



**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

June 3, 2019

Delivered electronically to "corporateoffice@mckinstry.com"

Subject: Complaint filed by the Freedom Foundation, PDC Case 51815

Dear McKinstry Company, 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 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. Therefore, you are not required to submit a written response to the complaint by June 7, 2019, as previously requested. The PDC's action was taken because Freedom Foundation did not submit evidence of violations based on direct contact with individual employers/contractors.

As stated in the letter to Freedom Foundation, the requirement to have on file the written authorizations that comply with RCW 42.17A.495 and WAC 390-17-100, for individual employees, before withholding or diverting wages or salary for contributions to political committees or candidates for state or local office, and the requirements in RCW 42.17A.495 and WAC 390-17-100 to maintain the documents and books of account concerning the amounts withheld, applies to the, "*person or entity who withholds contributions.*"

The responsibility to use proper authorization forms and maintain the required records for public inspection is not a responsibility of the union or its political committee, and these responsibilities cannot be delegated to the union or political committee on behalf of the employers/contractors. While there is no prohibition on an employer sharing such records with the union and the union making them available upon request, there is no legal responsibility or obligation for the union to do so, and employers/contractors remain responsible for direct compliance with the law and rules even if the union or its political committee provides records to a requester.

In addition, RCW 42.17A.495(2) states, "... At least annually, an employee from whom wages or salary are withheld under subsection (3) of this section shall be notified of the provisions of this subsection." WAC 390-17-110 details the requirements for "Employee notification of withholding provisions."

PDC staff recommends you consult with your legal counsel to ensure you are fully compliant with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110. The PDC's action does not preclude Freedom Foundation from contacting individual employers/contractors and refiling a complaint based on evidence obtained from individual employers/contractors. Thank you.

If you have questions, you may contact Fox Blackhorn at 1-360-753-1980 toll-free at 1-877-601-2828, or by email at pdca@pdca.wa.gov.

Sincerely,

/s _____
Fox Blackhorn
Compliance Coordinator 2

Endorsed by,

/s _____
Barbara Sandahl
Deputy Director
For Peter Lavalley
Executive Director



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June 3, 2019

Delivered electronically to "mnelsen@freedomfoundation.com"

Subject: Complaint regarding:

1. American Electric, Inc (2), PDC Case 51802
2. Apollo Mechanical Contractors (2), PDC Case 51803
3. BNB Mechanical, LLC (2), PDC Case 51804
4. Central Washington Refrigeration (2), PDC Case 51805
5. Cogen Cleaning Technology, PDC Case 51806
6. Critical Path Resources, No PDC Case Number Assigned
7. Day & Zimmermann NPS (2), PDC Case 51807
8. Doubl-Kold (2), PDC Case 51808
9. Indian Eyes, LLC (2), PDC Case 51809
10. Infrasource Services, LLC (2), PDC Case 51810
11. Intermech, Inc. (2), PDC Case 51811
12. Iron Mountain Management (2), PDC Case 51812
13. Joint Apprenticeship and Training Committee (2), PDC Case 51813
14. JH Kelly, LLC (2), PDC Case 51814
15. McKinstry Company, LLC (2), PDC Case 51815
16. S2 Industrial Inc., PDC Case 51816
17. Waste Treatment Completion Company, LLC (2), PDC Case 51817
18. Washington Building Trades (2), PDC Case 51818
19. Williams Plant Services (2), PDC Case 51819

Dear Freedom Foundation:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on May 20, 2019. The complaint alleged that the 19 named respondents may have violated RCW 42.17A.495 and WAC 390-17-100 for failure to maintain copies of payroll deduction authorizations for public inspection, deducting employee wages for contributions to political committees without first obtaining proper employee authorization forms, and for failure to allow employees to determine the amount of their wages to deduct for contributions to political committees on employee authorization forms.

PDC staff reviewed the allegations; the applicable statutes and rules; and a response provided by Wayne Gold Jr. on behalf of Doubl-Kold to determine whether the record supports a finding of one or more violations.

