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August 28, 2019

VIA EMAIL

Public Disclosure Commission
711 Capitol Way Rm. 206
P.O. Box 40908
Olympia, Washington 98504-0908
pdcc@pdcc.wa.gov

Re: *PDC Case Number 55700*

Dear Public Disclosure Commission Staff:

We are writing in response to the July 26, 2019 complaint brought by the Freedom Foundation (“Foundation”) alleging that Temp-Control Mechanical Corp. (“TCM” or “the Company”) is violating RCW 42.17A.495 and WAC 390-17-100. TCM disputes the Foundation’s allegations and responds as follows.

INTRODUCTION

The Foundation’s current allegations are contained on pages eight and nine of its July 26 Complaint. Specifically, the Foundation claims: (1) the current version of the Labor 598 Dispatch Form does not comply with RCW 42.17A.495 and WAC 390-17-100 because employees are not provided an option to designate some contribution different than 0.7 percent; (2) TCM is failing to secure compliant withholding requests from its employees; and (3) TCM has withheld more than the requested 0.7 percent from certain workers.

As discussed below, TCM is obtaining fully compliant wage withholding requests from its workers who are having a portion of their wages contributed to the Local 598 Political Action Committee (“PAC”). Contrary to the Foundation’s claim, there is no obligation for employees to be given an option to select a withholding amount. The only remotely similar requirement is set forth at WAC 390-17-100(2)(d), wherein specific allocations must be provided when contributions are made to multiple political committees or candidates. The mere fact that an

optional notice provided at the bottom of WAC 390-17-100 allows employees to write in a specific withholding amount is immaterial.

With respect to the alleged over withholding, TCM has reviewed its payroll records and has confirmed that all subject withholdings have been made at the requested 0.7 percent amount. Relevant spreadsheets from TCM's payroll system memorializing the 0.7 percent withholding are attached for the Commission's review. Any compliance questions involving how the PAC's C-3 forms have been completed is an issue better directed to those who complete the forms.

RELEVANT BACKGROUND

TCM is one of the Pacific Northwest's largest mechanical and plumbing systems experts. In areas ranging from pre-construction and engineering to fabrication, the Company supports a wide variety of industries, including healthcare, government, and high-tech facilities.

Some of TCM's employees are members of the United Association of Plumbers and Pipefitters Local 598 ("Local 598"). As noted by the Foundation, the PAC is funded at least in part by authorized payroll withholdings from Local 598 members, including certain TCM employees. Although TCM as an employer is responsible for complying with RCW 42.17A.495 and WAC 390-17-100 by obtaining compliant request forms, the union has prepared several versions of the authorizations that TCM understands are being used by signatory contractors. As the Commission has previously noted, outdated versions of the authorization form did not appear to comply with legal requirements, as employees were not advised about specific non-discrimination provisions, or their ability to discontinue the withholdings at any time.

By March 2019, Local 598 modified its Dispatch Form to address the issues raised by the Commission. Attached as **Exhibit A** is an example of the post-March Dispatch Form. As an additional measure, Local 598 prepared a template Annual Authorization to Withhold Funds for 598 PAC, a copy of which is attached as **Exhibit B**. Both documents fully comply with RCW 42.17A.495 and WAC 390-17-100, in that the forms advise employees about the non-discrimination provisions and their right to revoke the withholding request at any time. TCM obtains only compliant withholding requests from its employees. Additionally, no withholdings are currently being made for any Local 598 member who has not requested the withholding on a compliant form.

Similar to most unionized employers, TCM is obligated by its collective bargaining agreement to direct a portion of its member-employee's earnings to the union on a monthly basis to cover union dues, various benefits and industry funds. As reflected on the spreadsheet attached as **Exhibit C**, those sums are either hourly amounts (e.g., \$12.40 hourly for health and welfare) or a percentage of earnings (e.g., 3% for union dues). Similarly, Exhibit C reflects the employees' requested 0.7 percent contribution to the PAC.

In its Complaint, the Foundation identified three employees it believed had been subjected to PAC withholdings in excess of the requested 0.7 percent level. Attached as **Exhibit D** is a summary of PAC withholdings for those employees from November 2018 through June 2019. Each month, the proper 0.7 percent withholding was taken and directed to Local 598 for

distribution to the PAC. Attached as **Exhibit E** is a full breakdown of how those employees' wages were allocated to the various categories, including the PAC, for November 2018. Those contributions were consistent with the schedule set forth on Exhibit C.

