



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Apollo Mechanical Contractors (3)

Respondent.

PDC Case 54746

Report of Investigation

I. BACKGROUND

First Complaint

- 1.1 United Association of Plumbers and Pipefitters Local 598 (UA Local 598) operates Plumbers & Steamfitters Local 598 PAC (Local 598 PAC or UA 598 PAC), a political committee funded by voluntary payroll deductions of employees who are members of the union. Since 2014, over \$1.6 million has been withheld from the wages of employees of several employers, and contributed to Local 598 PAC.
- 1.2 On November 19, 2018, Maxford Nelsen, Director of Labor Policy, Freedom Foundation, filed a complaint with the Public Disclosure Commission (PDC) alleging 37 named respondents may have violated RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110 by: (1) failing to obtain a proper written request from employees before withholding wages or salaries for contributions to Plumbers & Steamfitters Local 598 PAC; and (2) failing to provide an annual notification to employees who have requested payroll deductions for political contributions of their right to withdraw their request at any time, and of the prohibition against discrimination for not contributing.
- 1.3 Two of the 37 respondents named in the complaint were United Association of Plumbers and Pipefitters Local 598, PDC Case 43672, and Plumbers & Steamfitters Local 598 PAC, PDC Case 43673. However, the statute and rules primarily apply to employers/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.
- 1.4 The remaining 35 respondents were employers/contractors whose employees made political contributions to the union's PAC through payroll deductions. The complaint alleged that two versions of the work dispatch forms in use at the time did not comply with the withholding authorization requirements of RCW 42.17A.495 and WAC 390-17-100.

- 1.5 The withholding authorization accepted by the employers/contractors was developed by the union, even though the employers/contractors have been, and continue to be, responsible when there are deficiencies in the authorization, and when the annual notification is deficient or not sent as required by statute and rule, informing the employee of their right to revoke their authorization at any time, and of the employee's protection against discrimination by both the union and the employer/contractor for not contributing to the union's PAC.
- 1.6 One of the 35 employers/contractors was Apollo Mechanical Contractors (Apollo), PDC Case 43676.
- 1.7 Staff's review of the November 19, 2018 complaint found the authorization form being accepted by the 35 employers/contractors did not conform to the requirements in RCW 42.17A.495 and WAC 390-17-100. Staff also found many of the employers/contractors had not been sending out the required annual notification to employees who have funds withheld for PAC contributions, as required by WAC 390-17-110.
- 1.8 In a letter sent February 14, 2019, PDC staff dismissed the complaint against the 35 employers/contractors even though staff found "the current authorization form being accepted by the 35 employers/contractors does not conform to the requirements in RCW 42.17A.495 and WAC 390-17-100." The dismissal letter included a formal written warning, and made it clear to the 35 employers/contractors, including Apollo Mechanical Contractors, that in the future, they 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. The February 14, 2019 letter made it clear that any revised authorization forms intended to correct the current deficiencies must have the following characteristics:
 - o The "Political Contribution Withholding Authorization" as it is described in WAC 390-17-100 should be a stand-alone form with its own signature. If the authorization is to be incorporated with additional information, it needs to have a separate section that clearly identifies it as a "Political Contribution Withholding Authorization." The authorization must be an "opt-in" system where the employee affirmatively requests to have wages or salaries withheld for political contributions. This means the authorization may not require the employee to "opt-out" in order to avoid making a political contribution.
 - o The authorization must either follow the suggested format provided in WAC 390-17-100, or include all of the required elements in WAC 390-17-100(2)(a) through (h), including a statement that the authorization may be revoked at any

time, and a statement informing the employee of the prohibition against employer and labor organization discrimination, including each element described in RCW 42.17A.495.

