their  
18 class, so I will say welcome. Thanks for coming out and  
19 hope you have a good meeting with us. Thank you.

20

21 Approve Transcript From April 25, 2024 Electrical Board  
22 Meeting

23

24 CHAIR JENKINS: All right. So we're  
25 on Item No. 2, and the chair would entertain a motion to

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1 approve the transcripts from April 25th, 2024.

2 BOARD MEMBER NORD: Board Member Nord,  
3 motion.

4 CHAIR JENKINS: We have a motion.

5 Do we have a second?

6 BOARD MEMBER GRAY: Second. Board  
7 Member Gray.

8 CHAIR JENKINS: We have a motion, and  
9 we have a second.

10 Any discussion?

11 Hearing none, all in favor, say aye.

12 BOARD MEMBERS: Aye.

13 CHAIR JENKINS: Any opposed?

14 Motion passes.

15 Appeals

16 Kugel Construction; EZINS02418, EZINS02419, EZINS02420

17

18 CHAIR JENKINS: All right. So moving  
19 on to our next item, looks like we're on to appeals and  
20 looks like we have -- correct me if I say it wrong -- but  
21 Kugel.

22 MR. KNOLL: Kugel is correct.

23 CHAIR JENKINS: And we have the --  
24 John Barnes; is that correct?

25 MR. BARNES: Correct.



1 CHAIR JENKINS: Can I get your name,  
2 please, sir?

3 MR. KNOLL: First name Thomas. Last  
4 name Knoll, spelled K-n-o-l-l, Jr.

5 CHAIR JENKINS: All right. So the  
6 matter here before us today is an appeal in the matter of  
7 Kugel Construction Docket Nos. 06-2023-LI-01889. The  
8 hearing is being held and pursuant and due to proper  
9 notice to all interested parties in Vancouver,  
10 Washington, on July 25th, 2024, at approximately  
11 9:07 a.m.

12 This is an appeal from the original order issued by  
13 the Office of Administrative Hearings on November 28th,  
14 2023. It is my understanding the decision was affirmed  
15 citation notices EZINS02418 and EZINS02419 and dismissed  
16 citation notice EZINS02420, all issued by the Department  
17 of Labor and Industries on January 24th, 2023.

18 It is further my understanding that Kugel  
19 Construction has timely appealed that decision to the  
20 electrical board.

21 And I see we have both our parties here today. So  
22 the electric board is legal [sic] authorized by the  
23 legislature not only to advise the Department regarding  
24 electrical program, but to hear appeals when the  
25 Department issues citations or takes some other adverse



1       action regarding electrical license certifications  
2       compliance.

3             The electrical board is a completely separate entity  
4       from the Department and, as such, will independently  
5       review actions taken by the Department.

6             When the Department issues penalties, the hearing is  
7       assigned to the Office of Administrative Hearings to  
8       conduct the hearing pursuant to Administrative Procedures  
9       Act.

10            The ALJ who conducted this hearing then issues a  
11       proposed decision and order. If either party appeals,  
12       that decision is subject to review by the electrical  
13       board.

14            Please keep in mind that, while our review is  
15       de novo, we sit in the same position as the  
16       administrative law judge and review the entire record  
17       regardless of whether the piece of evidence is referenced  
18       by the ALJ.

19            We are bound by the evidence in the record, and no  
20       new evidence can be submitted at this hearing. Each  
21       party will be given 15 minutes today to argue the merits  
22       of the case.

23            Any board member may ask questions, and the time may  
24       be extended at the discretion of the board. At the  
25       conclusion of the hearing, the board will determine if



1 the findings and conclusions reached by the ALJ are  
2 supported by the facts and the rules pertaining to the  
3 electrical installations.

4 Are there any questions?

5 MR. BARNES: No.

6 CHAIR JENKINS: Okay. As the  
7 appealing party, you have the burden to prove the  
8 established proposed decision is incorrect. Therefore,  
9 we'll hear from you first.

10 MR. KNOLL: All right. Thank you very  
11 much for your time. My name is Thomas Knoll. I  
12 represent Kugel Construction in this matter, and we are  
13 appealing the two citations that were affirmed by Judge  
14 Derifield, ALJ, specifically the -- and I won't give the  
15 number, but I will outline the topic.

16 So one of the citations is from RCW 19.28.041, and  
17 that's where it was alleged that Kugel Construction  
18 engaged in electrical work without a license. That one  
19 was affirmed.

20 And then WAC 296-46B-901, which requires the  
21 contractor to post an electrical permit before work is to  
22 be done at the worksite, that citation was also affirmed.

23 There was a third citation that you heard that was  
24 dismissed. That one comes from RCW 19.28.271, and that  
25 RCW states that an employer cannot hire an individual to



1 do electrical work who does not have a license. That  
2 citation was dismissed.

3 Now, the basis of our appeal is basically  
4 surrounding the judge's conclusion that Kugel  
5 Construction is liable for these citations based on a  
6 legal theory of imputed liability.

7 Now, before today's hearing, I submitted -- I don't  
8 know if you've had time to read my motion in support of  
9 our appeal. Some of you are shaking your head yes.

10 And I think it's important, and I want to highlight  
11 for you what is necessary in order to prove imputed  
12 liability.

13 First of all, we believe that that standard is not  
14 applicable to this type of situation. When I -- when I  
15 researched this, imputed liability is quite commonly  
16 found in situations where there is a sexual harassment  
17 claim or hostile work claim.

18 And in those situations, an employer can be liable  
19 through imputed liability, but in order to do so, if that  
20 is, in fact, the standard that you consider to be  
21 accurate, in order to make that conclusion, the evidence  
22 has to show that the employer knew or should have known  
23 about the conduct.

24 And I'm referencing the sexual harassment, knowing  
25 full well that's not the basis of this case, but the





1 employer knew or should have known about conduct and  
2 failed to act to prevent that conduct from going forward.

3 What the evidence in this case demonstrates -- and  
4 the judge even says so in her order -- that there is no  
5 dispute that it was Mr. Kugel's employee who did  
6 electrical work and that Mr. Kugel and his project  
7 manager did not know that that work actually was done by  
8 the employee.

9 That's the facts of the case. There's no dispute  
10 about that. And so when you -- when you take that  
11 information, which was established through testimony, and  
12 apply it to imputed liability, L&I did not meet its  
13 burden because, if Kugel Construction did not know that  
14 its employee was doing something prohibited by law, it  
15 didn't have knowledge of the act and, therefore, could  
16 not act on that knowledge to prevent further violations.

17 So just in quick summary, though, to provide you the  
18 relevant facts of this case, Kugel Construction had a  
19 construction superintendent by the name of Mike Meyers,  
20 and he was assigned to be a superintendent for a worksite  
21 in Puyallup, Washington.

22 And during the course of his assignment at that  
23 worksite, a portable generator arrived at the worksite  
24 early on when they were doing dirt work, and Mr. Meyers  
25 hooked up/hardwired that portable generator to a trailer.



1           And -- and sometime after doing that, an  
2           investigator from L&I comes to the worksite in Puyallup  
3           to check for electrical compliance. He sees the  
4           generator. He sees it's been connected, and he begins  
5           his work. He contacts Mr. Meyers and has a discussion  
6           with him about the generator and who hooked it up.

7           Mr. Meyers initially at that meeting said he didn't  
8           know. He gives a reason for it in the record why he  
9           didn't know, is because he initially hooked it up the  
10          first time, but the generator and trailer had moved on  
11          the lot, and so he believed that someone had disconnected  
12          what he had initially connected and reconnected it. And  
13          so when he answered the investigator's question, he was  
14          answering it based on what he thought had happened.

15          But, anyway, what the investigator found is that he  
16          didn't see a permit for electrical work. He received  
17          from Mr. Meyers that a Kugel Construction employee hooked  
18          up the unit and that no Kugel Construction worker was an  
19          electrician.

20          Right after that interview, he calls the  
21          superintendent for Kugel Construction to try and get a  
22          little bit more details about this generator that was  
23          hooked up, and he contacts Geoffrey Wieland. He's the  
24          project manager right under the owner, Adam Kugel.

25          A conversation occurs with Mr. Wieland. Mr. Wieland



1 could not confirm who hooked the generator up, did not  
2 give a name, knew a generator had been delivered to the  
3 worksite, and he also testified that he had not been to  
4 the worksite since the generator had arrived and been  
5 hooked up.

6 With that brief interview by the inspector with  
7 Mr. Wieland, he issues those three citations against  
8 Kugel Construction. And when the president, Adam Kugel,  
9 received the citations through the mail, that was the  
10 first time that he knew of anything regarding a problem  
11 at the Puyallup worksite.

12 That's a general synopsis of the facts relevant to  
13 this case.

14 Now, I've already told you what I believe the  
15 standard is for imputed liability and that it's not met  
16 in this case because the owner, through his testimony,  
17 and the project manager said they didn't know anything  
18 about the hookup, and even Mr. Meyers said himself that  
19 he did it on his own.

20 He didn't tell his employer, didn't think anything  
21 was wrong about doing such work because, when he worked  
22 in Alaska, he could do things like that and had done  
23 generator hookups.

24 But I want to get to Judge Derifield's decision  
25 because this case should have been dismissed against Adam



1 Kugel, and the only case that should have been brought  
2 should have been one against Mike Meyers because, in her  
3 opinion -- I'm reading from the packet Page 12; and  
4 that's in Judge Derifield's decision about the middle of  
5 the page -- it says, "In this case, the undisputed  
6 evidence establishes that the appellant's employee,  
7 Mr. Meyers, installed a hardwired generator without  
8 electrical contractor licensure. He did so in violation  
9 of 19.28.041 Paragraph 1."

10 Right there, the judge, through the evidence she  
11 heard, found that it was Mr. Meyers who was the one at  
12 fault, and that's important to remember because I want to  
13 read specifically this RCW.

14 And let's just go to this RCW. What does the RCW  
15 say? It says, "It is unlawful for any person" -- that  
16 would be Mr. Meyers in this case -- "or a corporation" --  
17 Mr. Kugel was cited; so that would include him; he's a  
18 corporation -- "to advertise, offer to do work, submit a  
19 bid, engage in conduct, or carry on business of  
20 installing and maintaining wires without having an  
21 unexpired electrical contractor license."

22 Our position is that -- and this was not news to L&I  
23 because they were told of this before we had the  
24 hearing -- that the only individual at fault is  
25 Mr. Meyers, not Kugel Construction.



1           He's the innocent party in this. He took no part in  
2 encouraging, directing, or having any knowledge that  
3 something like this had happened.

4           And the proper charge to have been brought, if the  
5 investigator would have done a more thorough  
6 investigation, would have been to charge Mr. Meyers.

7           Clearly, the judge found very easily that he was the  
8 one who violated the statute, and -- and there is no  
9 evidence that Mr. Kugel engaged in any type of activity  
10 that involved electrical work.

11           Yes, his employee did, but he was a superintendent,  
12 and you'll see in the exhibit that they filed -- our  
13 exhibit at the hearing was Exhibit B. It was the  
14 position description for Mr. Meyers.

15           Nothing in that position description supports  
16 Mr. Meyers doing electrical work. He was to manage  
17 subcontractors who were doing different jobs, one of  
18 which would be electrical work, but he was not to  
19 actively to do that work.

20           And so Mr. Kugel is the innocent party. Mr. Meyers  
21 is the one the charge should have been found against  
22 because that's what the statute calls for.

23           And something else that's -- words mean things,  
24 especially when you're talking about the law. When it  
25 gives the list of individuals or corporations that can be



1 charged, it says, "Any person, firm, partnership,  
2 corporation, or other entity."

3 It's not the employee and the corporation. L&I has  
4 to choose. Are we going after the corporation or are we  
5 going after the individual? It's not and/or. That's not  
6 what is written there. It's one -- it's only one. You  
7 have to choose.

8 In this case, L&I chose to go after the corporation,  
9 knowing full well that our evidence would be that the  
10 corporation did not specifically participate in this  
11 activity. Mr. Meyers did it on his own.

12 When you look at the judge's opinion, the initial  
13 order, it's troubling how she -- she twists the evidence  
14 in order to come to the conclusion almost in an effort to  
15 save L&I's claim, realizing that it would have probably  
16 been better to have just charged Mr. Meyers from the  
17 get-go, but she's -- she's going after this imputed  
18 liability theory and how is it the corporation could be  
19 liable.

20 Well, when you look at what she says, still on  
21 Page 12 of the packet, it says, "The fact remains that  
22 Mr. Meyers" -- it's talking about what he did -- "did so  
23 in the course of his employment with the appellant and  
24 the -- and for the appellant's benefit."

25 There are two incorrect assumptions. Number one,



1 what Mr. Meyers did was not in the course of his  
2 employment. The position description says very clearly  
3 what his limitations are. He was acting on his own, not  
4 in the course of his employment.

5 And number -- number two, she says, Well, he did it  
6 for Mr. Kugel's benefit. No. Breaking the law is not  
7 for Mr. Kugel's benefit. It was actually counter to his  
8 benefit.

9 In fact, when you look at the record, you can see  
10 there was an electrical contract with a contractor  
11 licensed to do that work that was obtained prior to this  
12 job getting started.

13 And it would be inconsistent for Mr. Meyers to do  
14 the work of a subcontractor who is already contracted to  
15 do that work and, in fact, testified at the hearing they  
16 had been paid to do the temporary power hookup. It had  
17 been paid.

18 Mr. Meyers did it, but the subcontractor was  
19 actually paid by Kugel Construction for that, and Kugel  
20 Construction had contracted, in part, for that specific  
21 job to be done.

22 So her assumption that, well, this was done in the  
23 course of his employment and for Kugel's benefit is  
24 completely wrong. It's not. In fact, Mr. Kugel said  
25 that what his employee did was not within the course and



1 scope of his employment. It was outside because the  
2 position description clearly says what is allowed for.

3 Finally -- I know I'm almost out of time -- what's  
4 really troubling in this case is, L&I went after only the  
5 corporation, and in their closing at hearing, Mr. Barnes  
6 said this: "Meyers had a lot of authority and power as  
7 the superintendent, and so it's not unreasonable to  
8 believe that the actions that he took would then -- would  
9 be then attributable back to the company for which he  
10 works."

11 That's another way of saying, "Judge, Kugel  
12 Construction needs to be responsible under a theory of  
13 imputed liability," but there is some incorrect  
14 assumptions here.

15 Yes, the superintendent had authority and power, but  
16 did he have authority and power to do electrical work?  
17 He didn't get that from Kugel Construction. That  
18 position description narrows his authority right there.

19 Clearly, even though this is being argued, looking  
20 at the facts, the authority and power of Mr. Meyers stops  
21 short of what he actually did that day on the worksite by  
22 hooking up the generator. That is not substantiated by  
23 the evidence. If there's any fault at all, it belongs to  
24 Mr. Meyers.