RESPONSE TO SPECIFIC ALLEGATIONS

A. TCM Complies with all Withholding Authorization Requirements

Under WAC 390-17-100(2), payroll deduction forms can either conform to a suggested format, or be in a different format, provided that the forms contain the following information:

- (a) The name of the individual authorizing the withholding or diversion;
- (b) The name of the individual's employer;
- (c) The name of each political committee or candidate for which contributions are to be withheld;
- (d) If more than one political committee or candidate is specified, the total dollar amount per pay period...to be withheld for each committee or candidate;
- (e) A statement specifying that the authorization may be revoked at any time and such revocation shall be in writing;
- (f) A statement that reads: "No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee;"
- (g) The individual's signature or other reliable and secure verification; and
- (h) The date on which the form was completed.

As discussed above, Local 598 members are dispatched to TCM projects through a revised Dispatch Form. See Exhibit A. That form contains all of the information listed above and thus complies with WAC 390-17-100. Pursuant to WAC 390-17-100(3), because the form includes the WAC 390-17-100(2) elements, it "constitutes written authorization of the individual authorizing the withholding or diversion." In addition to the new compliant Dispatch Form, Local 598 also prepared a separate Annual Authorization to Withhold Funds for 598 PAC. See Exhibit B. That form is different than the Annual Notification Concerning Withholding Funds for 598 PAC issued by TCM pursuant to WAC 390-17-110.¹ TCM utilizes both forms as appropriate to ensure its employees receive proper notice and submit written requests for withholding.

The Foundation argues the current Dispatch Form used by TCM violates WAC 390-17-100 because it does not expressly give union members the right to specify a withholding amount. The Foundation is apparently troubled by the inclusion of a default 0.7 percent withholding amount. Nothing in WAC 390-17-100 requires that employees be given the opportunity to customize their withholding request. The only similar requirement is set forth at WAC 390-17-

¹ In its Complaint, the Foundation has raised no issues with respect to the annual notice. That said, TCM has provided its employees with the notice, a copy of which is attached as Exhibit F.

100(2)(d), under which an authorization form must specify amounts to be withheld when the funds will be directed to multiple candidates or political action committees. Here, withholdings are made for one political action committee, the PAC. As such, there is no requirement for the form to include the option for employees to specify differing withholding amounts.

If for any reason the PDC feels the forms currently in use are non-compliant, TCM is willing to modify them to the PDC's satisfaction.

B. TCM Makes only Requested Withholdings

Apparently based on its review of the C-3 Cash Receipts Monetary Contribution forms filed by the PAC, the Foundation claims that TCM withheld far more than 0.7 percent from its Local 598 member-employees. That is simply not true.

Pursuant to its collective bargaining agreement with Local 598, TCM remits funds to the union on a monthly basis. Attached as Exhibit D is a summary derived from TCM's accounting system showing the monthly PAC withholdings for the employees listed in the Foundation's Complaint. Those withholdings, which are made on the same basis for all Local 598 members who have made the same withholding request, equate to the required 0.7 percent amount. Attached as Exhibit E are spreadsheets from the Company's accounting system showing a monthly example for November 2018 for the three listed employees. Again, the same process is used for all Local 598 member-employees. While the PAC C-3 forms are not the picture of clarity, TCM has complied with its responsibilities.

NO ENFORCEMENT OPTION IS WARRANTED

A. TCM Is Not Violating RCW 42.17A.495 or WAC 390-17-100

As explained above, TCM is not violating RCW 42.17A.495 or WAC 390-17-100. The Dispatch Form instituted in March 2019, as well as the Annual Authorization to Withhold Funds for 598 PAC, are both compliant. Further, TCM has never withheld more than the requested 0.7 percent.

B. Any Violation Should be Considered Technical or Minor

If the PDC finds that the forms currently being utilized by TCM are non-compliant – a claim TCM vigorously disputes – that violation should fall within the concept of “technical corrections” under RCW 42.17A.005(51). A technical correction “means the correction of a minor or ministerial error in a required report that does not materially harm the public interest and needs to be corrected for the report to be in full compliance with the requirements of this chapter.” The Dispatch Forms previously issued by Local 598 did require minor amendments, but those changes have been made.

The Foundation claims, without support, that the technical correction standards do not apply to TCM “because the statute at issue, RCW 42.17A.495, does not pertain to disclosure of contributions or expenditures or require that TCM file any reports with the PDC.” On the

contrary, RCW 42.17A.495(4) requires persons or entities who withhold contributions to maintain documents reflecting the authorizations, for no less than three years, and deliver the information to the PDC “upon request.” It is unclear how the Foundation believes that this does not constitute a “required report,” based on the plain language of RCW 42.17A.495(4).