- 1.9 Staff informed the respondents, if the authorization form is different from the sample provided in WAC 390-17-100, it must include the language in WAC 390-17-100(2)(f) or an acceptable alternative statement. Staff stated, the language being suggested on behalf of the respondents of, *"I understand I have a right to refuse to so contribute without any reprisal"* is not an adequate substitute statement. Staff informed the respondents, the authorization must state, the prohibition against discrimination for failing to contribute to the union's PAC applies to both the employers/contractors and the union, and the authorization must describe or reference the three discrimination prohibitions found in RCW 42.17A.495(2) and WAC 390-17-100(2)(f).
- 1.10 Staff informed the respondents, WAC 390-17-110 states, "the written notification shall identify where the employee can submit the revocation, which shall be the name and address of the employer's contact, or the name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries." Staff also reminded the respondents of the "Written notification" distribution requirements in WAC 390-17-110(3) and the requirement in subsection (4) for the employer to maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.
- 1.11 Staff reminded the employers/contractors, including Apollo Mechanical Contractors, they need to understand and comply with their responsibility to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution; (2) provide a proper annual notification to employees making political contributions through payroll deductions; and (3) maintain the required records related to the written authorizations and annual notifications.
- 1.12 The respondents stated they would ensure staff's suggested changes were incorporated into the written authorization form, and a proper annual notification would be sent to employees making PAC contributions through payroll deductions. United Association of Plumbers and Pipefitters Local 598 stated they would make staff's suggested changes to the written authorization form, would send the annual notification on behalf of the employers/contractors, and would provide a copy of the annual notifications sent, to the respective employers.
- 1.13 Based on its findings, staff determined, for the complaint filed in the instance described above, no evidence supported a finding of an actual violation warranting further investigation concerning the alleged failure of United Association of Plumbers and Pipefitters Local 598, PDC Case 43672, and Plumbers & Steamfitters Local 598 PAC, PDC Case 43673, to comply with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110.

- 1.14 Based on its findings, staff determined, for the complaint filed November 19, 2018, the failure of the 35 employers/contractors to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution; and (2) provide a proper annual notification to employees making political contributions through payroll deductions did not amount to an actual violation warranting further investigation.
- 1.15 On February 14, 2019, pursuant to WAC 390-37-060(1)(b), the 35 employers/contractors, including Apollo Mechanical Contractors, received a formal written warning concerning: (1) their failure to obtain a proper written request from employees before withholding wages or salaries for contributions to Plumbers & Steamfitters Local 598 PAC; and (2) their failure to provide an annual notification to employees who have requested payroll deductions for political contributions, of their right to withdraw their request at any time, and of the prohibition against discrimination by the employer and the union for not contributing. The formal written warning included staff's expectation that the 35 employers/contractors would fully comply with RCW 42.17A.495, WAC 390-17-100, and WAC 390-17-110 in the future. Staff stated the Commission would consider the formal written warning in deciding on further Commission action if there were future violations of PDC laws or rules. Based on this information, the PDC found no further action was warranted and dismissed the matter in accordance with RCW 42.17A.755(1).

Second Complaint

- 1.16 According to Maxford Nelsen, based on C-3 reports filed with the PDC, in January 2019, Plumbers & Steamfitters Local 598 PAC reported receiving \$39,916.45 from about 600 individuals. In February, the PAC received \$39,571.99 in contributions from about 650 individuals. In March, the first full month after the PDC issued its February 14, 2019 warning letter, the PAC reported receiving \$49,593.69 in contributions from about 730 individuals. In April 2019, UA 598's PAC disclosed receiving \$43,098.41 in contributions from about 780 individuals.
- 1.17 According to Mr. Nelsen, based on this information, the Freedom Foundation asked UA 598 to provide it an opportunity 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," in accordance with RCW 42.17A.495(4). He said the Foundation was permitted to inspect records at the union's headquarters in Pasco on May 8, 2019.
- 1.18 Mr. Nelsen said the Freedom Foundation's inspection revealed the union possessed only 13 legally valid dispatch forms and continued to receive contributions to its PAC from hundreds of employees based on invalid authorizations.

- 1.19 On May 21, 2019, based on this information, Mr. Nelsen filed a second complaint, alleging 19 employers, including Apollo Mechanical Contractors, had continued to violate RCW 42.17A.495 and WAC 390-17-100, after receiving the February 14, 2019 dismissal and warning letter from the PDC by deducting contributions to UA 598 PAC from employees' wages, without proper authorization.
- 1.20 On June 3, 2019, the PDC dismissed these cases, including the complaint against Apollo Mechanical Contractors, Case 51803, pursuant to RCW 42.17A.755(1). In a case closure letter to Apollo Mechanical Contractors, the PDC noted:
- "The PDC's action was taken because Freedom Foundation did not submit evidence of violations based on direct contact with individual employers/contractors."
 - "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... [E]mployers/contractors remain responsible for direct compliance with the law and rules even if the union or its political committee provides records to a requester."
 - "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."