25 And the last thing I will say is, having argued to





1 the judge that, even though L&I had an option, we -- they  
2 could have gone after the person, Mr. Meyers, if they  
3 chose the corporation. Even though they said, "No, it's  
4 the corporation's fault, not Mr. Meyers'. It's the  
5 corporation's," subsequent to this hearing and without  
6 notice to me, without notice to the judge, L&I personally  
7 went against Mr. Meyers, citing him for the very same  
8 conduct that they tried --

9 CHAIR JENKINS: One second. Was -- is  
10 that in the record?

11 MR. KNOLL: It is in the record.

12 CHAIR JENKINS: Okay.

13 MR. KNOLL: I will tell you it's  
14 Page -- just a second here. It's Page 21 of the packet.  
15 I mean, the citation.

16 CHAIR JENKINS: One second.

17 MR. KNOLL: Is that -- I'm pretty sure  
18 it's Page 21. I'm looking at Page 21 down at the bottom.

19 CHAIR JENKINS: Okay. Continue.

20 MR. KNOLL: Okay. And that is  
21 relevant because, pursuant to court rules, Civil  
22 Rule 60(b)3 and 4, newly discovered evidence is relevant  
23 to these proceedings.

24 And -- and it really -- what -- what really -- I  
25 think, for the citizens of this state, what is harmful is



1 in the one case, you have L&I going after a corporation,  
2 blaming only the corporation for this, but then kind of  
3 behind everyone's back, you have a subsequent action  
4 taking a different position, which is, no, it's actually  
5 Mr. Meyers' fault. We're going after him, but they have  
6 already told the court, no, it's only the corporation.

7 And I think that sends the wrong message to the  
8 public and those that seek to follow the rules. And I  
9 know the director of this agency very well, Joel Sacks,  
10 and I know for a fact that that is not the way Mr. Sacks  
11 operates. He is always aboveboard.

12 And I think that that fact, along with the other  
13 arguments that I have made, should result -- and I'm not  
14 asking for equity. This last piece I'm arguing shows  
15 that L&I is conceding that the true party at fault really  
16 was Mr. Meyers, just as the judge had actually found, but  
17 then used this -- went through gymnastics to come up with  
18 this imputed liability theory.

19 I think all of what I've argued plus the fact that a  
20 subsequent action occurred that was inconsistent was what  
21 had been argued at the hearing deserves or should result  
22 in a dismissal of the remaining two citations.

23 And, quite frankly, when the judge dismissed the one  
24 citation that says, "Mr. Kugel, you hired someone to do  
25 work -- electrical work who didn't have a license. That



1 one was suspended," if that's suspended, why does Kugel  
2 Construction then, in the end, become liable for someone  
3 who's doing electrical work when, again, Mr. Meyers was  
4 not hired for that job?

5 That -- that should have been dismissed out of hand  
6 right there.

7 With regard to the posted citation -- posted permit,  
8 South Gate Electric has the authority to get that. Kugel  
9 Construction doesn't get that on their own.

10 And with that, that's my argument. Thank you very  
11 much for your time.

12 CHAIR JENKINS: Thank you.

13 Department?

14 MR. BARNES: Thank you. John Barnes,  
15 for the Department.

16 Think about for a minute what Kugel is arguing.  
17 They're arguing that, in order to insulate them from any  
18 liability for any acts of their employees, all they have  
19 to do is say that, "You will obey all rules, regulations,  
20 and ordinances," and then if they violate one of those  
21 things, Kugel Construction, under their theory, says  
22 that's outside the scope of his -- you know, employment,  
23 and therefore, you can't charge the corporation for  
24 anything of its employees if they have this -- you know,  
25 part of their job description is they won't violate any



1 rules.

2 But think about it for a minute. A corporation  
3 signs no contracts. A corporation hires no  
4 subcontractors. A corporation acts through its board of  
5 directors, its officers, and its key employees.

6 And I submit to you that one of those key employees  
7 is the construction superintendent at the job site, and  
8 he's the one -- well, look at what his description is.

9 The job summary, which is Page 23 of 263, the job  
10 summary provides he's to provide on-site coordination for  
11 all phases of construction projects, including  
12 coordinating subcontractors, material and equipment,  
13 ensuring that specifications are being strictly followed,  
14 and work is proceeding on schedule and within budget.

15 Superintendents shall be responsible for scheduling,  
16 inspections, quality control, and job site safety.  
17 That's a significant amount of authority and  
18 responsibility, for one, and if a superintendent cannot  
19 bind a corporation for their wrongful acts, I don't know  
20 who can.

21 Now, Mr. Meyers, in his testimony, he said, "My  
22 primary responsibility is to oversee the job, maintain  
23 schedules, and interact with the different subcontractors  
24 to get the job done."

25 And his explanation was, "I was just trying to be



1 expedient. We needed it done. There was no electricians  
2 around. I did not know that I needed anything to do  
3 that."

4 That suggests a training issue to me, that he  
5 doesn't know that he can't perform electrical work,  
6 but -- so -- and the reason why Mr. Meyers was not cited  
7 initially is because, when the inspector approached him,  
8 he said he didn't know who did it.

9 MR. KNOLL: You know, I have to object  
10 to that because that's not in the record. The  
11 explanation as to why he wasn't charged is not in the  
12 record.

13 MR. BARNES: What do you mean? The  
14 one I just read?

15 MR. KNOLL: The one you just said.

16 MR. BARNES: Was --

17 MR. KNOLL: You were explaining why  
18 the investigator didn't charge Mr. Meyers, and I read the  
19 transcript. I did not see that.

20 MR. BARNES: The reason -- well, I'm  
21 just saying that Mr. Meyers denied ever hooking it up,  
22 and only later, when come to hearing, he says, "Okay. I  
23 did it, but I assumed that somebody else had unhooked it  
24 and hooked it back up when the trailer was moved."

25 He's the superintendent. He should have known that



1 it wasn't. He was more likely on-site when it happened.

2 And there's nothing in any statute that I'm aware  
3 that says you can't charge the perpetrator or, in this  
4 case, Mr. Meyers for performing the wrongful act and the  
5 corporation. There's nothing that says you can't do  
6 both. And, in fact, it happens all the time.

7 And there is -- as far as Mr. Meyers being cited, if  
8 we really want to get at it, it's not in the record.  
9 It's in the post -- I believe there was a brief done that  
10 that was included in after the decision was made. So it  
11 is really not in the record other than through counsel's  
12 post-hearing briefing.

13 Now -- and you also have to look at the fact what  
14 was happening here. This was in November/December of  
15 2022. It's cold, more likely rainy, and they needed the  
16 power to -- temporary power to hook up the trailer so  
17 they could, you know, have light, get out of the  
18 elements, maybe hook up their coffee pot, whatever.

19 But it was certainly done for the benefit of the  
20 corporation. They needed that temporary power hooked up  
21 to the trailer in order to use their computers, their  
22 printers, you know, their lights, and everything.

23 So to say that it was not done at the benefit -- for  
24 the benefit of the corporation is not correct. It  
25 certainly was done for the benefit of them.



1           And part of his job -- Mr. Meyers' job was to have  
2           that power hooked up. He should have done it through an  
3           electrical contractor or subcontractor, but he did it  
4           himself. That was part of what his responsibilities  
5           were, is to make sure there was temporary power.

6           He, unfortunately, thought that he could do it  
7           himself or that he didn't need any permit or didn't need  
8           to be a licensed electrician, which was wrong, but to say  
9           that you can't impute that to the corporation is --  
10          that's how corporations operate, through their key  
11          employees and their officers and directors.

12          Now, there was no permit on-site at the time, and  
13          there had been a previous -- or there had been an  
14          electrical contractor that was a subcontractor that was  
15          supposed to hook up the temporary power, and they had  
16          obtained a permit prior to any of this going down.

17          That permit did not include temporary power hookup.  
18          That permit was amended after the Department inspector  
19          came on-site, and then later that day, they amended the  
20          permit to include the temporary power, and eventually  
21          they did come out and inspect it.

22          But there was no permit. They had a permit, but it  
23          did not include the hookup of the temporary power at the  
24          time, and that's the reason why that citation was issued.

25          But there was a lot of talk about imputed liability,



1 and there was some examples given of sexual harassment,  
2 but most of these imputed liability cases that are  
3 cited -- for example, let's say Mr. Meyers was driving  
4 back to the -- let's say -- or driving out to the site  
5 but while he was on his phone and he got into a crash.

6 Well, the third party -- you know, the victim of the  
7 car crash, there's a question of whether or not the  
8 corporation will be liable for that -- to that third  
9 party for the accident, you know, with Mr. Meyers.

10 And there's a good argument to be made that -- that  
11 because he was on his phone -- or let's say he was  
12 speeding or something of that nature, that that was  
13 outside the scope of his employment and that it shouldn't  
14 be imputed.

15 That's not what we have here. We have no third  
16 party. We're not imputing a third-party, you know,  
17 liability to the corporation because here there is no  
18 third party.

19 It is the corporation acting through Mr. Meyers that  
20 was cited, and to my knowledge, I know of nothing that  
21 prevents a citation to Mr. Meyers, as well as a citation  
22 to the corporation for which he works.

23 You know, it's not an either-or. They both have  
24 liability for that action, one for Mr. Meyers simply for  
25 hardwiring the generator without being an electrical





1 contractor or electrician.

2 And also that you can be imputed to the corporation  
3 because essentially what they're arguing is that you can  
4 never cite the corporation because, like I said, all they  
5 simply got to do is say, you got to follow all rules and  
6 regulations, and if they go outside of it, oh, they're  
7 outside the scope of their employment.

8 Well, I don't think that's what the law says, and  
9 that's -- I think that in this case that Kugel  
10 Construction was properly cited for their actions of  
11 their construction superintendent.

12 So thank you very much.

13 CHAIR JENKINS: Thank you very much.  
14 Questions, comments from the board?

15 BOARD MEMBER NORD: I have a couple  
16 questions.

17 CHAIR JENKINS: Yes. Go ahead.

18 BOARD MEMBER NORD: This is for the  
19 counsel of Kugel Construction.

20 MR. KNOLL: Yes.

21 BOARD MEMBER NORD: If I understand  
22 your argument correctly, Mr. Meyers performed the  
23 connections of the generator to the trailer, yet South  
24 Gate Electric billed for that work and was paid for that  
25 work?



1 MR. KNOLL: No. He didn't have them  
2 billed prior.

3 BOARD MEMBER NORD: Did he ultimately  
4 bill for that work and get paid for that work?

5 MR. KNOLL: South Gate actually -- it  
6 was in the contract. Maybe I misspoke before.

7 Mr. Meyers' position description is Exhibit A in our  
8 pleadings. The contract for the electrical work is  
9 Exhibit B. And in Exhibit B, South Gate Electric put in  
10 the contract that they would do a temporary power hookup.

11 And so Kugel Construction expected, per the  
12 contract, that they will do that work, and so Kugel paid  
13 them for that, but they didn't actually do it when this  
14 whole case arose. It was Mr. Meyers that did it.

15 BOARD MEMBER NORD: So South Gate  
16 Electric never performed that work?

17 MR. KNOLL: Well, they came out and  
18 they inspected.

19 BOARD MEMBER NORD: Can you show me  
20 where in the testimony this is said?

21 MR. KNOLL: Where this is said?

22 BOARD MEMBER NORD: That they  
23 inspected it but they didn't install it.

24 MR. KNOLL: Just a second here. I  
25 wrote down the transcript page numbers, not the PO packet



1 page numbers. I noticed that this morning.

2 MR. BARNES: I think that is a correct  
3 statement, though.

4 BOARD MEMBER NORD: Okay. You both  
5 agree it's a correct statement. I'll accept that.

6 MR. KNOLL: Yeah. It's between -- I  
7 would say it's between Page 53 and 54 --

8 BOARD MEMBER NORD: Okay.

9 MR. KNOLL: -- in the transcript. In  
10 the bottom right-hand corner of the transcript, there's  
11 pages and that's where you'd find it.

12 BOARD MEMBER NORD: Okay. Question  
13 for Department's counsel: From your testimony, it's my  
14 understanding that the Department -- their position is,  
15 Mr. Meyers is the on-site representative of Kugel  
16 Construction, and as a result of that responsibility and  
17 his job being paid by Kugel Construction, he's  
18 responsible for all activities on the job site?

19 MR. BARNES: That is correct.

20 BOARD MEMBER NORD: Okay. So  
21 Mr. Kugel is an agent of the corporation in respect to  
22 his general foremen, general contractors representative,  
23 and responsible for everything that happens on that site?

24 MR. BARNES: Mr. Meyers, not  
25 Mr. Kugel.



1 BOARD MEMBER NORD: Yeah. Mr. Meyers.

2 MR. BARNES: Correct.

3 BOARD MEMBER NORD: Thank you.

4 MR. KNOLL: Can I comment on that?

5 CHAIR JENKINS: Did you have any  
6 questions concerning that for --

7 BOARD MEMBER NORD: No. I just -- I  
8 had my clarification.

9 CHAIR JENKINS: Any other questions  
10 from the board?

11 SECRETARY MOLESWORTH: Could I make a  
12 comment? Add a little bit of context to the law.

13 So to start with, the laws, as they are written, are  
14 designed to change behavior of all parties involved. I  
15 take a little exception to your comment about Mr. Sacks.

16 I know Mr. Sacks as well, and he's a very big  
17 supporter of compliance that protects the citizens of  
18 Washington and the legal electrical contractors.

19 And so my comment or my question is going to be: Is  
20 a corporation -- who does the work for the corporation?

21 MR. KNOLL: The employees of the  
22 corporation do the work. That's true, but -- but not --  
23 but because employees do the work for the corporation,  
24 not every employee's action speaks for the corporation.

25 What I'm saying is, not every action an employee



1 does for a corporation binds the corporation to  
2 liability. That's where you get to that imputed  
3 liability piece, where the corporation has to be put on  
4 notice that there's something that is going wrong and  
5 they failed to act. You just -- not everyone is  
6 automatically liable.

7 When I worked at the attorney general's office and a  
8 State employee was sued, there was a form that was  
9 signed, the request for defense. And in that form, the  
10 AG, attorney general, had to determine that the employee  
11 who was being sued was acting in the scope and course of  
12 employment. If they were not, they were on their own.  
13 They were not represented.

14 SECRETARY MOLESWORTH: Okay. So in  
15 the course of employment, are you telling me that when --  
16 when Mr. Meyers connected that generator, that he didn't  
17 get paid for those two or three hours that he used to  
18 connect that generator?