If the PDC finds that TCM committed a violation, a warning or correction under WAC 390-37-061 should be issued. WAC 390-37-061(1) provides that PDC staff can consider whether investigations or adjudicative proceedings always constitute the best use of public funds, or “an alternative response better meets the PDC’s mission and public expectation by allowing the expedited resolution of minor violation, and the focusing of resources on more significant violations.”

Minor violations can occur in three different ways, per WAC 390-37-061(2):

- (a) When required information is not timely disclosed, but the public is not deprived of critical information; or
- (b) When incomplete information is disclosed, but as a good faith effort to comply with disclosure is made, and the public is not deprived of critical information.
- (c) When any other violation of chapter 42.17A RCW has occurred that does not materially affect the public interest.

Here, TCM’s violations, if any, fall within WAC 390-37-061(2)(c), and do not materially affect the public interest. TCM has received only one prior warning, in February 2019, that was in fact the result of Local 598’s failures, rather than any action on TCM’s part. Thereafter, TCM has utilized fully compliant withholding request forms.

CONCLUSION

TCM’s authorization forms are compliant with RCW 42.17A and WAC 390-17. All current deductions from Local 598 members are lawful and properly conducted. TCM asks that the PDC dismiss the Foundation’s complaint, based on a finding that no violation has occurred.

Sincerely,

JACKSON LEWIS P.C.



Scott W. Osborne
Meredith A. Smith

1328 Road 28
Pasco, WA 99301

U.A. LOCAL 598 DISPATCH FORM

Phone : (509) 545-1446
Fax : (509) 547-2139

Contractor : Temp-Control Mechanical Corp

Site Name : Microsoft MWH04

Site Address : 1500 Port Industrial Way
Quincy, WA 98848

Job Steward : Billy Dolson

Assigned To : Dearborn, Douglas A xxx-xx-xxxx

Comments : DRUG TEST ON SITE. 4X10'S W/OT. [REDACTED] RIGGING
CERT

Report Date : 03/11/2019

Report Time : 07:0000 AM

Pay Rate : \$50.47

Job Desc : Pipefitter

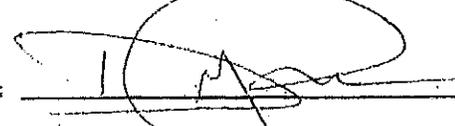
Job Type : List Call

Hiring List : Book A - Fitter

Site Notes:

PAC Authorization

So that the common interest of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, I voluntarily authorize and direct the above-named employer and any signatory to the Collective Bargaining Agreement for whom I work to deduct the suggested 0.70% (0.0070) as ratified by the Local 598 Membership, each week from my pay for transfer to the Local 598 Political Action Committee, where funds will be used for federal or state races as deemed necessary by PAC leadership. I understand that I have a right to refuse to so contribute without any reprisal. Furthermore, I recognize that the contribution guideline is just that, and that I may contribute any amount or not at all to the Political Action Committee - although only the suggested amount is supported by the paycheck deduction process. Contributing an alternative amount will require contacting the Local's staff. Note: No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (i) the failure to contribute to, (ii) the failure in any way to support or oppose, or (iii) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. Furthermore, I understand that to comply with the Federal law, the PAC must use its best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per calendar year. I understand that my contribution is not tax-deductible. I understand that I may revoke my authorization at any time in writing.

Signature: 

Date: 3/8/2019

Work Assessment Check-Off Authorization

I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3% and IAP at 2.25% of gross pay to Local Union 598. This authorization shall be valid for the period of one year or the balance of the term of the current agreement, whichever is sooner, and shall automatically renew itself for successive one-year periods. This 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.

Signature: 

Date: 3/8/2019

Office Copy

ANNUAL AUTHORIZATION TO WITHHOLD FUNDS FOR 598 PAC

At least annually you have the right to determine if you want to have a pre-determined percentage withheld from your weekly paycheck to help fund the Local 598's PAC fund.

The State of Washington has a WAC 390-17-110 that addresses withholding provisions as they relate to PAC funds. Below is a portion of that WAC.

- 1) (a) By June 30, 2003, and at least annually by June 30 thereafter, employees from whom funds are being withheld for contributions to a candidate or political committee under RCW 42.17A.495 shall be notified, in writing, of the nondiscriminatory provisions of RCW 42.17A.495(2). Employee notification shall include the following language:

'No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for:

- (i) The failure to contribute to;**
- (ii) The failure in any way to support or oppose; or**
- (iii) In any way supporting or opposing a candidate, ballot proposition, political party, or political committee.'**

Everyone who has been dispatched by 598 to an employer has language on their dispatch that authorizes the employer to withhold certain percentages from their weekly paycheck as deductions, which are after tax dollars. These are not fringes. It is your right to determine which items are withheld and not withheld as a deduction. If you sign the dispatch slip without making any notation in the authorization area and initialing the notation the employer will withhold per the CBA and the signed dispatched.

