STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION
711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

February 14, 2019

Delivered electronically to mail@jhkelly.com

JH Kelly, LLC
P.O. Box 2038
Longview,WA,98632

Subject: Complaint filed by Maxford Nelsen (Freedom Foundation), PDC Case 43692

Dear JH Kelly, LLC:

Below is a copy of an electronic letter sent to Maxford Nelsen (Freedom Foundation) concerning a complaint filed with the Public Disclosure Commission (PDC).

As noted in the letter to Maxford Nelsen (Freedom Foundation), the PDC has dismissed this matter in accordance with RCW 42.17A.755(1) and will not conduct a more formal investigation into these allegations or take further enforcement action in this matter.

However, pursuant to WAC 390-37-060(1)(b), this letter serves as a warning letter concerning your failure to fully comply with the requirements of RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110: (1) by failing to obtain a proper written request from employees before withholding wages or salaries for contributions to Plumbers & Steamfitters Local 598 PAC; and (2) by failing to provide an annual notification to employees who have requested payroll deductions for political contributions of their right to withdraw their request at any time, and of the prohibition against discrimination by their employer and their union if they withdraw their request to make political contributions through payroll deductions. Although not alleged in the complaint, please note that as an employer/contractor facilitating payroll deductions for political contributions, you are required to comply with the recordkeeping requirements detailed in RCW 42.17A.495(3) and WAC 390-17-100(4). Staff expects you to comply with the requirements referenced in this letter. The Commission will consider this formal written warning in deciding on further Commission action if there are future violations of PDC laws or rules.

If you have questions, you may contact Phil Stutzman at 360-664-8853, toll-free at 1-877-601-2828, or by email at pdc@pdc.wa.gov.

Sincerely,

/s Phil Stutzman
Phil Stutzman
Compliance Officer

Endorsed by,

/s
Peter Lavallee
Executive Director

Enclosure: Letter to Maxford Nelsen (Freedom Foundation)

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February 15, 2019

Sent by Email to: MNelsen@myfreedomfoundation.com

Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552
Olympia, WA 98507

Subject: Complaint regarding:

1. United Association of Plumbers and Pipefitters Local 598, PDC Case 43672
2. Plumbers & Steamfitters Local 598 PAC, PDC Case 43673
3. American Electric, Inc., PDC Case 43675
4. Apollo Mechanical Contractors (formerly known as Apollo Sheet Metal), PDC Case 43676
5. Applied Process Cooling, PDC Case 43677
6. BNB Mechanical, LLC, PDC Case 43678
7. Brothers Pipeline Corporation, PDC Case 43679
8. Callies Welding and Fabrication, LLC, PDC Case 43680
9. Central Washington Refrigeration, PDC Case 43681
10. Columbia River Electric Maintenance, PDC Case 43682
11. Day & Zimmermann NPS, PDC Case 43683
12. Doubl-Kold, PDC Case 43684
13. Fluid Controls and Components, Inc., PDC Case 43685
14. Indian Eyes, LLC, PDC Case 43686
15. Infrasource Services, LLC, PDC Case 43687
16. Integrated Systems, PDC Case 43688
17. Intermech, Inc., PDC Case 43689
18. Iron Mountain Management, PDC Case 43690
19. Joint Apprenticeship and Training Committee, PDC Case 43691
20. JH Kelly, LLC, PDC Case 43692
21. J.K. Johnson Mechanical Contractors, PDC Case 43693
22. Jordan Mechanical Group, PDC Case 43694
23. JR Merit, Inc., PDC Case 43695
24. MacDonald-Miller Facility Solutions, PDC Case 43696
25. McClintock and Turk, Inc., PDC Case 43697
26. McKinstry Company, LLC, PDC Case 43698