19 MR. KNOLL: He was -- he's salary.

20 CHAIR JENKINS: Yeah.

21 SECRETARY MOLESWORTH: What's that?

22 CHAIR JENKINS: It's not in the record  
23 whether he was paid or not.

24 SECRETARY MOLESWORTH: As an employee  
25 and from his argument --



1                   CHAIR JENKINS: As far as salary goes,  
2 but, yeah, the question is correct. Just can't answer  
3 that kind of question.

4                   MR. KNOLL: He wasn't specifically  
5 paid for that. There was no knowledge of what he had  
6 done. He was paid to be on the premises and to manage  
7 the subcontractors.

8                   SECRETARY MOLESWORTH: Exactly. Thank  
9 you. And so he was in his course of employment when he  
10 actually performed those -- that action and connected  
11 that generator?

12                  MR. KNOLL: He was not. And Mr. Kugel  
13 stated specifically that, when he moved on to that piece  
14 of work, that is not what he was hired to do. That was  
15 outside his -- his scope of employment.

16                  And according to Mr. Kugel -- and if you want to  
17 look at the exact page, Page 98 of the transcript,  
18 Mr. Kugel says that he could not think of any way that he  
19 could have predicted that Mr. Meyers would have done that  
20 work on that day because he had only placed him there to  
21 be a superintendent only and what the position  
22 description says, not to do electrical work.

23                  SECRETARY MOLESWORTH: So I worked in  
24 the industry for 50 years. A superintendent has all the  
25 authority to make decisions on that job site that -- so



1 he's making that decision, which is a low-level decision  
2 really. Right?

3 He's making that decision on behalf of that company.  
4 He's connecting that job trailer that the employees of  
5 Kugel Construction actually use. For whatever reason,  
6 they still use that. That's a benefit.

7 What I'm --

8 MR. KNOLL: He believes he is, but he  
9 is not -- he's not doing what he's told. He may believe.  
10 He wrongfully believed he was doing what the corporation  
11 wanted him to do, but the position description limits his  
12 authority and power.

13 SECRETARY MOLESWORTH: Well, and he  
14 thought that because they hadn't done the proper training  
15 and actually gave him those responsibilities completely.

16 He needs to have that training to know, "I can't do  
17 electrical work." Negligence is -- this guy has been in  
18 the industry a long time, it sounds like. Negligence is  
19 not a defense in these cases because he is expected, as  
20 somebody that's been engaged in the construction  
21 industry, to know what he can and cannot do.

22 So it's very hard for me to think that this person  
23 entered that and did that work, knowing -- or not knowing  
24 that that was something an electrical contractor should  
25 do.



1           Also he's engaged in that business that day, working  
2           for that company, and so what the agency would do is, we  
3           would cite Mr. Meyers for not having an electrical  
4           certification. We would also cite the company for not  
5           being a licensed electrical contractor because they're  
6           both responsible for that work.

7                       MR. KNOLL: But if you look at the  
8           statute that I read --

9                       CHAIR JENKINS: Sir? Sir?

10                      MR. KNOLL: -- it's --

11                      CHAIR JENKINS: It's not an argument.  
12           Please respond. Thank you.

13                      MR. KNOLL: It wasn't a question  
14           either. It was more of testimony for L&I.

15                      SECRETARY MOLESWORTH: It was setting  
16           a basis for the law, the way --

17                      MR. KNOLL: I've stated the law. The  
18           law says very clearly the remedy L&I has is to go after  
19           the corporation or the individual, and in this case, they  
20           went after both, basically double dipping.

21                      If you want to be fair about it, it is double  
22           dipping on the same conduct. But for him hooking up the  
23           generator, the corporation wouldn't have been cited, but  
24           because he hooked up the generator, both -- same conduct,  
25           they collect against Mr. Meyers and they collect against





1 the corporation.

2 I strongly disagree. That is -- I'm stating the law  
3 to you.

4 SECRETARY MOLESWORTH: Right. And so  
5 I just want to make this clear, that the way that law is  
6 written is, if we're approached by an individual that's  
7 under nobody else's employment, we would cite that  
8 individual. If we were approaching somebody that was  
9 employed by a company, we would cite both, right, because  
10 they're both responsible. That's where that part of the  
11 law comes from.

12 MR. KNOLL: I can't speak to  
13 hypotheticals. I'm talking about this case.

14 SECRETARY MOLESWORTH: Yeah.

15 MR. KNOLL: I'm talking about this  
16 case, and the facts demonstrate that he acted on his own,  
17 and he fell on his own sword and admitted his wrongdoing,  
18 not Kugel Construction.

19 I mean, Kugel Construction cannot be held liable for  
20 everything that happens, only those things that he knows  
21 about and he gave permission to do and expected from a  
22 particular employee.

23 SECRETARY MOLESWORTH: So putting that  
24 in the context of construction, let's say that that  
25 general decided to leave out a bunch of bolts on a steel



1 beam, and he made that decision. The building collapses.

2 MR. KNOLL: Are we talking about  
3 Meyers?

4 SECRETARY MOLESWORTH: Yeah.

5 MR. KNOLL: Okay.

6 SECRETARY MOLESWORTH: The  
7 superintendent on a job.

8 MR. KNOLL: Okay.

9 SECRETARY MOLESWORTH: Decided that,  
10 "No. I don't think it needs six bolts. We're only going  
11 to use two."

12 Who is liable when that building collapses? Is it  
13 Meyers? Yeah. Is it the company? Yeah. Because they  
14 had control over Meyers. They had control over what he  
15 actually did, as a company. That's why we cite them in  
16 that matter.

17 MR. KNOLL: If that was an expectation  
18 of the corporation for what he was to oversee, yes, but  
19 he's overseeing in your hypothetical.

20 In this case, he was actively doing work of another  
21 subcontractor who was already contracted to do it and  
22 eventually paid for -- based on the contract, and he just  
23 went there and saw that it was fine.

24 SECRETARY MOLESWORTH: So if I  
25 understood counsel correctly, they didn't add the



1 temporary power on to the permit until after the  
2 citations had been issued?

3 MR. BARNES: After the inspector had  
4 made the visit. I don't know if -- the citations might  
5 have been a couple days later, but the day of the  
6 inspection or the day that the inspector was out there is  
7 when they put that temporary power on the permit.

8 SECRETARY MOLESWORTH: Yeah.

9 MR. KNOLL: And "they" being the  
10 electrical company.

11 SECRETARY MOLESWORTH: Electrical  
12 contractor.

13 BOARD MEMBER COX: Mr. Chairman, I  
14 have a point of order or point of clarification for the  
15 board's counsel regarding the secretary of the board.

16 As I'm hearing the conversation, I'm hearing our  
17 secretary speak on behalf of Labor and Industries as the  
18 chief. Is that appropriate or is his position in the  
19 meeting to be the secretary?

20 I'm just hearing the word "we" and why we cite this  
21 and these things. I just want the clarification of --  
22 for the purposes of this board meeting for this appeal,  
23 is it appropriate for the secretary to take the position  
24 of Labor and Industries in addressing the appellant's  
25 counsel?



1 MR. BLOHOWIAK: The chief isn't a  
2 member of the board as a secretary, and as far as I  
3 understand it, is entitled to participate. I didn't stop  
4 him, you know, because Mr. Molesworth, the chief, is, you  
5 know -- he has a lot of experience.

6 BOARD MEMBER COX: Yes. He's an  
7 expert. That's why he's the chief. I just want to know  
8 what's appropriate for --

9 MR. BLOHOWIAK: He can ask questions,  
10 and he can engage. Obviously he doesn't vote on, you  
11 know, the outcomes of these cases, and it's always hard  
12 to determine, you know, if it's -- if it's asking a  
13 pointed question or is it advocacy.

14 And I'm not -- didn't feel like it was appropriate  
15 to stop his line of inquiry yet, but I was listening  
16 carefully because there is -- there is division there,  
17 but also, you know, he is placed on the board and is a  
18 member, so I believe he gets to participate.

19 And, like I said, I'm listening carefully, making  
20 sure. And, you know, language isn't always as precise as  
21 we want it to be when we're speaking extemporaneously.  
22 And so when we hear "we," you know, it's just -- he's  
23 speaking impassioned and he's asking questions, so I  
24 think -- anyway, the way I understood, he's asking  
25 questions, but -- anyway, I --



1                   BOARD MEMBER COX: I'm just trying to  
2 find the demarcation there of where speaking on behalf of  
3 L&I is coming into the conversation as opposed to a  
4 participant of the electrical board.

5                   MR. BLOHOWIAK: Should not be  
6 advocating for, you know, a particular outcome.  
7 Certainly asking questions as an expert to help, but  
8 ultimately also he is not going to vote on the outcome of  
9 this case.

10                  So, you know, you, as the voting members --  
11 ultimately what happens with this is with you, and I  
12 trust your judgment and your experience and time on the  
13 board to, you know, hear everything that you've heard, to  
14 digest it and, you know, to -- to fairly apply the, you  
15 know, facts to the law that's in front of you.

16                  BOARD MEMBER COX: Thank you, Counsel.

17                  BOARD MEMBER NORD: Mr. Chair, I have  
18 one more question for counsel for Kugel.

19                  Can you show me the testimony anywhere, where  
20 Mr. Meyers was ordered by his employer or instructed by  
21 his employer not to perform electrical work or any work  
22 requiring a license?

23                  MR. KNOLL: So, first of all, the  
24 employer didn't know that that happened until after the  
25 citations came in the mail.



1           And Mr. Meyers' testimony I wrote down again -- just  
2           to let you be clear about this, I'm giving you page  
3           numbers off the page of the transcript, not the bottom  
4           center bold numbering that says "Electrical Board Packet  
5           Page" whatever. I'm not referring to that.

6           Mr. Meyers --

7                         CHAIR JENKINS: That page number is?

8                         MR. KNOLL: I'm going to -- I'm  
9           looking here at my notes.

10                        CHAIR JENKINS: Oh.

11                        MR. KNOLL: So Page 72, Mr. Meyers  
12           said, The project manager, Geoffrey Wieland, did not tell  
13           him to hook up the generator.

14           Same page, 72, Adam Kugel, the president, he says,  
15           did not tell him to hook up the generator.

16           And then Page 72 to 73 -- so it's going to be the  
17           top of Page 73, Mr. Meyers says, Wieland and -- these are  
18           paraphrases, but the pages are where you can see the  
19           quote -- Wieland and Kugel were not advised of the  
20           hookup.

21           So the president and the project manager didn't know  
22           it was done, didn't know he was doing that, and were not  
23           advised thereafter. They only found out, Mr. Kugel  
24           testified, when he got the citations in the mail.

25                        BOARD MEMBER NORD: So nowhere in the



1 testimony do we have any understanding of what the  
2 expectation was of Mr. Kugel of his on-site foreman  
3 Mr. Meyers?

4 MR. KNOLL: Well, we do. We do have  
5 Mr. Kugel -- that he appointed Mr. Meyers as the  
6 construction superintendent and to do the duties  
7 consistent with our Exhibit A, which is the position  
8 description, which is to oversee the subcontractors and  
9 make sure they're doing what they're supposed to be doing  
10 and all of that.

11 You can see in Exhibit A -- I mean, that's what  
12 Mr. Kugel expected the superintendent of that site to do.  
13 There was no expectation that electrical work would be  
14 done by him because that's not his role.

15 I don't know -- you're looking at me as though maybe  
16 I didn't answer your question.

17 BOARD MEMBER NORD: Well, I have over  
18 50 years of experience in construction, and it's been my  
19 experience that the general foreman, general contractor's  
20 representative, is the God of the site, and he acts under  
21 the direct responsibility given to him by the owner of  
22 the company, and he always, always understands what their  
23 responsibilities are.

24 So I'm having a hard time grasping that this man,  
25 knowing what his position is on a job site, went rogue.



1 MR. KNOLL: Well, I can appreciate  
2 your 50 years of experience, but in this particular case,  
3 looking at the facts that were in evidence, Mr. Meyers'  
4 authority was limited by Mr. Kugel pursuant to position  
5 description.

6 BOARD MEMBER NORD: But we don't know  
7 that in the testimony. I don't see anywhere in the  
8 testimony that says that the owner of Kugel Construction  
9 or his immediate second instructed Mr. Meyers as to what  
10 the limitations of his job was.

11 MR. KNOLL: Well, on Page 67 of the  
12 transcript, Mr. Meyers is testifying, and he's answering  
13 my question, and he says his main function was to oversee  
14 work being done at the job site and interact with the  
15 subs.

16 I mean, the whole problem with this is, there's no  
17 exception on the part of Mr. Kugel that someone other  
18 than the electrical contractor he contracted with would  
19 do the work that he's paying to have done, paying the  
20 electrical contractor.

21 That's the problem with this. That's why Kugel has  
22 no notice to call up Meyers and say, "What are you doing  
23 with that portable generator?"

24 I mean, I've given you as many pages as I can.  
25 Meyers says, "This is what my role is," and he didn't





1 tell his immediate supervisor or the president what he  
2 did after he did it.

3 BOARD MEMBER NORD: Well, it appears  
4 to me that, after the fact, Mr. Wieland and Mr. Kugel are  
5 trying to build a wall between them and Mr. Meyers as a  
6 result of these citations.

7 MR. KNOLL: Well, that's -- that can  
8 be your inference, but the fact of the matter is, they  
9 testified -- both men testified under oath that they  
10 didn't instruct him to do that work. They didn't know he  
11 had done that work.

12 In fact, there were questions asked of Mr. Wieland,  
13 "When did you come to the job site?" And it wasn't until  
14 2023, after that citation came out, that Mr. Wieland said  
15 he had come to the job site. He knew there was a  
16 generator there.

17 But Mr. Kugel -- I mean, I hope -- I mean, it sounds  
18 like you're insinuating that they are -- by making this  
19 wall, that they are making up their testimony.

20 BOARD MEMBER NORD: No. That's not  
21 what I'm saying at all. What I'm saying is, you --  
22 you're having me to -- you're wanting me to believe that  
23 they never gave instructions -- that they didn't know  
24 that this happened.

25 MR. KNOLL: Correct.



1                   BOARD MEMBER NORD: I don't know if  
2 there's any instructions that he was ever given not to do  
3 it.

4                   MR. KNOLL: Well, because there's no  
5 expectation to do it from the first place. It wasn't his  
6 role.

7                   And Mr. Kugel had hired the electrical contractor to  
8 do that, and it says in the contract to do temporary  
9 power hookup.

10                  So Mr. Kugel's expectation is, South Gate Electric  
11 is doing that work.

12                  BOARD MEMBER NORD: But from what I  
13 understand, based upon what Mr. Barnes has told us, that  
14 was not included as part of the permit until the citation  
15 was issued; is that correct?

16                  MR. KNOLL: The South Gate Electric  
17 fell short of fulfilling its contractual  
18 responsibilities. The contract says very clearly what  
19 the plan is, came into play September 1 of 2022. This is  
20 what we will do. And temporary power is in the contract.