In this same area is language that will allow an employee to opt out or in on an annual basis. If notice is not given the authorization automatically renews for another year.

TCM has allowed this opt in or out at any time with a written request. TCM believes this complies with the intent of the WAC and associated RCWs.

Below is the individual annual authorization for TCM to either withhold funds for the 598 PAC, currently at .70% of your weekly gross pay, or to not withhold funds for the 598 PAC. While TCM believes authorization has been given and language on dispatches covers the employee's right to opt in or out TCM is clarifying the individual employed 598 member's intend as it pertains to Local 598's PAC fund.

I, _____ authorize TCM to
Employee Name - Printed

_____ withhold 598 PAC funds from my weekly paycheck.

_____ **Not** withhold 598 PAC funds from my weekly paycheck.

Employee signature

Date

EXHIBIT B

	DESCRIPTI ON	JOB CLASS	DUES DEDUCT	VAC DEDUCT	H&W	STATE PENION	NAT'L PENSION	SUPLMIT PENSION	ITF JATC TRAINING	ITF TRAINING	LMCCT	IAP	PEC	Leave	
J O U R N E Y	JourneymaJ		0.03	8.00	12.40	5.02	4.23	6.33	2.08	0.10	0.30	0.0225	0.007	1.23	
	JourneymaF01		0.03	8.00	12.40	5.02	4.23	6.33	2.08	0.10	0.30	0.0225	0.007	1.23	
	JourneymaF02		0.03	8.00	12.40	5.02	4.23	6.33	2.08	0.10	0.30	0.0225	0.007	1.23	
	General FoG		0.03	8.00	12.40	5.02	4.23	6.33	2.08	0.10	0.30	0.0225	0.007	1.23	
	Senior GF S		0.03	8.00	12.40	5.02	4.23	6.33	2.08	0.10	0.30	0.0225	0.007	1.23	
	Helper H		0	0.00	12.40	0	0	0.00	0	0.00	0.00	0	0	0	0.47
	45% A01		0.03	8.00	12.40	5.02	1.9	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	0.66
	50% A02		0.03	8.00	12.40	5.02	2.12	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	0.72
	55% A03		0.03	8.00	12.40	5.02	2.33	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	0.77
	60% A04		0.03	8.00	12.40	5.02	2.54	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	0.82
65% A05		0.03	8.00	12.40	5.02	2.75	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	0.87	
70% A06		0.03	8.00	12.40	5.02	2.96	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	0.92	
75% A07		0.03	8.00	12.40	5.02	3.17	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	0.97	
80% A08		0.03	8.00	12.40	5.02	3.38	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	1.02	
85% A09		0.03	8.00	12.40	5.02	3.6	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	1.08	
85% A10		0.03	8.00	12.40	5.02	3.6	6.33	2.08	0.10	0.30	0.0225	0.007	0.007	1.08	
45% A01.1		0.03	3.60	12.40	12.40	2.26	1.9	2.85	2.08	0.10	0.30	0.0225	0.007	0.08	
50% A02.1		0.03	4.00	12.40	12.40	2.51	2.12	3.17	2.08	0.10	0.30	0.0225	0.007	0.62	
55% A03.1		0.03	4.40	12.40	12.40	2.76	2.33	3.48	2.08	0.10	0.30	0.0225	0.007	0.68	
60% A04.1		0.03	4.80	12.40	12.40	3.01	2.54	3.80	2.08	0.10	0.30	0.0225	0.007	0.74	
65% A05.1		0.03	5.20	12.40	12.40	3.26	2.75	4.11	2.08	0.10	0.30	0.0225	0.007	0.8	
70% A06.1		0.03	5.60	12.40	12.40	3.51	2.96	4.43	2.08	0.10	0.30	0.0225	0.007	0.86	
75% A07.1		0.03	6.00	12.40	12.40	3.77	3.17	4.75	2.08	0.10	0.30	0.0225	0.007	0.92	
80% A08.1		0.03	6.40	12.40	12.40	4.02	3.38	5.06	2.08	0.10	0.30	0.0225	0.007	0.98	
85% A09.1		0.03	6.80	12.40	12.40	4.27	3.6	5.38	2.08	0.10	0.30	0.0225	0.007	1.05	
85% A10.1		0.03	6.80	12.40	12.40	4.27	3.6	5.38	2.08	0.10	0.30	0.0225	0.007	1.05	