II. ALLEGATIONS IN COMPLAINT

Current Compliant

- 2.1 On July 8, 2019, Maxford Nelsen, Director of Labor Policy, Freedom Foundation, filed a complaint with the Public Disclosure Commission, alleging Apollo Mechanical Contractors was in violation of RCW 42.17A.495 and WAC 390-17-100 by continuing to deduct 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 that comply with RCW 42.17A.495 and WAC 390-17-100. **(Exhibit 1)**
- 2.2 The complaint states, despite receiving a warning letter from the PDC on February 14, 2019 informing the firm none of the existing employee authorizations were compliant, and receiving a *second* letter from the PDC on June 3, 2019 encouraging it to "consult with your legal counsel to ensure you are fully compliant with RCW 42.17A.495," Apollo has continued to deduct political contributions to UA 598's PAC from hundreds of its employees

without first obtaining authorizations that comply with RCW 42.17A.495(3) and WAC 390-17-100.

- 2.3 The complaint alleged, from March-May 2019, Apollo withheld at least \$32,545.73 from hundreds of its employees' wages for Local 598 PAC, but was unable to produce *any* PAC deduction authorization forms for all but three of its employees. The complaint alleged all other deductions were made in violation of RCW 42.17A.495(3) and WAC 390-17-100, and even the three signed authorizations did not fully comply with the law, as they artificially restricted employees' ability to choose how much to contribute to the PAC.
- 2.4 Mr. Nelsen alleged the authorization forms violate WAC 390-17-100 by failing to permit the employee to designate the amount of the contribution to be withheld from their wages. He alleged the authorization forms impermissibly restrict employees' ability to choose how much to contribute to the PAC by requiring employees to agree to have 0.7 percent of their wages deducted for PAC contributions, even though the template form set forth in WAC 390-17-100 permits the employee to designate the specific dollar amount they wish to contribute.

II. FINDINGS

Alleged failure to obtain written authorizations from employees, before withholding wages or salaries, during the period March, April, and May 2019, that fully comply with RCW 42.17A.495 and WAC 390-17-100. Also, an alleged failure to allow the employee to designate the total dollar amount per pay period (or per week, month or year) to be deducted for contributions to Plumbers & Steamfitters Local 598 PAC, the political committee of United Association of Plumbers and Pipefitters Local 598, by precluding employees from designating an amount other than the suggested PAC contribution of 0.70% (0.0070) of wages.

Findings Based on Freedom Foundation Compliant

- 3.1 On June 6, 2019, Freedom Foundation, through Maxford Nelsen, requested to inspect the dispatch/authorization forms for employees of Apollo Mechanical Contractors who were reported as contributing to Local 598 PAC through payroll deductions during March, April and/or May 2019. Mr. Nelsen provided Apollo with a list of employees reported as contributing to Local 598 PAC during the requested period. He asked to inspect the authorization forms by June 28, 2019.
- 3.2 On June 27, 2019, Apollo payroll clerk Autumn Chamberlain emailed Freedom Foundation two PDF files containing 190 pages of documents. Autumn Chamberlain sent a copy of the email to Apollo employee Sharon Houser. Freedom Foundation stated its review of the documents found most dispatch/authorization forms consisted of signed statements by various Apollo employees acknowledging they had been provided with an annual notice of their right to stop PAC contributions through payroll deductions. The annual notice is required by RCW 42.17A.495 and WAC 390-17-110. The documents also included several

written requests by Apollo employees to cancel payroll deductions for PAC contributions. Mr. Nelsen said he found only three dispatch/authorization forms, and all three were compliant, version three authorization forms, although he alleged the three otherwise compliant forms did not allow the employee to designate the total dollar amount per pay period (or per week, month or year) to be deducted for contributions to Local 598 PAC. **(Exhibit 1, page 6)**

3.3 On June 28, 2019, after reviewing the documents, Mr. Nelsen emailed Ms. Chamberlain and Ms. Houser to confirm Apollo had no other dispatch forms in its possession authorizing March-May PAC deductions.