21                  The generator gets delivered. Meyers, from his  
22 Alaska experience -- he testified to this -- hooked it  
23 up. Didn't think anything wrong about it. And he  
24 testified there's instructions on the panel what wires to  
25 put in. It's simple. It's simple wire hookup.



1           He did it, and he was used to doing it from being in  
2 Alaska and never gave notice to his immediate supervisor  
3 or the president of what he had done.

4           And then when the inspector arrived and discovered,  
5 well, where is the electrician that did this, and it's  
6 determined that an electrician did not do it, then Kugel  
7 Construction gets put on notice what happened.

8                         BOARD MEMBER NORD: So is there in the  
9 testimony that the trailer was delivered, the generator  
10 was delivered, and Mr. Meyers failed to call the  
11 electrical contractor to hook it up?

12                         MR. KNOLL: I don't remember if that  
13 was -- it was -- there wasn't -- nobody could remember  
14 the exact time when the generator was delivered. The  
15 trailer appears. I don't think there's any testimony  
16 about when the trailer appeared. It was just testified  
17 to it was there on-site.

18           Then the generator comes, and I don't remember  
19 anyone -- I may have asked Mr. Meyers, "Well, why didn't  
20 you call South Gate Electric?"

21           I don't remember if I did or not, but there was -- I  
22 know Mr. Meyers did acknowledge at some point during his  
23 testimony that there was an electrical subcontract in  
24 play. I know that, but I don't -- I don't remember  
25 specific testimony about, "Well, when the generator



1       showed up, I forgot to call."

2               I don't remember anything of that. It was just he  
3 did it automatically because he thought it was okay from  
4 Alaska.

5                       CHAIR JENKINS: Board Member Baker.

6                       MR. KNOLL: And I hope I'm not  
7 overstepping my bounds. I'm trying to answer your  
8 question as fully as I can.

9                       BOARD MEMBER NORD: Go ahead, Don.

10                      BOARD MEMBER BAKER: I'm going to make  
11 a motion here in a moment, but I want to make a few  
12 comments. I don't need any rebuttal from counsel. Thank  
13 you. You've made a very good argument. I think you made  
14 the best argument you can with the information you have,  
15 so thank you for that.

16               A simple three-wire connection -- all evidence to  
17 the contrary, this was not a simple three-wire  
18 connection, clearly.

19               I don't have 50 years in the trade. I've only got  
20 47. I'm a little shy. So forgive me of that. But if  
21 you count the time I spent with my father out in the  
22 field, I probably got about 60. So we can have coffee  
23 afterwards, you want to talk about it.

24               But I'm wondering if, when Mike Meyers -- and I do  
25 know an electrician named Mike Meyers. Got to be a



1 different Mike Meyers.

2 I'm wondering if, when he made that simple  
3 three-wire connection, if he grounded that trailer  
4 properly. I'm guessing he probably didn't, and he  
5 probably put people in harm's way when he did that to get  
6 the coffee pot running or the microwave or the heater,  
7 what it was.

8 I don't care about South Gate and what their permit  
9 said. I don't care that his -- his job description  
10 didn't include doing electrical work. He did electrical  
11 work. He did it.

12 And when the Department -- by the way, to imply that  
13 the Department acted without integrity or acted  
14 inconsistent with how they work, they have been very  
15 consistent with this -- of they've worked in the past.

16 I've been on this board for many years, and to imply  
17 that Joel Sacks' level of integrity is in contrary to how  
18 the Department is acting here, that --

19 MR. KNOLL: Hey, that's not what I  
20 said.

21 BOARD MEMBER BAKER: That's what I  
22 heard. That's what I heard.

23 MR. KNOLL: I know Joel very well.

24 BOARD MEMBER BAKER: I got the name  
25 dropping. I got it. I got it.



1           The Department acted consistently with this -- with  
2           these citations. When they say -- I'm on Page 1 of the  
3           packet at the very bottom, bold letter, Board Packet,  
4           Page 1, where it says, "Perform electrical work.  
5           RCW 19.28.041 performing electrical work without a  
6           license," you can add the word "contractor's license."

7           They performed -- the contractor performed work  
8           without a contractor's license. That is a correct  
9           citation. And then consequently there is no permit.  
10          They didn't have a mechanism to pull a permit.

11          So typically, we see citations like this all the  
12          time, where somebody does work and you see that they  
13          didn't have a permit. They didn't request an inspection  
14          on time. There could be three or four citations all  
15          tagged around that one thing. That's very consistent  
16          with how the Department cites these types of situations.

17          The situation with citing Mike Meyers is, that's a  
18          sidebar. That's a rabbit trail we don't need to go down.  
19          We're talking about those today. We're talking about the  
20          citations to the contractor, which I believe the  
21          Department appropriately cited.

22          My motion is that we uphold the law judge's  
23          decision. It's that simple. The contractor engaged -- I  
24          think you properly read the RCW -- engaged in conduct.  
25          They did. When Mike Meyers went out there and did that



1 work and employed an agent of that contractor, that  
2 contractor now engaged in conduct -- electrical work.

3 And the Department correctly identified that and has  
4 correctly cited them. I believe the Department probably  
5 could have put more citations on this, but my motion is  
6 that we uphold the law judge's decision, and I'll leave  
7 that to the board.

8 CHAIR JENKINS: Motion to uphold the  
9 ALJ's decisions.

10 Do we have a second?

11 BOARD MEMBER NORD: Board member Nord,  
12 second.

13 CHAIR JENKINS: We have a second.

14 Any discussion?

15 BOARD MEMBER COX: Just one discussion  
16 question.

17 Do you -- does anyone see this as a rogue employee?

18 BOARD MEMBER BAKER: Don't care.

19 BOARD MEMBER NORD: Yeah. Don't care.

20 BOARD MEMBER COX: Okay. That's my  
21 clarification.

22 BOARD MEMBER NORD: It's immaterial to  
23 the question.

24 BOARD MEMBER CUNNINGHAM: Well,  
25 there's mechanisms to deal with a rogue employee. So you



1 pay the fine and you fire the guy, or you train him  
2 properly and say, "You can't do electrical work ever  
3 again. I have a subcontractor. Here is his phone  
4 number."

5 There's a mechanism to deal with this internally,  
6 and if it happens again, you know, you --

7 BOARD MEMBER NORD: That's strictly an  
8 internal matter between the employee and the employer.

9 BOARD MEMBER COX: And I ask that  
10 because I had a very similar issue happen to me where an  
11 employee installed fiberoptic backbone on a job site, and  
12 I got a call from him that said there was an inspector  
13 here wanting to know about permits.

14 And I had no -- it wasn't even one of my clients.  
15 He went rogue on me.

16 So, anyway, that's the only reason I was asking. We  
17 didn't -- we didn't get cited. That particular employee  
18 did because the inspector understood that he was doing,  
19 you know, night work, you know, to make some extra  
20 dollars, and he didn't understand the laws, rules, and  
21 regulations.

22 And the inspector didn't cite my company. Even  
23 though the young man was an employee of mine, he was  
24 working not under my direction. So that's the only  
25 reason I ask that clarification question.





1           But thank you, gentlemen.

2                   CHAIR JENKINS: Any other discussion?

3           Hearing none, all in favor of the motion -- all in  
4 favor, say aye?

5                   BOARD MEMBERS: Aye.

6                   CHAIR JENKINS: Any opposed?

7           Hearing none, motion passes. Thank you very much.

8                   MR. KNOLL: When will I get the  
9 written decision or --

10                   CHAIR JENKINS: So --

11                   MR. KNOLL: -- when does that happen?

12                   MR. BLOHOWIAK: So, Counsel, do you  
13 have an order prepared today?

14                   MR. BARNES: I don't today. I will  
15 draft one up, though.

16                   MR. BLOHOWIAK: Okay. So if the  
17 parties would please work together to draft an order  
18 reflecting the board's decision here today -- and you can  
19 either present that via email for the chair's signature  
20 between now and the next meeting, or if we do not get it  
21 before then, we will set this onto the calendar for the  
22 October meeting for presentment of that -- if there's no  
23 agreed order of the competing orders --

24                   MR. BARNES: Okay.

25                   MR. BLOHOWIAK: -- for the board to



1 make a decision at the time.

2 CHAIR JENKINS: Based on what the  
3 decision of the board was today.

4 All right. Thank you very much.

5 All right. So I guess we'll move on to the next  
6 case on our list. Give you a couple minutes to get set  
7 up.

8  
9 Mr. Rooter of Portland and Brian Buelte; ESIC000762 and  
10 ESIC000763

11  
12 CHAIR JENKINS: Moving on to  
13 Mr. Rooter of Portland and Brian Buelte. Am I saying that  
14 right?

15 MR. BUELTE: Buelte. Thank you.

16 CHAIR JENKINS: All right. So the  
17 matter before us today is an appeal of Mr. Rooter of  
18 Portland and Brian Buelte, Docket 10-2023-LI-01961. This  
19 hearing is being held in pursuant and due -- pursuant to  
20 due and proper notices to all interested parties in  
21 Vancouver, Washington, on July 25th, 2024, at  
22 approximately 10:10 a.m.

23 This is an appeal from the initial order issued by  
24 the Office of Administrative Hearings on April 9th, 2024.  
25 It is my understanding the decision dismissed citation



1 notices ESIC00074, ESIC00073, and ESI00072 issued by the  
2 Department of Labor and Industries on March 21st, 2023.

3 It is further my understanding, the Department has  
4 timely appealed the decision of the electrical -- to the  
5 electrical board, and I'm seeing there's a representation  
6 of Mr. Rooter?

7 MR. JOHNS: Yes, sir.

8 CHAIR JENKINS: Can I get your name  
9 and spell it for the court reporter, please?

10 MR. JOHNS: My name is Doug Johns.  
11 It's D-o-u-g, J-o-h-n-s.

12 CHAIR JENKINS: And I'm assuming  
13 you're also representing --

14 MR. BUELT: Yep. Brian, B-r-i-a-n,  
15 last name Buel, B-u-e-l-t.

16 CHAIR JENKINS: All right. For the  
17 Department?

18 MR. BARNES: John Barnes.

19 CHAIR JENKINS: John Barnes. Did you  
20 hear and understand the instructions I previously read  
21 for the last case?

22 MR. JOHNS: Yes, we did.

23 CHAIR JENKINS: Do you need me to  
24 repeat that?

25 MR. JOHNS: No. Thank you.



1 MR. BUELT: No.

2 CHAIR JENKINS: Each party will be  
3 given approximately 15 minutes today to argue the merits  
4 of the case. Any board member may ask questions, and the  
5 time may be extended to the discretion of the board.

6 At the end of this -- the conclusion of the hearing,  
7 the board will determine the findings and conclusions  
8 reached by the ALJ are supported by the findings, facts,  
9 and rules pertaining to electrical installations.

10 And since the board -- the Department is the  
11 appealing party, you have -- you may begin.

12 MR. BARNES: Thank you, Your Honor.  
13 John Barnes, for the Department of Labor and Industries.

14 This was a strange decision because the result of  
15 this decision, under this erroneous ruling, an electrical  
16 trainee cannot be supervised remotely while performing  
17 electrical work but a plumbing trainee performing  
18 electrical work can be supervised remotely. That's not  
19 what the statute and what the rules say.

20 And this judge, as I'll get into, made a fairly huge  
21 error in this.

22 But the facts of this case is that the Electrical  
23 Inspector Simshauser was -- he's a member of the E CORE  
24 and was just on a routine inspection, and he noticed a  
25 Mr. Rooter of Portland truck in the driveway of a



1 Vancouver residence.

2 So he stopped by, and he contacted Mr. Buel, who  
3 was an electrical trainee in the state of Washington.  
4 Now, he was a certified electrician in Oregon, but in  
5 Washington he had just gotten his trainee certificate.

6 And when Mr. Simshauser approached him, he noticed  
7 that the water heater had been disconnected from, you  
8 know, the electrical and placed on the side, and a new  
9 water heater was there in place.

10 Now, there was some discrepancy about whether or not  
11 it was actually -- the new one was actually hooked up or  
12 not, but that's really irrelevant because the electrical  
13 work being cited was when they disconnected the water  
14 heater and took it out.

15 Now, as I said, Mr. Buel is just a -- I'm sorry.  
16 He is a plumbing trainee. If I misspoke, I'm sorry.  
17 He's not an electrical trainee. Mr. Buel is a plumbing  
18 trainee.

19 Now, there is a couple -- this was a -- I was  
20 looking at a number of rules and -- and statutes. Now,  
21 there is, in the plumbing statute, in  
22 RCW 18.106.070(3)(a), it allows for a plumbing trainee to  
23 be supervised remotely by a certified plumber no more  
24 than 40 miles away. It doesn't mention anything about  
25 them performing electrical work.



1           So if you send your plumber out and they have a  
2           requisite number of hours, the trainee, and they go in  
3           and they replace the toilet, pure plumbing work, they can  
4           be supervised remotely.

5           But when it comes to performing electrical work,  
6           they cannot. How do we know that? There's a plumbing  
7           rule that says that. The plumbing rule is under  
8           WAC 296-400A-010. And it says, "A plumber trainee  
9           performing electrical work must be supervised by a  
10          certified plumber or a certified residential plumber."

11          Then it goes on -- this is the plumbing rule -- "In  
12          accordance with RCW 19.28.161" -- referring to the  
13          electrical code -- "the trainee performing electrical  
14          must be under the direct supervision of a PL01 or PL02  
15          certified plumber who is on the same job site as the  
16          trainee" -- and the last line says -- "and remote  
17          supervision or supervision by a residential service  
18          plumbee -- or plumber is not permitted."

19          So you've got a statute -- a plumbing statute that  
20          says that plumbing trainees can be supervised remotely,  
21          but later in the rule, it says, but if they're performing  
22          electrical work, they cannot be.

23          Now, you ask yourself, well, that seems pretty  
24          straightforward. How did we come to this decision?

25          Well, I'll refer you to the decision, and in the



1 conclusion of law 5.7 -- this is the judge -- after he  
2 says, "Now to be sure, WAC 296-400A-0107 precludes the  
3 remote supervision when the plumber trainee is performing  
4 electrical work."

5 So he recognizes that they have to be -- they cannot  
6 be supervised remotely.

7 And then he goes on to say, "Disconnecting  
8 electrical equipment from electrical power constitutes  
9 electrical work." So disconnecting the water heater  
10 confirms the electrical work.

11 And then for some profound reason, he then says,  
12 However, neither the electrical statute nor the plumbing  
13 statute reference this WAC that talks about, you know,  
14 plumbing trainees performing electrical work or any other  
15 authority.