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

- RCW 42.17A.495(3) prohibits employers, *“or other person or entity responsible for the disbursement of funds in payment of wages or salaries,”* from withholding or diverting a portion employee wages or salaries for, *“contributions to political committees or for use as political contributions except upon the written request of the employee.”*
- RCW 42.17A.495(4) requires any person or entity who withholds contributions subject to the written request of the employee, to, *“maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee’s request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee.”*
- WAC 390-17-100(1) reiterates that each, *“employer or other person who withholds or otherwise diverts a portion of wages or salary of a Washington resident or a nonresident whose primary place of work is in the state of Washington shall have on file the individual’s written authorization before withholding or diverting the individual’s wages or salary”* for contributions to political committees or contributions to candidates for state or local office.
- WAC 390-17-100(4) reiterates that, “employers and other persons who withhold or divert wages or salaries must: (a) Maintain the completed forms, with the individual’s signature or verification, for as long as the withholding or diversion continues; (b) Keep the forms and other documents described in RCW 42.17A.495(4) open for public inspection for three years after the last disbursement of wages or salaries; and (c) Provide the forms and other documents described in RCW 42.17A.495(4) to the commission upon request.
- As noted in staff’s February 15, 2019, case closure letters to United Association of Plumbers and Pipefitters, Local 598 and Plumbers & Steamfitters Local 598, and in the warning letters to 35 employers/contractors, of which 16 are named in this complaint, *“[t]he 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.”*
- In those letters, PDC staff made a clear statement to the union, the union’s PAC, and the 35 employers/contractors which we will reiterate here for the 19 named respondents in this complaint, employers/contractors subject to RCW 42.17A.495, and WAC 390-17-100 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.”*
- In your complaint filed against the 19 named respondent employers/contractors, you indicated that you *“emailed James Barton, counsel for UA 598’s PAC, on April 11, 2019 and, in accordance with RCW 42.17A.495(4) requested to inspect the “deduction*

authorization/‘dispatch form’ for every person listed on the form C3 filed by UA 598’s political committee on April 5, 2019 with the Public Disclosure Commission.”

- The requirement to have on file the written authorizations that comply with RCW 42.17A.495 and WAC 390-17-100, for individual employees, before withholding or diverting wages or salary for contributions to political committees or candidates for state or local office, and the requirements in RCW 42.17A.495 and WAC 390-17-100 to maintain the documents and books of account concerning the amounts withheld, applies to the, *“person or entity who withholds contributions.”* The responsibility to use proper authorization forms and maintain the required records for public inspection is not a responsibility of the union or its political committee, and these responsibilities cannot be delegated to the union or political committee on behalf of the employers/contractors. While there is no prohibition on an employer sharing such records with the union and the union making them available upon request, there is no legal responsibility or obligation for the union to do so, and employers/contractors remain responsible for direct compliance with the law and rules even if the union or its political committee provides records to a requester.
- A response to your complaint was provided by Wayne Gohl Jr. on behalf of Doubl-Kold, which indicates that they, *“have complied as requested and were doing so before the original complaint was filed by Mr. Nelsen.... I do not know what records 598 keeps or how they are stored or organized. I only know what Doubl-Kold is doing. I would appreciate in the future if this continues that someone checks with us or our records before claims are made we are not complying with the RCWs and WACs.”*
- No evidence was provided in this complaint that was obtained from the 19 named employer/contractor respondents that they failed to maintain the required records in accordance with the provisions of RCW 42.17A.495(3) and WAC 390-17-100(1)-(3), or that they failed to permit public inspection as required by RCW 42.17A.495(4) and WAC 390-17-100(4).

Based on these findings staff has determined that, in this instance, no evidence supports a finding of a violation warranting further investigation. The PDC’s action was taken because Freedom Foundation did not submit evidence of violations obtained from individual employers/contractors.

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). The PDC’s action does not preclude Freedom Foundation from contacting individual employers/contractors and refiling a complaint based on evidence obtained from individual employers/contractors.

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If you have questions, you may contact Fox Blackhorn at 1-360-753-1980 toll-free at 1-877-601-2828, or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

/s _____
Fox Blackhorn
Compliance Coordinator 2

Endorsed by,

/s _____
Barbara Sandahl
Deputy Director
For Peter Lavalley
Executive Director

cc: American Electric, Inc.
Apollo Mechanical Contractors
BNB Mechanical, LLC
Central Washington Refrigeration
Cogen Cleaning Technology
Critical Path Resources
Day & Zimmermann NPS
Doubt-Kold
Indian Eyes, LLC
Infrasource Services, LLC
Intermech, Inc.
Iron Mountain Management
Joint Apprenticeship and Training Committee
JH Kelly, LLC
McKinstry Company, LLC
S2 Industrial Inc.
Waste Treatment Completion Company, LLC
Washington Building Trades
Williams Plant Services