27. Michels Corporation, PDC Case 43699
28. Northwest Metal Fab & Pipe, Inc., PDC Case 43700
29. Perma Cold Engineering, Inc., PDC Case 43701
30. Snelson Companies, Inc., PDC Case 43702
31. Stirrett-Johnson, Inc., PDC Case 43703
32. TCM Corp., PDC Case 43704
33. Truetemp Northwest, Inc., PDC Case 43705
34. University Mechanical Contractors, PDC Case 43706
35. Waste Treatment Completion Company, LLC, PDC Case 43707
36. Washington Building Trades, PDC Case 43708
37. Williams Plant Services, PDC Case 43709

Dear Mr. Nelsen:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on November 19, 2018. Your complaint alleged that the 37 named respondents may have violated RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110: (1) by failing to obtain a proper written request from employees before withholding wages or salaries for contributions to Plumbers & Steamfitters Local 598 PAC; and (2) by failing to provide an annual notification to employees who have requested payroll deductions for political contributions of their right to withdraw their request at any time, and of the prohibition against discrimination for not contributing.

PDC staff reviewed your allegations; the applicable statutes and rules; the response received from Jim Barton on behalf of all respondents; and the response received from Meghan Chalk on behalf of Iron Mountain Management to determine whether the record supports a finding of one or more violations.

Based on staff's review, we found the following:

- Two of the 37 respondents named in your complaint are United Association of Plumbers and Pipefitters Local 598 (PDC Case 43672) and Plumbers & Steamfitters Local 598 PAC (PDC Case 43673). However, the statute and rules primarily apply to the employer/contractors who withhold wages or salaries as payroll deductions for political contributions. The statute and rules apply to the union by prohibiting the union from discriminating against a member who does not make political contributions.

- The remaining 35 respondents are employer/contractors whose employees make political contributions to the union's PAC through payroll deductions. The withholding authorization accepted by the employer/contractors was developed by the union (United Association of Plumbers and Pipefitters Local 598), even though the employer/contractors have been and continue to be responsible when there are deficiencies in the authorization, and when the annual notification is deficient or is not sent as required by statute and rule, informing the employee of their right to revoke their authorization at any time, and of the employee's protection against discrimination by both the union and the employer/contractor for not contributing to the union's PAC.

- Some of the employer/contractors demonstrated that they have a way for employees to revoke their written authorization. However, it appears that the current authorization

form being accepted by the 35 employer/contractors does not conform to the requirements in RCW 42.17A.495 and WAC 390-17-100. It also appears that many of the employer/contractors have not been sending out the required annual notification to employees who have funds withheld for PAC contributions, as required by WAC 390-17-110.

- PDC staff has made it clear to the employer/contractors that in the future, they must: (1) receive proper "Political Contribution Withholding Authorization" forms before withholding wages or salaries for political contributions; (2) send out, or authorize the union to send out on its behalf, a proper annual notification to employees making PAC contributions through payroll deductions; and (3) maintain all required documents pertaining to political contribution withholding authorization forms, open for public inspection, for a period of three years after the last disbursement of wages or salaries, and maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years. Staff has made it clear that any revised authorization forms intended to correct the current deficiencies, must have the following characteristics:

    - The "Political Contribution Withholding Authorization" as it is described in WAC 390-17-100 should be a stand-alone form with its own signature. If the authorization is to be incorporated with additional information, it needs to have a separate section that clearly identifies it as a "Political Contribution Withholding Authorization." The authorization must be an "opt-in" system where the employee affirmatively requests to have wages or salaries withheld for political contributions. This means the authorization may not require the employee to "opt-out" in order to avoid making a political contribution.

    - The authorization must either follow the suggested format provided in WAC 390-17-100, or include all of the required elements in WAC 390-17-100(2)(a) through (h), including a statement that the authorization may be revoked at any time, and a statement that informs the employee of the prohibition against employer and labor organization discrimination including each element described in RCW 42.17A.495.