16 So he says, "Accordingly, I hold that the" -- he's  
17 not going to apply the rule essentially.

18 But think about it for a second. His reason for not  
19 enforcing the rule was because it's not mentioned in the  
20 statute. Well, that makes no sense. Rules are made  
21 after the legislature passes the statute. So unless the  
22 legislature is clairvoyant and knows that there's going  
23 to be a rule out there that says this, it's not going to  
24 be in the statute.

25 The statute was passed first. The rules interpret



1       it. And that's why it makes no sense why he said that  
2       because, if that's the case, any rule that's not  
3       referenced in a statute would be subject to this same  
4       treatment. So there would be a whole host of rules that  
5       would not be enforced because, well, the statute doesn't  
6       mention it.

7               But he's not correct there because in both the  
8       electrical statute and the plumbing statute, there are  
9       provisions for rulemaking. So it's anticipated that  
10       there will be a rulemaking in this.

11              And, you know, he could have just simply cited to  
12       that. He said, well, it's true that the rule does not --  
13       or the statute does not cite the rule because the rules  
14       weren't in existence at the time the statute was passed.

15              So for that reason, the judge already made the  
16       decision that that remote supervision of plumbing  
17       trainees doing electrical work is not allowed and also  
18       that removing the hot water tank is considered electrical  
19       work.

20              So from those two, it's just logical to say that  
21       they violated the statute and that these citations should  
22       be affirmed. Thank you.

23                              CHAIR JENKINS: All right. Thank you  
24       very much.

25              Doug or Brian?





1 MR. JOHNS: I'll kick off. Good  
2 morning.

3 We're both here because one of the citations is for  
4 Brian and two are for my company. We won't each take  
5 15 minutes, I assure you.

6 I'd like to just start with introductions sitting  
7 here and how it applies to the case, so --

8 MR. BUELT: Okay. My name is Brian  
9 Buelte. I'm a licensed journeyman plumber in the state of  
10 Washington. I also am a licensed journeyman plumber in  
11 the state of Oregon.

12 MR. JOHNS: And on the day of the  
13 job --

14 MR. BUELT: And on the day of the job,  
15 I had received 4,000 hours from L&I. They had qualified  
16 me, after a long debate, to go ahead and take the  
17 journeyman plumber's exam, and so I was waiting on an  
18 exam date at that point when I proceeded with the work  
19 and met Inspector Simshauser.

20 MR. JOHNS: My name is Doug Johns. My  
21 wife and I are the owners of Mr. Rooter Plumbing, and  
22 Mr. Rooter Plumbing has been in operation since 1995 in  
23 Portland and 2000 in Vancouver, and we have approximately  
24 50 people licensed in both states. And our scope of work  
25 is residential service plumbing, so fixtures, water



1 heaters, pipes, and a lot of sewer work.

2 And we've been -- my wife and I have been the owners  
3 for three years. The previous owner of 27 years retired,  
4 and we took over from there.

5 So with that, let me please open by just affirming  
6 once again that, on this job that's in question, my  
7 business improperly supervised the plumbing trainee, and  
8 that is my responsibility. I wasn't there. But it's my  
9 responsibility. Everything that happened in this company  
10 is my responsibility.

11 And I've affirmed that since the very first day that  
12 I got the citation and went back and reread  
13 WAC 296-400A-010, Paragraph 7, which I agree with the  
14 counsel, says that a remotely supervised plumbing  
15 trainee, which Brian was at the time, even despite his 20  
16 years of experience -- in the state of Washington, he's  
17 still a trainee -- is not allowed to be remotely  
18 supervised for electrical.

19 And I missed that, but it doesn't matter because  
20 it's still true. So we were in violation and -- of that  
21 statute.

22 I should not have sent -- my company should not have  
23 sent Brian to replace the water heater under remote  
24 supervision. Now, if he had shown up at the house and it  
25 was a gas water heater, we would have been great because



1 we pull the permit. We're a licensed company. He was  
2 under all the proper remote supervisions. Gas is  
3 dangerous. He knows how to do it. But that's considered  
4 plumbing.

5 Unfortunately, it was an electric water heater, and  
6 so the moment that he disconnected it from the existing  
7 wiring -- we didn't change any wiring or do anything  
8 dramatic, but the moment we disconnected it, that was a  
9 violation of the plumbing code requirement for direct  
10 supervision of the trainee.

11 So if I acknowledge that my company did not  
12 supervise Brian as a trainee correctly, then why didn't I  
13 just pay the fines, correct my process, and move on?

14 Well, I would have if the citations had been for  
15 improper supervision of the plumbing trainee. I would  
16 have been disappointed that, given our long clean record,  
17 there was no warning, but there would have been a very  
18 reasonable argument for a plumbing supervision citation,  
19 which I could not have argued against.

20 But instead of just paying the fine and moving on, I  
21 appealed, for two reasons. One, there were three  
22 electrical citations. The electrical licensing  
23 citations, which were selected for this situation, are  
24 inappropriately applied to what was a plumbing  
25 supervision violation. It's the equivalent of a reckless



1 driving ticket for a five miles per hour speed limit  
2 violation.

3 Two, if those citations for unlicensed contractor  
4 were left to stand, it would be on my record for seven  
5 years with no context or explanation for potential  
6 customers to read as they research my company.

7 The wording of the citation is the exact same as the  
8 words that we apply to a rogue contractor replacing  
9 electrical panel without a license. They're damning, and  
10 they could hurt my business and Brian's career. So we  
11 chose to appeal.

12 And that brings us to the core point of debate in  
13 this case, and the debate is not whether Brian was  
14 allowed to do that work under remote supervision. That's  
15 not the debate.

16 The debate is this: Does a mistake in supervision  
17 by a licensed plumbing contractor over a certified  
18 plumbing trainee erase all the privileges of the  
19 contractor and the trainee's plumbing licenses and  
20 subject them to the full weight of the electrical code as  
21 if they were rogue unlicensed handymen?

22 That's the debate. After reviewing all of the  
23 evidence and the arguments in the appeal hearing, Judge  
24 Terry Schuh answered this question with a definitive no.  
25 That's on Page 13. And Counsel and I are both going to



1 quote the judge.

2 The judge says, "The citations at issue rely on the  
3 lack of respective licenses. Perhaps Mr. Rooter and/or  
4 Mr. Buelte violated the regulation requirement requiring  
5 direct supervision.

6 "However, the citations at issue here do not rely  
7 upon that regulation of supervision. Therefore, the  
8 citations issued here and the corresponding penalties  
9 should be set aside and dismissed."

10 He didn't say we didn't do the wrong thing. He said  
11 the citations were given were wrong.

12 The judge ruled that the licensing citations were  
13 inappropriately applied for violation of supervision  
14 status.

15 So let me share two examples, further illustrating  
16 why these three electrical licensing citations are  
17 illogically applied to the scenario of a plumbing  
18 contractor installing a water heater.

19 First, imagine a scenario of a licensed plumber --  
20 and this is happening in my company right now, as we  
21 speak -- a licensed plumber working for a licensed  
22 plumbing contractor going to do an electric water heater.  
23 Under that scenario, which is clearly covered by the  
24 exemption for plumbers in RCW 19.28, we're allowed to do  
25 like and kind if we don't change anything but the



1       electrical.

2             Under that scenario, no electrical license is  
3       required for a water heater replacement. However, the  
4       language of these three citations is still technically  
5       true regarding that plumbing contractor's lack of an  
6       electrical license.

7             Every time that a plumbing contractor installs an  
8       electric water heater, they do, as the citation would  
9       say, without having a valid contractor license. We never  
10      have a license.

11            This is the second scenario. Imagine a remotely  
12      supervised plumbing trainee as Brian was who happens to  
13      work for one of the very large multi-trade companies that  
14      does electrical plumbing and HVAC, and that company holds  
15      an electrical license because they have an electrical  
16      division that that trainee is not in.

17            If the trainee -- the plumbing trainee disconnected  
18      an electrical water heater while under remote supervision  
19      like Brian, the same problem with supervision would  
20      exist, but the citations that we were given couldn't be  
21      levied because the employer has an electrical license.

22            Surely the inspector would not walk away and say,  
23      "Well, you're lucky. You work for a multi-trade company  
24      and not Mr. Rooter. Have a nice day."

25            The inspector should put some kind of a warning or



1 violation on that scenario. There has to be something  
2 even though the contractor holds an electrical license.

3 So what would that be? Well, the appropriate  
4 warning or citation in that situation and in ours is one  
5 specific to supervision, not licensing.

6 And we see examples of this in both of our trades.  
7 The electrical and the plumbing codes, as well as the  
8 citations that have been issued by L&I for electrical and  
9 plumbing inspectors, clearly demonstrate there's a  
10 distinction between supervision violations and licensing  
11 violations.

12 So WAC 296-46B-915 is the civil penalty schedule for  
13 electrical violations, and in your trade, there's exact  
14 language of what citations the inspector is supposed to  
15 choose from.

16 No. 5 is failing to provide proper supervision to an  
17 electrical trainee as required by 19.28 RCW, supervision  
18 for the contractor.

19 No. 6 -- and these are, by what I found, almost  
20 always applied together, and they should be. No. 6,  
21 working as an electrical trainee without proper  
22 supervision as required by Chapter 19.28 RCW.

23 So that's on the electrical side, which doesn't  
24 apply to us but does demonstrate that supervision  
25 violations exist.



1           Now, the plumbing code -- unfortunately, our trade  
2           doesn't list out the language in the RCW of what citation  
3           should be, but the plumbing code -- it only lists out  
4           monetary penalty for violations.

5           However, in preparing for the appeal, I, for the  
6           first time in my life, used my taxpayer rights and did a  
7           request for information from the government, and I -- in  
8           Page 166 of your packet, I got every plumbing citation  
9           for almost a two-year period and then created a summary  
10          of those citations.

11          And just as in the electrical code, I found there  
12          are two violations consistently levied for supervision:  
13          one for the contractor and one for the trainee.

14          9 percent of all Washington plumbing citations  
15          during that period of time were for this language:  
16          "Contractor failed to provide proper supervision."  
17          That's the contractor version. And the second one,  
18          "Improper supervision while in the trade of plumbing."  
19          That's the trainee. So electrical and plumbing do the  
20          same thing.

21          So these plumbing citations or warnings are what  
22          should have been applied in our situation and likely  
23          would have been if a plumbing inspector had come to the  
24          job site instead of an electrical inspector. And we're  
25          plumbers. We pull the plumbing permit. On the plumbing





1 code, we should have been hit with that.

2 So wrapping up, as a plumbing business owner, I have  
3 a responsibility to know and follow the code. I take the  
4 responsibility seriously. Embarrassingly, on this job, I  
5 fell short.

6 By dispatching Brian under remote supervision and  
7 not taking into account the special requirement of direct  
8 supervision for the portion of the job of disconnecting  
9 the heater, I caused both him and my company to violate  
10 the supervision standard required for the job.

11 But unlike these three citations incorrectly claim,  
12 I do not direct my employees to perform work for which  
13 they are not trained or certified. My business stays  
14 squarely within the bounds of the plumbing trade and does  
15 not advertise or perform unlicensed electrical work.

16 My business does not employ anyone for the purpose  
17 of electrical work beyond the very narrow scope afforded  
18 to us by the plumbers exclusion in RCW 19.28.

19 Thank you for listening to our arguments. I hope  
20 that I've helped illustrate the logic behind Judge  
21 Schuh's ruling, that these electrical citations were  
22 incorrectly applied to the plumbing supervision error,  
23 and therefore, he set them aside and dismissed them, and  
24 I would ask that you uphold his logic and keep that the  
25 same way.



1 CHAIR JENKINS: All right. Thank you  
2 very much.

3 Questions from the board? Comments from the board?

4 BOARD MEMBER NORD: A comment. I have  
5 to say, in all the years that I've been on this board,  
6 I've heard many different citations. This is the first  
7 time I've heard this citation the way it's been applied.

8 And it appears somehow there is a loophole between  
9 the two departments, being electrical and plumbing, and  
10 how the codes are written and how your expectations are  
11 of how you're supposed to follow them.

12 So my question for the chief, have you seen this one  
13 before?

14 SECRETARY MOLESWORTH: I've not  
15 experienced this situation before. This particular one,  
16 you know, I'm aware of because it's been appealed, but  
17 no.

18 BOARD MEMBER NORD: So you and I are  
19 basically on the same page of this?

20 SECRETARY MOLESWORTH: Right.

21 BOARD MEMBER NORD: Is perhaps here,  
22 there's an opportunity for the Department to reassess  
23 this position and maybe try to correct this in the  
24 future?

25 SECRETARY MOLESWORTH: Oh, well, we'll



1 always take a look at this, and I've got some questions  
2 written down here for my staff.

3 What I would like to -- the statement I would like  
4 to make about the application of those citations is that  
5 we're -- where the situation went a little sideways, I  
6 think, is because -- and let me first ask: Are you an  
7 electrical trainee or a plumbing trainee?

8 MR. BUELT: I am a plumbing trainee.  
9 I'm actually a licensed plumber in the state of  
10 Washington. At the time of this infraction, I was a  
11 trainee.

12 SECRETARY MOLESWORTH: You were a  
13 plumbing trainee?

14 MR. MUTCH: Yep.

15 SECRETARY MOLESWORTH: So when the  
16 inspector came on-site and you had an uncertified  
17 electrical trainee but you had a certified plumbing  
18 trainee but he wasn't being supervised correctly, he  
19 probably then went to assume that, okay, because he's not  
20 being done correctly, now we're doing electrical work,  
21 and then they applied it that way.

22 That's -- that's the assumption that I have to make  
23 when I look at the application of this.

24 MR. JOHNS: For clarification, sir,  
25 there was only one person on the job site.



1                   SECRETARY MOLESWORTH:  Yep.  Right.  
2                   That's what I'm saying.  The trainee, yeah.

3                   CHAIR JENKINS:  Yes, Board Member Don  
4                   Baker?

5                   BOARD MEMBER BAKER:  So really good  
6                   articulation and communication on all that.  This is the  
7                   first I've seen something like this as well.  I'm  
8                   inclined to support the law judge's decision.

9                   However, what I'm hearing from you is, "Hey, I'll  
10                  own this.  We made a mistake.  You should have cited me  
11                  correctly."

12                  That's where I think the opportunity is for the  
13                  Department is walk away from this and go back and clean  
14                  this up and cite them properly.

15                  MR. JOHNS:  Well, I'm not asking for  
16                  double jeopardy.

17                  BOARD MEMBER BAKER:  No.

18                  MR. JOHNS:  I'm not a lawyer, but I  
19                  did take high school government class.  I don't want to  
20                  get hit a second time.

21                  BOARD MEMBER BAKER:  I hear you.  I  
22                  hear you, but based on what I'm hearing and what I see,  
23                  I'm inclined to uphold the law judge's decision, which is  
24                  not what L&I wants to hear, but I think you cited him  
25                  improperly.



