



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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February 26, 2021

Delivered electronically to Maxford Nelsen, Freedom Foundation, at
mnelsen@freedomfoundation.com

Subject: Complaint regarding JH Kelly, LLC (3), PDC Case 54324

Dear Mr. Nelsen:

Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received July 8, 2019, alleging JH Kelly, LLC violated RCW 42.17A.495 and WAC 390-17-100 by deducting employees' wages for political contributions to Plumbers & Steamfitters Local 598 PAC, the political action committee operated by United Association of Plumbers and Pipefitters Local 598, without first obtaining authorizations compliant with RCW 42.17A.495 and WAC 390-17-100. The complaint stated, from March-May 2019, JH Kelly withheld at least \$40,288.08 from hundreds of its employees' wages for UA 598's PAC without compliant authorization forms.

Your complaint also alleged the otherwise compliant Version Three dispatch/authorization form created by Local 598 PAC for JH Kelly violated WAC 390-17-100 by failing to allow the employee to designate the dollar amount of the contribution to be withheld from the employee's wages. The complaint alleged the authorization form impermissibly restricted the employee's ability to choose how much to contribute to the PAC by providing a pre-determined contribution of 0.7 percent of wages, even though the template form in WAC 390-17-100 permits the employee to designate a specific dollar amount for a contribution.

Your complaint also alleged JH Kelly violated RCW 42.17A.495(4) by failing to maintain open for public inspection documents and books of account verifying wages withheld through payroll deductions for political contributions, based on JH Kelly's alleged failure to timely produce all such records when requested to do so.

RCW 42.17A.495 and WAC 390-17-100 provide, no employer may withhold wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The written request must be on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination. The written request form must also inform the employee of the right to revoke the written request at any time. Employers are also required to maintain open for public inspection documents and books of account verifying wages withheld through payroll deductions for political contributions.

WAC 390-17-110 requires employers to provide an annual notification of the nondiscriminatory provisions of RCW 42.17A.495(2) and language stating the employee authorization for withholding wages or salary for political contributions may be revoked at any time.

PDC staff reviewed your complaint, responses from JH Kelly, and the relevant law and rules. As a result of the investigation, staff found the following:

Alleged Failure to Use Authorization Forms with Nondiscrimination and Right to Revoke at Any Time Language - On June 6, 2019, the Freedom Foundation sent a letter to JH Kelly requesting an opportunity to inspect the authorization forms for JH Kelly employees listed as contributors to Local 598 PAC in March, April and/or May 2019 on the PAC's C-3 forms. The letter asked for an opportunity to inspect the forms on or before June 28, 2019. On June 27, 2019, Craig Yabui, JH Kelly's Vice President and General Counsel, emailed the Freedom Foundation a link to download two PDF files totaling 155 pages of dispatch forms. On July 24, 2019, Vanessa Soriano Power responded on behalf of JH Kelly, noting JH Kelly did not have actual notice of the Freedom Foundation's first complaint (Case 43692) including a copy of the PDC's closure letter to the complainant sent February 15, 2019 or the warning letter sent to JH Kelly on February 14, 2019, until, at the earliest, May 24, 2019, when JH Kelly's Vice President & General Counsel was notified of the Freedom Foundation's second complaint (Case 51814).

Ms. Power stated, consistent with RCW 42.17A.495(4), JH Kelly responded timely to Mr. Nelsen's request to review dispatch/authorization forms. She said JH Kelly's compliance history does not reflect systemic or ongoing problems, JH Kelly has taken corrective action and initiated remedial measures, in conjunction with UA 598, when noncompliance was brought to its attention, and JH Kelly has made a good faith effort to comply with all laws and regulations, and is committed to compliance. Ms. Power said, JH Kelly has not intentionally violated RCW 42.17A.495 or WAC 390-17-100, and recognizes its role as an employer that has employees from whom funds are being withheld for contributions to Local 598 PAC, and the need for better coordination with Local 598 to ensure compliance with authorization requirements.

Alleged Failure to Produce Records Upon Request - Staff's investigation found, JH Kelly's initial disclosure on June 27, 2019 was intended to be complete, but as of the date of the disclosure on June 27, 2019, JH Kelly was still in the process of reviewing records to determine whether further responsive documents existed. After the disclosure was made on June 27, 2019, JH Kelly, in good faith, continued to review records and ultimately identified additional responsive documents. Those documents were then collected, and a supplemental disclosure was made on July 30, 2019. Staff found no evidence that the timing of JH Kelly's supplemental disclosure, which occurred after the complaint was filed, was intended to interfere with or impair Freedom Foundation's request to inspect forms or the Freedom Foundation's complaint.

Alleged Failure to Allow Employees to Designate a Specific Dollar Amount of Deduction - Staff's investigation found an employee is not prohibited by RCW 42.17A.495 and WAC 390-17-100 from requesting a payroll deduction for political contributions based on a percentage of the employee's wages or salary. The sample form in WAC 390-17-100 includes a space for an employee to designate the dollar amount to be deducted per period/week/month/year, but neither the form nor the rule prohibits an employee from designating the dollar amount to be deducted as a percentage of wages or salary.

After a careful review of the alleged violations and relevant facts, PDC staff has concluded its investigation, and has resolved the complaint against JH Kelly. The complaint has been resolved through a Statement of Understanding and dismissal, as described below.

JH Kelly completed a Statement of Understanding (SOU) in accordance with WAC 390-37-142. JH Kelly: (1) acknowledged a violation of RCW 42.17A.495 and WAC 390-17-100 by deducting employees' wages for political contributions to Plumbers & Steamfitters Local 598 PAC (Local 598 PAC), the political committee operated by United Association of Plumbers and Pipefitters Local 598 (Local 598), without first obtaining authorizations that comply with RCW 42.17A.495 and WAC 390-17-100; (2) expressed an understanding that the Commission will not hold an adjudicative hearing in connection with the violation; and (3) paid a \$500 civil penalty. The \$500 penalty resolves this allegation. Staff believes this is the appropriate resolution considering all the facts and circumstances, including the mitigating factor that JH Kelly may not have immediately received the PDC's February 14, 2019 warning letter and JH Kelly's good-faith efforts to come into compliance after becoming aware of the PDC's February 14, 2019 warning letter.

Because staff's investigation found JH Kelly was still in the process of reviewing records when it initially produced documents, and when additional responsive records were identified, collected and supplemented its initial disclosure, I am dismissing the alleged violation of RCW 42.17A.495(4) in accordance with RCW 42.17A.755(1) and WAC 390-37-070.

Because staff's investigation found an employee is not prohibited by RCW 42.17A.495 and WAC 390-17-100 from requesting a payroll deduction for political contributions based on a percentage of the employee's wages or salary, meaning that a requested deduction based on a percentage of the employee's salary is permissible, I am dismissing that portion of the complaint in accordance with RCW 42.17A.755(1) and WAC 390-37-070.

If you have questions, you may contact Phil Stutzman, Compliance Officer, at 360-753-1111; toll-free at 877-601-2828; or by e-mail at pdcc@pdc.wa.gov.

Sincerely,

Electronically Signed Peter Frey Lavallee

Peter Frey Lavallee
Executive Director

cc: Vanessa Soriano Power, Counsel, JH Kelly, LLC
Craig Yabui, JH Kelly's Vice President and General Counsel