	Williams	Kronberg	Schneirla	Total
November 2018:				
Gross Pay	\$ 18,800.82	\$ 13,047.20	\$ 14,190.78	\$ 46,038.80
Pac Deduction	\$ 131.61	\$ 91.33	\$ 99.34	\$ 322.28
December 2018:				
Gross Pay	\$ 15,393.98	\$ 10,715.36	\$ 14,305.86	\$ 40,415.20
Pac Deduction	\$ 107.76	\$ 75.01	\$ 100.15	\$ 282.92
January 2019:				
Gross Pay	\$ 19,084.76	\$ 14,435.20	\$ 15,728.84	\$ 49,248.80
Pac Deduction	\$ 133.58	\$ 101.07	\$ 110.11	\$ 344.76
February 2019:				
Gross Pay	\$ 18,043.75	\$ 13,269.28	\$ 14,422.94	\$ 45,735.97
Pac Deduction	\$ 126.29	\$ 92.90	\$ 100.97	\$ 320.16
March 2019:				
Gross Pay	\$ 20,567.34	\$ 10,465.52	\$ 16,831.60	\$ 47,864.46
Pac Deduction	\$ 143.70	\$ 73.27	\$ 117.82	\$ 334.79
April 2019:				
Gross Pay	\$ 19,747.17	\$ 8,439.04	\$ 17,934.36	\$ 46,120.57
Pac Deduction	\$ 138.22	\$ 59.09	\$ 125.53	\$ 322.84
May 2019:				
Gross Pay	\$ 23,154.03	\$ 11,881.28	\$ 20,546.16	\$ 55,581.47
Pac Deduction	\$ 162.07	\$ 83.17	\$ 143.82	\$ 389.06
June 2019:				
Gross Pay	\$ 17,034.30	\$ 10,881.92	\$ 16,019.04	\$ 43,935.26
Pac Deduction	\$ 119.22	\$ 76.18	\$ 112.14	\$ 307.54

Local 598 Plumbers & Pipefitters Benefits Report

Employer 0020-402278
National ID 00-74813

Report Month Nov-18

EMPLOYEE NAME	TOTAL HOURS	TOTAL PAY	DUES DEDUCT	VAC DEDUCT	LEAVE	H&W	STATE PENION	NAT'L PENSION	SUPPLMT PENSION	JATC TRAINING	ITF TRAINING	LMGBT	IAP	PEC	TOTAL FUNDS
Kronberg, Philip	220.00	13047.20	391.42	1760.00	270.60	2728.00	1104.40	930.60	1392.60	457.60	22.00	66.00	293.56	91.33	9,508.11
Schneirra, Shawn	224.50	14190.78	425.72	1796.00	276.14	2783.80	1126.99	949.64	1421.09	466.96	22.45	67.35	319.29	99.34	9,754.76
Williams, Donald	259.00	18800.82	564.02	2072.00	318.57	3211.60	1900.18	1095.57	1639.47	538.72	25.90	77.70	423.02	131.61	11,998.36
	703.50	\$ 46,038.80	\$ 1,381.16	\$ 5,628.00	\$ 865.31	\$ 8,723.40	\$ 3,531.57	\$ 2,975.81	\$ 4,453.16	\$ 1,463.28	\$ 70.35	\$ 211.05	\$ 1,035.87	\$ 322.27	\$ 30,661.22

ATTACHMENT #1

ANNUAL NOTIFICATION CONCERNING WITHHOLDING FUNDS FOR 598 PAC

As required by the State of Washington administrative code, WAC 390-17-110 please be advised that neither UA Local 598, nor any signatory contractor, may or will discriminate against you in the terms or conditions of your employment for (1) failing to contribute to the PAC, (2) failing to support (or oppose) the PAC, or (3) in any way supporting or opposing a candidate, ballot measure, political party or political committee.

If you have voluntarily authorized PAC contributions, you may rescind that authorization at this, or any, time. As you are aware, so that the common interests of Local 598 members to secure jobs, fair wages, and safe working conditions can be heard by state and federal candidates for office, you have previously voluntarily authorized your employer to deduct 0.70% (0.0070) of your weekly gross pay to be contributed to the PAC.

Should you wish to discontinue this voluntary contribution to the PAC via payroll deduction, at any time, you may contact your employer or, UA Local 598 in writing at 1328 Rd 28, Pasco, WA 99301.

I acknowledge receipt of the above notice to ensure my local union and employer are in compliance with Washington State law:

Printed Name

Signature

Date

Note: A copy of this form shall be retained by Local 598 and your employer for at least five years.