1                   BOARD MEMBER NORD: You recognize the  
2 issue, and you recognize your responsibility. So you  
3 recognize, as an administrator of a business, what your  
4 responsibilities truly are, which is rare for us as a  
5 board to hear. I have to agree with Don.

6                   CHAIR JENKINS: Can I put my opinion  
7 out?

8                   BOARD MEMBER NORD: Absolutely.

9                   CHAIR JENKINS: Well, first of all, I  
10 want to say that's extremely refreshing to finally hear a  
11 contractor say, "I'm responsible for everything I do."  
12 That is like, holy smokes, that --

13                   BOARD MEMBER NORD: Never heard that.

14                   CHAIR JENKINS: Thank you so much for  
15 saying that because we always tell you they are.

16                   The unfortunate part I'm looking at is, he was in  
17 violation. So we all understand that. And since he was  
18 not an electrician, he was a plumbing trainee and that  
19 was outside -- considering the situation, outside the  
20 scope, you -- I should have to sit back and say, anybody  
21 doing this work, if they don't have a proper  
22 certification in one direction, then it falls -- as the  
23 inspector did, fell under electrical.

24                   And as we've had multiple discussions about, are  
25 they in violation of the law?



1           And I'm happy to -- and I sympathize for the cost,  
2           any type of a negative repercussions from this because it  
3           sounds like it was a simple mistake, but it's a very  
4           costly simple mistake, in my opinion, because it was a  
5           violation of the law.

6           The law that was laid down is true. It was not  
7           electrical -- electrician doing the work. He was not a  
8           trainee doing the work. Yet the work was done. And  
9           since they can't apply it to the exception, it's a very,  
10          very tiny exception allowed, it's electrical work.

11          It's done by non-electrician, and there was no other  
12          rules that allow him to do this work legally, so I -- I'm  
13          on the idea that, yeah, should it be this strong as far  
14          as a penalty for it? Should it be all that?

15          I -- I don't think we have a choice. It was illegal  
16          and did fall under those rules.

17                   MR. JOHNS: We are legal as a business  
18          to do it.

19                   CHAIR JENKINS: No. I absolutely  
20          understand that, and I totally get that. It's just the  
21          work that was done was illegal. And you owned up to it.  
22          I get it. I appreciate it by all rights.

23          But here is the issue now: You're understanding  
24          this and you do this. What happens to the next  
25          contractor that comes by and says, "Well, I didn't mean



1 to do that. That wasn't my intention," but it was?

2 MR. JOHNS: What I'm owning up to is  
3 improper supervision. I'm not owning up to the citations  
4 as written. My business is allowed to do this work.  
5 He's allowed do this work, but --

6 CHAIR JENKINS: Stop there. He wasn't  
7 allowed to do that work because he did it outside of the  
8 electrical scope, so it was in violation of electrical  
9 law. And if you can argue that it's not in violation,  
10 please bring it up, but it's a violation, and we're  
11 supposed to uphold what the law is.

12 BOARD MEMBER BAKER: This is a lot  
13 like the last case we just talked about; right? Right?

14 There's an employee doing work he's not licensed  
15 for. Did the Department cite the employee as well?

16 Because it's the exact same citations that we saw in  
17 the last case would have applied to this case if the  
18 Department was acting consistently.

19 But this is -- this is different. I think this is  
20 different. I see it different, you know. So -- and it's  
21 not electrical work until he starts making connection.  
22 So he can disconnect that wiring. He can go flip a  
23 breaker off and remove the hot water tank. It's when he  
24 reconnects it that he's starting to do electrical  
25 inspection.



1 CHAIR JENKINS: Board Member Don  
2 Baker, I disagree with that, but --

3 BOARD MEMBER BAKER: Go ahead. Duly  
4 noted.

5 MR. BUELT: I do have a question to  
6 your point. That's the way I always understood it. In  
7 22 years of being a part of the plumbing trade, that's  
8 the way I've always understood it.

9 BOARD MEMBER BAKER: It's not an  
10 electrical installation until you're doing an electrical  
11 installation.

12 MR. BUELT: Yes. The disconnection.

13 BOARD MEMBER BAKER: That's correct.

14 MR. BUELT: This is why we allow  
15 restoration companies to go in, flip breakers, do the  
16 water damage, kill the power, check the power, cut walls,  
17 do what they do. If they're not installing, they're just  
18 disconnecting. It's clearly stated in here.

19 MR. JOHNS: And the record shows that  
20 Brian did not install. I sent the journeyman plumber to  
21 do it.

22 MR. BUELT: John, yep. And he came  
23 and did the installation.

24 BOARD MEMBER NORD: The other problem  
25 I see with this citation, once again, based on my years





1 in the sport, I've never seen two plumbers come in before  
2 being charged with an electrical violation.

3 And reading the transcript and hearing you two  
4 today, yes, you were there doing plumbing work. You are  
5 a licensed plumber. You were a licensed trainee in  
6 Washington at the time, a journeyman in Oregon.

7 I would assume, because I do not know the Oregon  
8 journeyman laws for plumbing, it's probably at least a  
9 4,000-hour --

10 MR. BUELT: Mm-hm.

11 BOARD MEMBER NORD: -- certification.  
12 So you're probably -- you're obviously probably qualified  
13 to do plumbing work. You came in like a restoration  
14 company in this case. You removed a hot water tank. But  
15 as I read the transcript and I think, as it's been  
16 brought up, you never made electrical connections to put  
17 the new one in.

18 MR. BUELT: That's correct. And, in  
19 fact, Simshauser -- excuse me -- Electrical Inspector  
20 Simshauser took photos of the job site with the  
21 electrical not connected.

22 BOARD MEMBER NORD: Okay. So for the  
23 chief --

24 CHAIR JENKINS: Well, let's finish  
25 this comment first.



1                   BOARD MEMBER NORD: Yeah. For the  
2 chief, taking these two out of the equation, in this  
3 scenario, do we allow anyone, whether it's a restoration  
4 company, a plumbing company, a carpenter, to disconnect  
5 that equipment without fear of citation to remove it?

6                   SECRETARY MOLESWORTH: No. Because  
7 part of the electrical work is a disconnection. Because  
8 parts might still be energized, how do we make it safe  
9 for the installation? Do they ever get reconnected?  
10 There's a lot to that.

11                   BOARD MEMBER NORD: And I agree with  
12 that.

13                   SECRETARY MOLESWORTH: So I can --  
14 I -- I tried to make a point a little bit ago and  
15 probably didn't state it as well as I should have, but  
16 what we're talking about here is an exception for  
17 plumbers to do this work; right?

18                   If the standards of that exception are not met, then  
19 that exception doesn't exist. All right. So since he  
20 wasn't supervised the way he should have been, doing that  
21 electrical work, that violated the standard of the  
22 exception.

23                   That's when we went to it being an electrical  
24 contractor. That's -- that's where that came in, so --

25                   MR. JOHNS: I see the logic. And I



1 question why the supervision penalties are out there.  
2 Certainly a debate which direction to go.

3 CHAIR JENKINS: Any questions/comments  
4 from the electrical board?

5 BOARD MEMBER BAKER: I'd just float a  
6 motion out there. I'll make a motion to uphold the law  
7 judge's decision.

8 CHAIR JENKINS: We have a motion.  
9 Do we have a second?

10 BOARD MEMBER CUNNINGHAM: Second.

11 BOARD MEMBER GRAY: Second.

12 CHAIR JENKINS: Second.

13 Any discussion?

14 I'm going to say again, that if this was a non --  
15 this is a contractor -- a non-plumbing contractor out  
16 there doing this work, would they be cited the same?

17 So you got a general contractor sends out an  
18 employee, "I want you to disconnect that water heater out  
19 there." Is that in violation of the code?

20 SECRETARY MOLESWORTH: Yes.

21 CHAIR JENKINS: That's effectively  
22 what happened. Okay. Because it wasn't supervised,  
23 didn't fall under the exceptions. That's what happened.

24 Now, I really appreciate your upfront honesty, and  
25 I -- yes. I get it. But that's the situation that



1       happened.

2               So now, when we have another person come up and they  
3 say, "Hey, we had this employee that did this," are we  
4 going to give them the same allowance because it -- we  
5 don't think it's -- it's against the law? Sorry.

6                       BOARD MEMBER CUNNINGHAM: I think  
7 there are similarities between this particular appeal and  
8 the previous. Right? We applied electrical laws to a  
9 general contractor to take responsibility for his  
10 employee doing work they're not qualified for and  
11 certified for, but in this particular case, these guys  
12 are covered by the plumbing laws, but they got outside of  
13 their supervision requirements. And so now to somehow,  
14 you know --

15                      BOARD MEMBER NORD: The two are in  
16 conflict with each other.

17                      BOARD MEMBER CUNNINGHAM: Yeah.  
18 They're in conflict. Now we have this metamorphosis  
19 where a plumbing contractor is now turned into an  
20 electrical contractor because an individual isn't allowed  
21 because of the -- you know, because of the remote  
22 supervision to do this one specific task, which they  
23 never actually did hook up the heater. Right?

24               So seems to me that we're not talking -- these are  
25 not apples to apples, these two appeals this morning. We



1 have a significant difference between they're covered by  
2 the plumbing statute. I think the E CORE guys may be  
3 going a little too far.

4 SECRETARY MOLESWORTH: So if I  
5 could --

6 BOARD MEMBER BAKER: Call for vote.

7 SECRETARY MOLESWORTH: -- address that  
8 comment really quickly?

9 BOARD MEMBER BAKER: Call for a vote.

10 SECRETARY MOLESWORTH: Pardon me?

11 BOARD MEMBER BAKER: We've got a  
12 motion and a second.

13 CHAIR JENKINS: We're still in  
14 discussion, though.

15 SECRETARY MOLESWORTH: I just want to  
16 make it clear that we made an exception to the electrical  
17 laws with the understanding that, if you do not follow  
18 that exception to the letter, now you're contracting  
19 without a license because if they don't follow it to the  
20 letter, now we're putting people at risk. There's a  
21 reason for 100 percent supervision.

22 And they didn't do that. That was a stipulation to  
23 that exception. Right? That's an exception to the  
24 plumbing law that we allow them to change those water  
25 heaters. That's an exception.



1           That's -- that doesn't fall under plumbing law.  
2           That's -- if they don't follow the standard of that -- or  
3           the parts of that exception to the letter, they're in  
4           violation, and then it reverts back to the electrical law  
5           because they're outside of -- of what that exception  
6           actually allowed.

7           Does that make sense -- any more sense? And that's  
8           why he's cited, and I think he cited it appropriately. I  
9           think we need to have some discussions, you know, in the  
10          future about this. Possibly. It's always good  
11          discussion.

12                           CHAIR JENKINS: Any more discussion?

13                           Hearing none, all in favor of the motion?

14                           BOARD MEMBERS: Aye.

15                           CHAIR JENKINS: All in opposition?

16                           BOARD MEMBER NORD: I have to be  
17          opposed based upon the fact that we have to uphold what  
18          the law is, no matter how we see it.

19                           CHAIR JENKINS: So let me do a  
20          recount. All in favor, all raise your hand. One, two,  
21          three, four, five.

22                           Opposed, one.

23                           Motion carries.

24                           All right. I'm assuming you don't have --

25                           MR. BARNES: I don't have an order. I



1 will prepare one, though.

2 CHAIR JENKINS: Okay. Given that, if  
3 it doesn't get sent to us before the next meeting, we'll  
4 be set up for next meeting to explain your -- present for  
5 the next meeting. Otherwise, you can send it to us and  
6 we'll get signed.

7 MR. JOHNS: Thank you.

8 CHAIR JENKINS: Thank you. I think it  
9 is a good time for a break. So let's get back here in  
10 say 15-ish minutes, and we'll be in recess.

11 (Recess from 10:46 a.m. to  
12 11:14 a.m.)

13 CHAIR JENKINS: All right. It is now  
14 11:14. I'd like to bring the Washington State Electrical  
15 Board meeting back to order.

16  
17 Discussion and signature for Order issued. Mastec  
18 Network Solutions; EREIF01172, EREIF01173, EREIF01174,  
19 EREIF01175, EREIF01176, EREIF01177, EREIF01178

20  
21 CHAIR JENKINS: All right. So we are  
22 on to the discussion for the Mastec solutions -- Network  
23 Solutions. I received an order for that, so I'll be  
24 signing it. It's been resolved. So we can move on from  
25 that one.



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Certification/CEU Quarterly Report

CHAIR JENKINS: The next here we have certification/CEU quarterly training with Larry Vance.

Are you available?

MR. VANCE: Yes.

CHAIR JENKINS: There he is. Give you a minute. Come on up.

MR. VANCE: I'll be right there.

Well, good morning, Chairman Jenkins, members of the board. My name is Larry Vance. I'm a technical specialist for the Department of Labor and Industries. I work for Chief Electrical Inspector Wayne Molesworth.

Today I'd like to -- I have several things for you. Last board meeting we had questions about on exam results, what zero meant, zero attempts. What does zero attempts mean?

Zero attempts -- what the reply back from PSI is, is that a zero attempt is when somebody -- when somebody registers for an exam but chooses not to take it. That counts as a zero attempt.

BOARD MEMBER COX: Okay.

MR. VANCE: So it doesn't make that much sense, but that's what it is. So it's a -- it's





1 counted as an attempt, but it's a zero attempt.

2 BOARD MEMBER NORD: So they paid money  
3 to take the opportunity but failed to take the  
4 opportunity?

5 MR. VANCE: Yes. Or they -- or they,  
6 say, walk out of the exam, meaning that they've taken a  
7 section -- the -- a particular section of the exam, say  
8 the laws and rules section, but they don't take the coded  
9 theory section, for instance. So that would come in as a  
10 zero attempt.

11 BOARD MEMBER COX: Because when I look  
12 at your reports, I see how many passed on attempt one,  
13 attempt two, attempt three, and then I notice there's how  
14 many did on attempt zero, and that was my question.

15 MR. VANCE: Right.

16 BOARD MEMBER COX: So attempt zero is,  
17 they didn't complete -- is that how I'm understanding?

18 MR. VANCE: They didn't even start.

19 BOARD MEMBER COX: Didn't even start.

20 Okay.

21 MR. VANCE: That's what I understood  
22 PSI, so --

23 BOARD MEMBER NORD: So if PSI, for  
24 example, had in Spokane scheduled ten people to take an  
25 O1 exam and because of weather or something out of their



1 control, the exam facility was closed, would that still  
2 be a zero attempt or would it be rescheduled?