3.4 On June 28, 2019, Ms. Houser confirmed the three dispatch forms provided to Mr. Nelsen were the only forms in Apollo's possession that had been generated by Local 598 during the March-May 2019 period. The Freedom Foundation identified 384 employees as having made contributions to Local 598 PAC through a payroll deduction during the March-May 2019 period. The employees making contributions, other than the three identified by Ms. Houser as having signed compliant version three authorizations, signed non-compliant version one or version two authorization forms, and were provided a notification containing the required non-discrimination and right to revoke at any time language.

3.5 On July 8, 2019, Maxford Nelsen filed a complaint with the Public Disclosure Commission, alleging Apollo Mechanical Contractors was in violation of RCW 42.17A.495 and WAC 390-17-100.

3.6 The Freedom Foundation stated, in March-May 2019, Apollo deducted at least \$32,545.73 in contributions to Local 598 PAC without any authorization. This statement was made because Apollo provided only three authorization forms for the March-May 2019 period. Apollo acknowledged it had only three Version three, compliant authorization forms for the March-May 2019 period, but noted the remainder of the contributions were made pursuant to non-compliant Version one and Version two authorization forms that were supplemented with signature sheets titled, "*Annual Notification Concerning Withholding Funds for 598 PAC*" notifications which included the required non-discrimination and right to revoke language.

Findings Based on Response Provided by Trey Bland, Apollo Operations Manager

3.7 On July 18, 2019, Trey Bland, Operations Manager for Apollo, responded to the complaint. Trey Bland stated, 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 are dispatched to a work site by UA Local 598. The response also included pages 3 and 4 of a document titled, "UA Local 598 Contract, Effective 6/1/18-5/31/23." **(Exhibit 2)**

- 3.8 The *Annual Notification Concerning Withholding Funds for 598 PAC* form created by Apollo for employees who were members of Local 598 and whose dispatch date was prior to January 1, 2019 gives employees wishing to discontinue the voluntary contribution to Local 598 PAC the option to discontinue.
- 3.9 Trey Bland said, 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, and return it to payroll by March 31, 2019. Copies of the signed, Annual Notifications were forwarded to Mr. Nelsen on June 27, 2019. Mr. Nelsen did not consider the signed, Annual Notifications to be compliant employee authorizations, and did not include these forms in his count of compliant authorization forms.
- 3.10 Trey Bland said Apollo 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. This form was created by Apollo, and is similar to the dispatch/authorization form created by Local 598 for its members to sign when dispatched to a work site.
- 3.11 Trey Bland said these *"Hire-In Authorization to Withhold Funds for 598 PAC"* forms were not given to Mr. Nelsen because Apollo understood Mr. Nelsen's request to be limited to a request to review the dispatch/authorization forms generated by Local 598, in Apollo's possession. Trey Bland said he did not understand the scope of Mr. Nelsen's request, or the follow-up request made on June 28, 2019, to also include copies of the *"Hire-In Authorization to Withhold Funds for 598 PAC"* form created and implemented by Apollo to address the issues identified in the first and second complaints filed by Freedom Foundation.
- 3.12 Trey Bland said, the Local 598 Dispatch form is generated and solely controlled by Local 598. Trey Bland said, 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 identified on pages 55, 59, and 68 of the documents Apollo provided to Mr. Nelsen.
- 3.13 Finally, Trey Bland stated, it is Apollo's intent to conform with all Washington State laws and rules. Trey Bland said, Apollo believes it has done its due diligence on this subject, and asked for help if the PDC believes Apollo has not, so Apollo can put this issue to rest.

Supplement to Complaint Based on Apollo's Response to Complaint:

- 3.14 On August 7, 2019, Maxford Nelsen supplemented the Freedom Foundation's complaint based on Apollo's response to the July 8, 2019 complaint. Mr. Nelsen said he was correcting the record by stating, in his original request to Apollo he sought *"PAC deduction authorization forms"* and made no mention of or reference to receiving only *"dispatch forms"*

in use by UA Local 598.” Mr. Nelsen said 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. Mr. Nelsen noted, 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. **(Exhibit 3)**

3.15 Mr. Nelsen stated that Apollo’s response to the complaint does not shed light on how many employees, if any, have signed the “*PAC deduction authorization form*” it developed and whether the deductions Apollo made from employees’ wages during the March-May 2019 period had signed authorization forms prior to the deductions being made from their wages.