- Staff informed the respondents that the current revised authorization (Exhibit D in Jim Barton's January 4, 2019 letter) that includes a statement that the authorization is subject to cancellation by written notice to the Employer and Local 598 given within the 60-day period preceding an automatic renewal date is not acceptable, and that the "Political Contribution Withholding Authorization" form must inform the employee that their request may be revoked at any time.

- Staff informed the respondents that if the authorization form is different from the sample provided in WAC 390-17-100, it must include the language in WAC 390-17-100(2)(f) or an acceptable alternative statement. Staff stated that the current suggested language of, "I understand I have a right to refuse to so contribute without any reprisal" is not an adequate substitute statement. Staff informed the respondents that the authorization must state that the prohibition against discrimination for failing to contribute to the union's PAC applies to both the employer/contractor and the union, and that the authorization must describe or reference the three discrimination prohibitions found in RCW 42.17A.495(2) and WAC 390-17-100(2)(f).

- Concerning the respondent's proposed "Annual Authorization Notice" included as Exhibit F in Mr. Barton's January 4, 2019 response, staff suggested changing the name to reflect that it is an annual notification rather than an annual authorization, using a title like "Annual Notification Concerning Withholding Funds for 598 PAC" to be more reflective of the purpose of the document. Staff informed the respondents that the notification language proposed in Mr. Barton's January 4, 2019 response tells the recipient they may rescind their authorization by contacting the PAC in writing, but that WAC 390-17-110 states, "the written notification shall identify where the employee can submit the revocation, which shall be the name and address of the employer's contact, or the name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries." Staff also reminded the respondents of the "Written notification" distribution requirements in WAC 390-17-110(3) and the requirement in subsection (4) for the employer to maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.

- Staff reminded the employer/contractor respondents that they need to understand and comply with their responsibility to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution; (2) provide a proper annual notification to employees making political contributions through payroll deductions; and (3) maintain the required records related to the written authorizations and annual notifications.

- The respondents have stated that they will ensure that staff's suggested changes are incorporated into the written authorization form, and that they will ensure that a proper annual notification is sent to employees making PAC contributions through payroll deductions. United Association of Plumbers and Pipefitters Local 598 has stated that they will make staff's suggested changes to the written authorization form, and that they will send the annual notifications on behalf of the employer/contractors, and will provide a copy of the annual notifications they send, to the respective employers.

Based on these findings staff has determined that, in this instance, no evidence supports a finding of an actual violation warranting further investigation concerning the alleged failure of United Association of Plumbers and Pipefitters Local 598, PDC Case 43672, and Plumbers & Steamfitters Local 598 PAC, PDC Case 43673, to comply with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110.

Based on these findings staff has determined that, in this instance, the failure of the 35 employer/contractor respondents to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution; and (2) provide a proper annual notification to employees making political contributions through payroll deductions does not amount to an actual violation warranting further investigation.

However, pursuant to WAC 390-37-060(1)(b), the 35 employer/contractor respondents will receive a formal written warning concerning: (1) their failure to obtain a proper written request from employees before withholding wages or salaries for contributions to Plumbers & Steamfitters Local 598 PAC; and (2) their failure to provide an annual notification to employees who have requested payroll deductions for political contributions of their right to withdraw their request at any time, and of the prohibition against discrimination by the employer and the union for not contributing. The formal written warning will include staff's expectation that the 35 employer/contractor respondents will fully comply with RCW 42.17A.495, WAC 390-17-100,

and WAC 390-17-110 in the future. The Commission will consider the formal written warning in deciding on further Commission action if there are future violations of PDC laws or rules.

Based on this information, the PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1). Thank you for bringing this matter to the Commission's attention.

If you have questions, you may contact Phil Stutzman at 1-360-664-8853, toll-free at 1-877-601-2828, or by e-mail at pdc@pdc.wa.gov.

Sincerely,

Phil Stutzman
Compliance Officer

Endorsed by,

Peter Lavallee
Executive Director

cc: 37 Respondents