3 MR. VANCE: I believe that would be  
4 rescheduled. It's when a person --

5 BOARD MEMBER NORD: -- on their own  
6 opportunity failed to show up?

7 MR. VANCE: Failed to show up or  
8 walked out. Essentially opted not to participate, so to  
9 speak.

10 BOARD MEMBER COX: So if I can bring  
11 notice to the current report that's before us, an 01  
12 administrator general exam, it says, "Attempt: Zero.  
13 Number of passed: Two."

14 So that -- am I to assume by your statement, two  
15 people registered for it but didn't take the 01  
16 administrator --

17 MR. VANCE: They didn't complete all  
18 sections of the exam. They left before completing all  
19 sections.

20 BOARD MEMBER CUNNINGHAM: They passed  
21 because they got enough of what they did answer correctly  
22 that they passed anyway.

23 BOARD MEMBER COX: Okay.

24 BOARD MEMBER CUNNINGHAM: Is that  
25 true?



1                   MR. VANCE: So two passed. Number of  
2 failed --

3                   BOARD MEMBER COX: Oh, yeah. Two  
4 passed on attempt zero.

5                   MR. VANCE: Yes. Two passed, ten  
6 failed. Total 12 attempted it. And I believe that  
7 under -- under all 12 of those, what they -- I --

8                   BOARD MEMBER COX: See, I'm trying to  
9 understand that. How did two pass if the reply back from  
10 PSI said they didn't complete it or didn't even start it  
11 when two of them passed according to this report?

12                  MR. VANCE: Their example they gave me  
13 was an administrator candidate I believe -- let me -- I  
14 can open it. I actually have their email.

15                  SECRETARY MOLESWORTH: Could it be  
16 there was four people that attempted, two of them walked  
17 out, two of them actually passed?

18                  MR. VANCE: Their response says, "Zero  
19 appears if the candidate doesn't take a portion of --  
20 doesn't take a portion but the system counts it as a  
21 fail."

22                  Okay. So when I -- let's say I register for the  
23 administrator's exam with PSI. It's a three -- it's a  
24 three-section exam. I decide after two sections I've had  
25 enough and I walk out. That is a zero.



1 I do not know how you can pass -- and I'll have to  
2 come back with this question. I do not know how you can  
3 pass a zero attempt. Right?

4 BOARD MEMBER COX: Or in this case,  
5 two persons.

6 MR. VANCE: Two persons passed with  
7 zero attempt. So yes.

8 BOARD MEMBER COX: Thus my need for  
9 clarification.

10 MR. VANCE: I understand completely,  
11 and I will go back to them and delve more into this.  
12 This zero thing has not always been there. And it's --  
13 it's great that we're focusing on it because we --

14 BOARD MEMBER COX: I want the report  
15 to mean something to me.

16 MR. VANCE: Yeah. I do too. And it's  
17 something that needs to get figured out because it  
18 doesn't -- their response does to a point make sense, but  
19 then how do you pass a -- if it's a -- how do you --  
20 yeah. Yes.

21 So looking at the pass rates, there's no real  
22 substantial change in pass rates. Nothing is alarming  
23 there.

24 We have had some instances in the past where there's  
25 been some data issues with candidates. We've talked



1 about that at previous quarter meetings, and it's been --  
2 we haven't experienced that of late.

3 That was kind of a period of -- there was something  
4 going on between -- and I'm speculating -- just based on  
5 the -- on everything I've learned about it, but it was  
6 actually the exam result lived on the server at the  
7 location where the exam was delivered and wasn't promoted  
8 to PSI. In other words, PSI didn't know anything  
9 about -- you know, I mean, it just -- they didn't have  
10 the scores. They didn't have the information.

11 And when the candidate goes back to the testing  
12 location where they tested and inquires about it, all of  
13 a sudden it's resolved. In other words, we need to  
14 promote these -- something happened in a handshake here.  
15 We need to move this up.

16 So thankfully that -- that has been worked out.  
17 That was quite -- quite an inconvenience for our test  
18 candidates, and it was kind of a reputational thing for  
19 us.

20 What's going on here? You know, I took the exam. I  
21 passed the exam. Here, I've got a score sheet, and it  
22 says I passed the exam, but PSI says I didn't pass the  
23 exam. So frustrating, but -- but I believe that we're on  
24 the right track.

25 Any questions about the exam reports?



1           We're still, you know, testing on a national level.  
2           We've got a lot of participation at PSI testing locations  
3           around the United States, which is a great thing.

4           And we're -- we appear to be in a -- in a pretty  
5           good situation right now from that -- from that  
6           standpoint. In other words, we don't have -- we don't  
7           have any outstanding issues right now. We'll put it that  
8           way. Things are -- things are -- other than the fact  
9           than, how do you pass on a zero. Right? We'll find that  
10          out.

11                           CHAIR JENKINS: So I guess one  
12          question I had is: Are we still on schedule towards the  
13          end of the year for our testing to be updated to the new  
14          code?

15                           MR. VANCE: Well, currently for  
16          capacity reason, we don't have anybody currently working  
17          on that. So, you know, generally, it's about at least a  
18          year after adoption.

19           And -- and the testing is -- is -- any modifications  
20          to the exam are rather minor because the impact of code  
21          changes are rather minor generally, so we -- yeah. We're  
22          working in that general direction, though. It's on --  
23          it's -- it's moving to -- that task is moving to the top  
24          of the pile, so yes.

25                           CHAIR JENKINS: So sounds like it is



1 on schedule then. It's just a little -- we haven't  
2 gotten any updates for it yet.

3 MR. VANCE: That's aggressive right  
4 now.

5 The other thing that has to happen is that -- so we  
6 develop -- we go through and go through all of our exam  
7 questions, laws, rules, and code. Then there's a period  
8 of time where PSI has to integrate that question database  
9 into their system. So it's our time plus their time, and  
10 then we're ready to roll. So we're working on it.

11 CHAIR JENKINS: Okay. Board Member  
12 Bobby Gray?

13 BOARD MEMBER GRAY: Thank you,  
14 Mr. Chair.

15 This is a question I've asked before, but just to  
16 reiterate, why -- is there any thought about perhaps  
17 putting that effort out for contract for someone to come  
18 in and do that for you since you're limited on resources  
19 for that, someone that's an expertise in that area to go  
20 update that for you?

21 MR. VANCE: The way the database is  
22 arranged is that we have all of our -- all of our  
23 certification/license types, and then you have the  
24 question database, and then you have how each question  
25 applies to each specialty. In other words, there's some



1 specialties that don't get some questions.

2 It's complex from that side of things, knowing what  
3 the specialty scope of work is and whether or not a  
4 question should apply or not to it. So to farm that out  
5 would be -- and find subject matter expertise, it would  
6 be --

7 BOARD MEMBER GRAY: It's a sole source  
8 justification to somebody that has that expertise?

9 MR. VANCE: You know, there are some,  
10 you know, former L&I staff members that would be very  
11 qualified to do that, but at this point we're at a point  
12 where it's kind of the next item on the list for us, as  
13 far as a bigger lift.

14 We just got through adopting code, got through  
15 updating our correction database. That's a big lift as  
16 well.

17 So we have all of the corrections that are in our  
18 agency on software, and that's actually a bigger lift  
19 because of all the -- there -- it's not whether or not,  
20 you know, something can or can't be done necessarily.

21 It's the fact that we have to change all the code  
22 references when things move around. So it gets to be a  
23 lot. That's a bigger task than the exam update,  
24 actually.

25 So -- and there's -- let's see. We're pushing 4,000





1 corrections somewhere in there that we have in that  
2 database that we have to go through, so our correction  
3 database is based on only things that are prohibited.

4 They're not -- the code has a lot of things that --  
5 where it's telling you what's allowed. So that's --  
6 that's outside of -- we don't write corrections for  
7 what's allowed. We write corrections for what's not  
8 allowed or what's prohibited.

9 So it's -- it's been a lot of work, been a lot of  
10 work. So rulemaking has calmed down. We're not actively  
11 involved in any rule making right now, and we've gotten  
12 through the code cycle. Next is the exam.

13 So there we are.

14 CHAIR JENKINS: Fair enough. Fair  
15 enough. Any other questions/comments from the board?

16 Anything else?

17 MR. VANCE: No. Thank you all.

18 CHAIR JENKINS: Thank you very much  
19 for your time. Appreciate it.

20 MR. VANCE: Yes. Thank you.

21 CHAIR JENKINS: Before we get the next  
22 item, which is our secretary's report, I just wanted to  
23 make sure I get this read into the minutes. This is the  
24 letter that we sent to the chief. It was written up by  
25 our attorney, Ben Blohowiak. Did I say that right?



1 MR. BLOHOWIAK: No.

2 CHAIR JENKINS: Hope I am.

3 "Dear Mr. Molesworth, I am writing on behalf of the  
4 Washington State Electrical Board. At the board's April  
5 2025 -- April 25th, 2024, meeting, a vote was held to  
6 formally recommend and advise electrical program that an  
7 increase in ECOPE staffing is needed.

8 "As you are aware the ECOPE staff plays a crucial  
9 role in the sharing compliance with electrical regulation  
10 and addressing the growing issues -- issue of unlicensed  
11 electrical work which undermines both public safety and  
12 the efforts of licensed contractors.

13 "From its advisory position, electrical program the  
14 board is well suited -- situated" -- can't read today --  
15 "to view the industry from both compliance and contractor  
16 perspective.

17 "It is from that position that the board reviews and  
18 an increase -- views an increase of ECOPE staff will  
19 enhance the electrical program's ability to conduct  
20 thorough inspections, enforcement compliance, and provide  
21 support for -- to legitimate contractors.

22 "This will not only ensure legitimate contractors  
23 are not undermined by the underground economy, but will  
24 also foster safer electrical infrastructure in the state  
25 of Washington.





1           The electrical fund balance on June 30th, 2024, was  
2           \$13,857,367, which is about 4.7 times that average  
3           monthly operating expenditures. The average monthly  
4           operating expenditures for fourth quarter or fiscal year  
5           2024 were \$2,881,802 compared to \$2,568,628 for the same  
6           period last year, which is an increase of about  
7           12 percent.

8           Average monthly revenue for the fourth quarter of  
9           that fiscal year 2024 was \$2,836,416 compared to  
10          \$2,834,328 for the same period last year, an increase of  
11          about .007 percent -- 0007 percent. Very small.

12          June 2024, customer service: 46,630 permits were  
13          sold last quarter. 98.4 percent or 45,873 were processed  
14          online, which is an increase of .1 percent from last  
15          quarter.

16          99.7 percent of contractor permits are sold online,  
17          which is an increase .1 percent from the previous  
18          quarter. Homeowners online sales for this quarter is  
19          83.7 percent, which is a .6 percent decrease from the  
20          previous quarter.

21          Online inspection requests is 74.6 percent, which is  
22          a 1.8 percent decrease from last quarter. During this  
23          quarter, customers made 90.3 -- 90.3 percent of all  
24          electrical license renewals were done online, which is a  
25          .4 percent decrease from last quarter.



1 Key performance measures, first one is percent of  
2 inspections performed within 24 hours of request. The  
3 goal is normally 86 percent. In fiscal year 2023, we did  
4 77 percent this time -- at this time frame. In fiscal  
5 year 2024, it was 78 percent.

6 Percent of inspections performed within 48 hours of  
7 request: 89 percent in 2023 and 90 percent in 2024.

8 Total inspections performed: In 2023 there was  
9 264,723. In fiscal year 2024, there was 263,058.

10 Virtual electrical inspections, VEI, performed  
11 43,350 inspections in fiscal year 2023, and in 2024, they  
12 did 47,828.

13 Number of focus citations and warnings, contractor  
14 licensing, worker certification, no permit, failing to  
15 supervise trainees: Anticipated total number is 4,136.  
16 In fiscal year 2023, the field did 1,128. ECOPE audit  
17 did 5,609, for a total of 6,816 citations issued.

18 In fiscal year 2024, the field did 2,647 compliance  
19 stops or citations. ECOPE audit did 11,619. A total of  
20 14,266. I think it's important that we noted here for  
21 ECOPE's numbers that there was a couple of very sizable  
22 group citations that were matrixed and added to that  
23 large number for out-of-state contractors.

24 No. 8 -- or 7, serious electrical corrections that  
25 would result in disconnection. Oh, I'm sorry. I'm going



1 to go back to Line 6.

2 Inspection stops per inspector per day. Workload  
3 indicator only. It was 11.4. In fiscal year 2024, it  
4 was 11.3.

5 Serious electrical corrections that would result in  
6 disconnect: 37,532 in fiscal year 2023, and in fiscal  
7 year 2024, it was 38,275.

8 Turnaround time for average plan sets reviewed by  
9 plan review: In 2023, it was two days, and it continues  
10 in this year to be two days.

11 Plan pages reviewed: In 2023, it was 3,958. In  
12 this current time frame, it was 4,678.

13 Percent of warnings by focused violation type:  
14 Licensing had 2 percent; certification was 28 percent;  
15 permits, 61 percent; trainee supervision, 9 percent. All  
16 focus citations at 7 percent.

17 Electrical licensing citations and amusement right  
18 appeals, this is some data -- some comments about our  
19 licensing staff or citation staff. As of July 10th,  
20 2024, there are approximately 1,950 items waiting to be  
21 processed by the licensing team. The oldest item is  
22 dated 5/9/2024. About 1,100 of these items are  
23 affidavits needing to be processed. This backlog has  
24 continued to grow since April's board meeting.

25 In addition to processing documents, licensing staff



1 are responsible for answering all incoming electrical  
2 licensing phone calls for the time frame between  
3 April 1st, 2024, to June 30th, 2024. They receive 5,483  
4 calls through the licensing phone line. This does not  
5 include inbound calls to their direct lines or outbound  
6 calls made to the customers.

7 Both previously vacant positions within the  
8 licensing team have now been filled. These staff are  
9 currently being trained before they will be able to  
10 effectively assist with the workload.

11 Licensing supervisor position has now been filled  
12 internally by the staff member from our electrical  
13 appeals position. The work of the appeals position will  
14 be absorbed by the team for now.

15 The citations and amusement rides team is currently  
16 with their work -- or current with their workload with  
17 the exception of outstanding debt needing to be sent to  
18 the external collections agency. We are working to get  
19 an additional resource to assist with that work.

20 I think, from this particular part of the report, we  
21 take away that we've got an influx of applications,  
22 affidavits, because of some of it having to do with the  
23 apprenticeship rules that were put in place, and we had  
24 existing staff, and we were carrying some vacancies.

25 So those have now been filled, and we're hopeful in



1 putting some things in place where we're training  
2 staff -- the new staff currently on just how to process  
3 specific documents so they can get it and bring us up to  
4 date, and we'll continue their training to a larger scope  
5 of work after we do that.

6 Testing labs, I don't think -- don't see any new  
7 testing labs, so we didn't approve any other testing  
8 labs.

9 Passed legislation. We're entering into a new  
10 legislative session coming up.

11 Other program updates, just wanted to make you guys  
12 aware that we are actually engaged in talks with the  
13 cities -- Association of Washington Cities.

