

August 7, 2019

Mx. Fox Blackhorn
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504

Re: PDC Case No. 54746

Mx. Blackhorn,

This is a brief supplement to our complaint against Apollo Mechanical Contractors (Apollo) of July 8, 2019, responding to several issues raised by Apollo's reply. As requested in your email of July 16, 2019, I am providing the supplemental information within 30 days.

First, Apollo appears to state that the company began utilizing a new PAC deduction authorization form, presumably the second document attached to its reply, at some point this year. The reply states that copies of these forms "have not been given to Mr. Nelson" and that "Mr. Nelsen's latest request of Forms were centered around the Local 598 Dispatch Form." As noted in our complaint and Apollo's reply, Apollo provided us with only three signed PAC deduction authorization forms/UA 598 dispatch forms.

To correct the record, my original request to Apollo sought PAC deduction authorization forms and made no mention of or reference to only the "dispatch forms" in use by the United Association of Plumbers and Pipefitters Local 598 (UA 598). ***See original appendix pages 418-419.***

If Apollo has additional signed authorization forms, it violated the public inspection requirements of RCW 42.17A.495(4) by failing to provide them upon request. After reviewing the documents provided by Apollo and prior to filing the present complaint, the Freedom Foundation specifically asked Apollo if it had additional authorization forms and was informed it did not. ***See App. 429.***

I realize this allegation was not raised in the original complaint and am willing to file an additional complaint on this point if necessary. However, the Public Disclosure Commission (PDC) also has authority under RCW 42.17A.755(1) to initiate a complaint on its own, which would seem appropriate in situations such as this in which an investigation of a complaint uncovers additional violations.

Second, Apollo's reply does not shed light on how many employees, if any, have properly signed the PAC deduction authorization form it developed and whether the deductions Apollo

made from employees' wages during the March-May 2019 period in question had signed the authorization form prior to the deductions being made from their wages. At the very least, further investigation should be devoted to this question.

Third, Apollo declines to specify whether it has ceased deducting PAC contributions from the wages of employees who have not signed its new authorization form. Again, further investigation could provide an answer to this question, although Apollo's silence on the matter speaks volumes.

Fourth and finally, even Apollo's new authorization form suffers from one of the same flaws as the dispatch forms developed by UA 598 by inappropriately restricting employees' ability to determine how much to contribute to the political committee, instead fixing the deduction rate at 0.7% of wages.

The template authorization form set forth in WAC 390-17-100 permits the employee to designate the specific dollar amount they wish to contribute. WAC 390-17-100(2)(d) further indicates that PAC deduction authorizations must allow the employee to designate the dollar amount of the contribution by clarifying that, if the form authorizes contributions to multiple candidates or political committees, the form must specify "the *total dollar amount* per pay period (or per week, month or year) to be withheld *for each...*" (emphasis added).

Apollo may contend that WAC 390-17-100(2)(d) only applies to situations in which the authorization involves contributions to two or more recipients and that a percentage-based deduction is permissible when only one recipient benefits from the deduction. But if the PDC permits deductions based on a percentage of wages when only one recipient is involved, it would make no sense to require deductions for multiple recipients to be designated in dollar amounts. In other words, if an employee can designate 0.7% of their wages be withheld for a single recipient, there is no reason an employee could not specify 0.7% of their wages be withheld for one recipient and 0.5% be withheld for another. Either percentage-based deductions are permissible in all circumstances, or they are permissible in none.

However, the only proper way to understand WAC 390-17-100 is that employee authorizations must permit the designation of a specific dollar amount(s) to be withheld for any and all recipients.

The default position, as indicated by the PDC's template authorization form, is that the authorization must designate a specific dollar amount to be withheld, and WAC 390-17-100(2)(d) merely clarifies that, when multiple recipients benefit from the deductions, the employee's authorization must designate the specific dollar amount to be withheld "for each," which is also reflected in the template form. Deducting political contributions based on a percentage of employee wages simply is not sanctioned by the FCPA and PDC regulations.

This requirement protects employees from being manipulated into contributing amounts larger than they otherwise would. UA 598's dispatch forms, for example, intentionally attempt to make the deduction amount appear insignificant, describing it as "0.70% (0.0070)." In reality, the deductions often amount to \$100 or more per employee per month, hardly an insignificant sum

and likely more than many employees would agree to contribute if they were permitted to designate the amount of the deduction.

In conclusion, as Apollo's violations of the Fair Campaign Practices Act have been ongoing and extensive, despite warnings from the PDC, we respectfully request that the PDC initiate enforcement proceedings sufficient, at minimum, to ensure future compliance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Maxford Nelsen', with a long horizontal flourish extending to the right.

Maxford Nelsen
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