



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: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

February 26, 2021

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

Subject: Complaint regarding Apollo Mechanical Contractors (3), PDC Case 54746

Dear Mr. Nelsen:

Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received July 8, 2019, alleging Apollo Mechanical Contractors 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, in March-May 2019, Apollo deducted at least \$32,545.73 in contributions to Local 598 PAC without compliant authorization forms.

Your complaint also alleged the otherwise compliant Version Three dispatch/authorization form created by Local 598 PAC for Apollo violates 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 restricts 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 Apollo 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 Apollo'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 Apollo Mechanical Contractors, 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 July 18, 2019, Trey Bland, Operations Manager for Apollo, responded to the complaint, stating, during the February-March 2019 time frame, Apollo created and implemented Annual signature sheets for current employees titled, "*Annual Notification Concerning Withholding Funds for 598 PAC*." Following the February-March 2019 time frame, Apollo also created and implemented a PAC New Hire Authorization form titled, "*Hire-In Authorization to Withhold Funds for 598 PAC*" for newly hired employees who were dispatched to a work site by UA Local 598. The notification and new Version Three authorization form were developed to address the deficiencies in the Version One and Version Two authorization forms that did not include the required nondiscrimination and right to revoke at any time language.

Apollo asked all employees who were members of Local 598 and whose dispatch date was prior to January 1, 2019, to complete and sign the Annual Notification. Apollo also asked all employees who were members of Local 598 whose dispatch date was after December 31, 2018 who were still employed by Apollo in March 2019, and employees who were dispatched after December 31, 2018 but terminated their employment prior to March 2019, if they could be located, to complete and sign Apollo's "*Hire-In Authorization to Withhold Funds for 598 PAC*" form.

Apollo did not provide the Freedom Foundation with copies of the "*Hire-In Authorization to Withhold Funds for 598 PAC*" forms because Apollo understood the Freedom Foundation's initial and follow-up requests to be limited to requests to review the dispatch/authorization forms in Apollo's possession that had been generated by Local 598 during the March-May 2019 period. Apollo stated, for the names of Apollo employees identified by Freedom Foundation as contributors on Local 598 PAC's C-3 reports, Apollo had only three dispatch/authorization forms generated by Local 598, and those forms were provided to Mr. Nelsen. These forms were compliant, Version Three authorization forms. Even if Apollo had provided the Freedom Foundation with copies of the notifications sent to employees with on-going deductions for contributions to Local 598 PAC, the notifications would not have made the non-compliant authorizations compliant. Apollo is now using compliant Version Three authorization forms for employees authorizing deductions for political contributions.

Alleged Failure to Produce Records Upon Request - Staff's investigation found, although Apollo initially failed to produce all authorization forms requested, Apollo produced what they believed were all relevant records, and produced additional relevant forms upon discovery of their existence.

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 Apollo Mechanical Contractors. The complaint has been resolved through a Statement of Understanding and dismissal, as described below.

Apollo Mechanical Contractors completed a Statement of Understanding (SOU) in accordance with WAC 390-37-142. Apollo Mechanical Contractors: (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 Apollo's good-faith efforts to come into compliance after receiving the PDC's February 14, 2019 warning letter.

Because staff's investigation found Apollo produced what they believed were all relevant records, and produced additional relevant records when discovered, 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@pdcc.wa.gov.

Sincerely,

Electronically Signed Peter Frey Lavallee

Peter Frey Lavallee
Executive Director

cc: Trey Bland, Operations Manager, Apollo Mechanical Contractors