14 As you remember last session, we had the language  
15 for engineering qualifications for electrical  
16 inspectors -- we had that removed, and part of removing  
17 that language, the legislature asked us to meet with the  
18 Association of Washington Cities to determine if there  
19 were other pathways that we could go down in order to  
20 qualify people to be electrical inspectors.

21 So we're actively engaged in that. Doesn't mean we  
22 have to make decisions, but we have to supply the leg  
23 with a report on what we did, what our findings were,  
24 what our recommendations might be. So just a heads-up on  
25 that.





1           So any questions from the board?

2                   CHAIR JENKINS: Board Member Cox?

3                   BOARD MEMBER COX: Question on your  
4 secretary's report: Your key performance measures, Line  
5 No. 6, "Inspection stops per inspector per day," two  
6 questions. Number one, is that just field inspectors or  
7 does that include E CORE inspectors?

8                   SECRETARY MOLESWORTH: That's only  
9 inspections done for the -- only stops made for  
10 electrical inspections.

11                  BOARD MEMBER COX: For electrical  
12 inspection.

13                  Do you have any indicator that shows -- or simply  
14 general knowledge what the average inspection time is for  
15 your inspectors?

16                  SECRETARY MOLESWORTH: I could begin  
17 to guess, but they range probably between ten and fifteen  
18 minutes when we look at the different types of  
19 inspections, but that's going to be an average, and it  
20 might be a little lower than that. Might be anywhere  
21 from five to fifteen in that -- in that range because it  
22 takes very little time to inspect a temporary power pole.  
23 It takes quite a bit more time to inspect a temporary  
24 system on a big job. Right?

25                  And so it might say ten, but it might take an hour



1 and a half, depending on the scope. So it's very  
2 subjective whom we talk about those numbers of -- you  
3 know, what does the average time look like.

4 BOARD MEMBER COX: Thank you.

5 SECRETARY MOLESWORTH: Yeah.

6 Mr. Baker?

7 BOARD MEMBER BAKER: I'm on the key  
8 performance measures as well. Pretty much the same  
9 between '23 and '24, everything seems pretty consistent  
10 until you get to Line 5, and you got this bomb right in  
11 the middle there.

12 Can you elaborate on why there's so many more  
13 citations? I know you said E CORE did some out-of-state  
14 contractors, but even the field is more than double.

15 What's going on?

16 SECRETARY MOLESWORTH: So -- so we've  
17 engaged the field in -- in requiring that they meet their  
18 compliance expectations. So they have stepped it up.  
19 They've moved into that -- working in that and doing  
20 compliance that they should be doing during their  
21 inspections, driving to an inspection.

22 You know, that's kind of where the underground  
23 economy lives, is in those areas where we're doing new  
24 inspections or remodels or something like that. So  
25 they've engaged in that now and have really been making a



1 big difference.

2 One of the things that we see in some of our  
3 extended data is that inspectors are actually doing more  
4 work -- more inspections than they are having requests  
5 come in. So what that tells you is, there's a little  
6 time left during the day probably to do other compliance  
7 activity.

8 And so you see some of that occurring. We see some  
9 of that occurring, which is the -- the intent we had for  
10 addressing the regions and asking them to really engage  
11 in the compliance activity.

12 BOARD MEMBER BAKER: So did I just  
13 hear you say that, when inspectors have extra time in  
14 their day, they're being proactive and stopping on job  
15 sites or following --

16 SECRETARY MOLESWORTH: Absolutely.  
17 And it doesn't even mean they got extra time in their  
18 day. If I'm driving by, I see something, they're  
19 actually stopping. They're getting engaged and ensuring  
20 the right people are there.

21 BOARD MEMBER BAKER: I wasn't implying  
22 they have a light workload. Yeah. That's significant --  
23 more than double in the amount of citations.

24 SECRETARY MOLESWORTH: It is. Yeah.  
25 It's interesting. The other thing to note with the data



1 is that we've been carrying -- I'm trying to pull a  
2 number out, but it's right around 17 vacancies for  
3 electrical inspectors.

4 And so we're going to start looking at hiring again  
5 and putting inspectors back in the field, but we're  
6 trying to be very careful about that because, if we're  
7 doing more than is coming in, our compliance is going up,  
8 do we need that?

9 And in these days where you want to make sure our  
10 fund is going to maintain healthy because we've -- we've  
11 gone down \$2 million since last November in our fund.  
12 Right?

13 And so in order to maintain that, we have to carry  
14 some vacancies, and -- if we need to, and right now it  
15 doesn't show that we have the workload to really hire all  
16 17. We'll probably hire a few, and we'll kind of stage  
17 them in, depending on the workload.

18 But that's what's happened with the compliance is,  
19 they've got time. They're doing the compliance. They're  
20 still getting their inspections done, and we can't say  
21 enough about how -- how good the staff are responding to  
22 our requests out there. They're really working hard at  
23 it, so --

24 BOARD MEMBER BAKER: Are the -- it's  
25 not tracked here in this performance measures chart



1       you've given us, but are the individual inspectors being  
2       tracked how many citations they're writing?

3                       SECRETARY MOLESWORTH:    So --

4                       BOARD MEMBER BAKER:    Quota they've got  
5       to meet?

6                       SECRETARY MOLESWORTH:    Yeah.

7       Citations are part of their work description, right,  
8       their PDF we call them, and they are required to do six  
9       focus citations a quarter.  You know, so that's one or  
10      two a quarter.

11              And I think that that's why they're getting a little  
12      bit, too, is because they're starting to actually say,  
13      you know, "This is in your PDF.  This is part of your  
14      job.  We need to get some training, focus on those  
15      things, move forward, make sure the right people are  
16      installing the work right."

17                      BOARD MEMBER BAKER:    Last question:  
18      Is there any risk that your stakeholders are going to  
19      come back to you and say, you're trying to generate  
20      revenue here?

21                      SECRETARY MOLESWORTH:    Because we've  
22      had the fee increase?

23                      BOARD MEMBER BAKER:    Well, because  
24      you've increased so many citations.

25                      SECRETARY MOLESWORTH:    Oh, I -- I



1       doubt that, because when you look at citations and  
2       citation money, we actually don't make a lot of money. A  
3       lot of it goes into legal expenses. It goes into this.  
4       Right? We pay for this.

5               And so -- and a lot of the funds have not been  
6       collected. We're working with the AAGs right now to  
7       limit a little bit their authority on how they reduce  
8       penalties because, when they do settlement agreements,  
9       they can reduce a penalty and also payment plans.

10              And I say, you've got to make sure that this changes  
11       behavior, and so we're trying to get the payments upfront  
12       because what happens is, people will make their minimum  
13       25 percent upfront, and then they'll go defunct and we  
14       don't collect the rest. We have several million dollars  
15       in uncollected citations. Right?

16              A lot of this, we'll collect 25 percent and that's  
17       it. And so that's -- that's -- that's a hard pill to  
18       swallow.

19                      BOARD MEMBER BAKER: That's a good  
20       explanation. Thank you.

21                      SECRETARY MOLESWORTH: I think we can  
22       defend it, I guess, is what I should have probably have  
23       just said and make it easy.

24                      BOARD MEMBER BAKER: What are we going  
25       do when they start pointing their finger at us. Right?



1 Thank you.

2 SECRETARY MOLESWORTH: Yep.

3 BOARD MEMBER NORD: I got a question,  
4 Wayne.

5 With the increased number of citations, are we  
6 seeing an increased number of appeals?

7 SECRETARY MOLESWORTH: You know, I  
8 don't think we're seeing a number -- you know, that would  
9 be a good question to ask John. I haven't asked him  
10 that.

11 We're seeing more settlements, right, not  
12 necessarily appeals that are going to the ALJ or coming  
13 to the board, but we're seeing a lot of -- I see a lot of  
14 settlements come through.

15 BOARD MEMBER NORD: Good.

16 SECRETARY MOLESWORTH: So that's a  
17 good question. I'll see if we've got some numbers on  
18 that, see what that looks like.

19 BOARD MEMBER NORD: Well, settlement  
20 on the Department's part is much better than an appeal.

21 SECRETARY MOLESWORTH: What's that?

22 BOARD MEMBER NORD: A settlement on  
23 the Department's part is much better than the appeal.

24 SECRETARY MOLESWORTH: Yeah. It's  
25 part of the appeal process. Right? They appeal. Then



1       they negotiate with the AAGs, and then if they settle,  
2       it's great.

3             And you're right because most of the time people  
4       take responsibility for it. They change their behavior,  
5       which is what citations are for, and we don't see them  
6       again.

7             And so -- so that's good, you know -- and --  
8       although we should not be afraid to take them to court  
9       either because we should be -- we should be writing them  
10      correctly, justly.

11            BOARD MEMBER NORD: If they need to  
12      go, they need to go.

13            SECRETARY MOLESWORTH: Right.  
14      Exactly.

15            CHAIR JENKINS: I was going to ask,  
16      how is the VEI currently going? I know we had a  
17      replacement there and --

18            SECRETARY MOLESWORTH: Yeah.  
19      Unfortunately, you know, our VEI supervisor Brian Simpson  
20      passed away. We replaced him now. It's hard to replace  
21      Brian. It's almost impossible, but we've hired a  
22      supervisor named Shawn Johnson who used to be a VEI  
23      inspector, went to become a supervisor in Kennewick, and  
24      now he's come back to VEI and is our supervisor for VEI  
25      now.





1           We're looking at part of the positions we're  
2 holding. One of my recommendations will be that we move  
3 some of those into VEI and possibly start a section of  
4 VEI or at least have the capacity to do some of the  
5 smaller floatable tank systems, which would take a lot of  
6 risk and a lot of work away from the field so that they  
7 lighten up their workload to do other things.

8           But most of those are on rooftop where inspectors  
9 are not allowed to go, and we can get those easily  
10 with -- you know, with less risk to the individuals.

11                   CHAIR JENKINS: I just want to point  
12 out that -- maybe board members may have a different  
13 opinion, but I've always been of the opinion the VEI is  
14 kind of a, "You've been doing good. Therefore, we'll  
15 allow you to use this other product."

16                   SECRETARY MOLESWORTH: Yeah.

17                   CHAIR JENKINS: And I've kind of --  
18 over some time, I've kind of altered my opinion on that,  
19 and that is sometimes there might be a reason that we  
20 want to enforce a VEI system in maybe a particular  
21 portion of our industry to help curb some things that  
22 might be happening otherwise.

23                   SECRETARY MOLESWORTH: Right. Right.

24                   CHAIR JENKINS: So I just want to  
25 shake out that this should be a benefit, but there are



1       some cases we can use it as more of a tool to battle an  
2       underground economy or something that's happening that  
3       might solve for us. So we use it for benefit but also as  
4       a tool.

5                   SECRETARY MOLESWORTH: Right. We see  
6       it as a tool to enforce, for example, supervision because  
7       it takes a certified individual to hold the camera. We  
8       check licenses as soon as they come online, and they have  
9       to show us their license, show us their permit. They  
10      have to show us the location they're at. And that way,  
11      we can verify there's a license guy actually on the site.  
12      And so it does help.

13              Now, does that mean he was there the whole time? We  
14      can't do that, but at least there's been somebody there  
15      that's put eyes on it and is very familiar with the job  
16      site, and we can tell that. And a VEI does a  
17      considerable amount of compliance for how it's -- how  
18      it's built right, so --

19              CHAIR JENKINS: Thank you. Any other  
20      questions? Comments?

21              All right. Well, thank you very much.

22              SECRETARY MOLESWORTH: You're very  
23      welcome.

24              CHAIR JENKINS: All right. So we are  
25      done with that. Looks like we're all the way up to our



1 last item, which is public comment regarding items not on  
2 the agenda.

3 Do we have anybody signed in?

4 UNIDENTIFIED SPEAKER: No.

5 CHAIR JENKINS: All right. Well, does  
6 anybody -- board members -- anything they want to bring  
7 up before we close the meeting?

8 SECRETARY MOLESWORTH: I just like to  
9 thank the instructor and the gentlemen from Perry Tech  
10 for -- and the ladies for coming and participating and  
11 seeing what the actual board looks like.

12 This is the future of the industry back here, and  
13 there's so much, you know, for you to do in this  
14 industry.

15 I always like to tell people that are just coming  
16 in, you're an important part of society as electricians  
17 and people that work in the electrical industry. Stop  
18 and take a look around you, and let me know what you find  
19 that you can actually do without electricity.

20 I had a guy tell me, "I can pave a road." No, you  
21 can't because it takes electricity to build the paver.  
22 All right. How do you run a welder? Electricity. How  
23 do you make the carpet sewing machines?

24 There's nothing in this world that you can't -- that  
25 you can do without electricity. There's a lot of



1 opportunity here for you, and I commend you for taking  
2 the time and the travel to come down here and see the  
3 board. So thank you.

4 BOARD MEMBER GRAY: Thank you,  
5 Mr. Chair. Just a reminder, the 2026 NEC is in progress  
6 right now and the deadline for submitting public comments  
7 is coming up. I think it's August 8th, but it's in  
8 August sometime, so encourage everybody to go out there  
9 and take a look. A lot of changes in format, building a  
10 lot of new articles.

11 So that's going to have an impact on implementing  
12 those code changes. So encourage everybody to go out and  
13 get involved in that.

14 CHAIR JENKINS: And this is the one  
15 they're doing a major overhaul?

16 BOARD MEMBER GRAY: This is the next  
17 to the -- this is an interim step where we've gone  
18 through and taken out a lot of the parts that are related  
19 to medium voltage and to limited power, gave them  
20 separate articles, but in 2029, the plan is to completely  
21 overhaul the entire code.

22 So everything you knew about the code prior to 2029  
23 you can forget and start all over again.

24 CHAIR JENKINS: I would say thank you  
25 for that. I don't know if I --





C E R T I F I C A T E

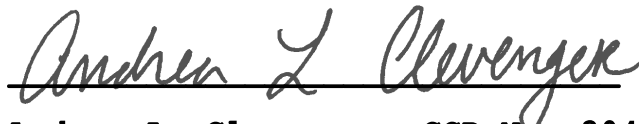
I, ANDREA L. CLEVINGER, a Certified Stenographic Court Reporter in and for the State of Washington, residing at Olympia, authorized to administer oaths and affirmations pursuant to RCW 5.28.010, do hereby certify;

That the foregoing proceedings were taken stenographically before me and thereafter reduced to a typed format under my direction; that the transcript is a full, true and complete transcript of said proceedings consisting of Pages 1 through 113;

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of August, 2024.



Andrea L. Clevenger, CCR No. 3041

(Certified Stenographic Court Reporter)



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