3.16 Mr. Nelsen also said Apollo has not stated whether it ceased deducting PAC contributions from the wages of employees hired before January 1, 2019, who signed Apollo’s Annual Notification form, but had not signed Apollo’s new “*Authorization to Withhold Funds for 598 PAC*” form.

Additional Response by Apollo Mechanical Contractors (9/21/2020)

3.17 On September 21, 2020, Trey Bland responded to staff’s additional questions. **(Exhibits 4-9)**

- **Exhibit 4** is a 5-page response to staff’s follow-up questions. Apollo’s answers are in red type.
- **Exhibit 5** is Attachment A to Apollo’s 9/21/20 response to staff’s follow-up questions. It is Apollo’s “Annual Notification Concerning Withholding Funds for 598 PAC” form, revised to inform employees to send notices revoking future PAC contributions to Apollo rather than to Local 598, as required by WAC 390-17-110(2), and provides Apollo’s mailing address. This version of the Annual Notification was used in 2020.
- **Exhibit 6** is Attachment B to Apollo’s 9/21/20 response to staff’s follow-up questions. It is Apollo’s revised “Hire-in Authorization to Withhold Funds For 598 PAC” used by Apollo starting September 17, 2020. The form states WAC 390-17-100 addresses withholding provisions as they relate to PAC funds, but then quotes language from WAC 390-17-110(1)(a) about the requirement to provide an annual notice of the nondiscriminatory provisions of RCW 42.17A.495(2). Attachment B was corrected by Attachment C.
- **Exhibit 7** is Attachment C to Apollo’s 9/21/20 response to staff’s follow-up questions. It is Apollo’s revision of Attachment B, Apollo’s “Hire-in Authorization to Withhold Funds For 598 PAC.” The revised form now correctly cites WAC 390-17-100(2)(f) rather than WAC 390-17-110(1)(a), as the reference to the employer’s

responsibility to provide an annual notification to employees about the non-discrimination protection for employees not making PAC contributions through payroll deductions. The Attachment C version of the form will be used on a going-forward basis.

- **Exhibit 8** is Attachment D to Apollo's 9/21/20 response to staff's follow-up questions. It is Apollo's "Annual Notification Concerning Withholding Funds for 598 PAC" form that was used before revisions were incorporated into the form to create the Attachment A version of the form. This version of the Annual Notification was used in 2019.
- **Exhibit 9** is Attachment F to Apollo's 9/21/20 response to staff's follow-up questions. It is the Dispatch form used by Local 598 when dispatching union members to Apollo's work site.

3.18 With Attachment A to Apollo's 9/21/20 response to staff's follow-up questions, Apollo updated its "Annual Notification Concerning Withholding Funds for 598 PAC" form to inform employees who want to revoke PAC contributions made through payroll deductions, to send their revocation notice to Apollo rather than to Local 598. The revised Annual Notification form provided Apollo's mailing address. The prior version of the form provided the union's address for sending the revocation notice. WAC 390-17-110(2) requires revocation notices to be sent to the employer's address. **(Exhibit 5)**

3.19 With Attachment B to Apollo's 9/21/20 response to staff's follow-up questions, Apollo updated its "Hire-in Authorization to Withhold Funds for 598 PAC" form, effective September 17, 2020. The revised Hire-in Authorization form states WAC 390-17-100 addresses withholding provisions as they relate to PAC funds, but then quotes language from WAC 390-17-110(1)(a) about the requirement to provide an annual notice of the nondiscriminatory provisions of RCW 42.17A.495(2). Attachment B was corrected by Attachment C, which will be used for future Local 598 new hires. **(Exhibit 6)**

3.20 With Attachment C to Apollo's 9/21/20 response to staff's follow-up questions, Apollo updated its Attachment B version of its "Hire-in Authorization to Withhold Funds for 598 PAC" form. The revised form now correctly cites WAC 390-17-100(2)(f) rather than WAC 390-17-110(1)(a), as the reference to the employer's responsibility to provide an annual notification to employees about the non-discrimination protection for employees not making PAC contributions through payroll deductions. The Attachment C version of the form will be used for future Local 598 new hires. **(Exhibit 7)**

3.21 In March and June 2019, Apollo sent the required 2019 Annual Notifications to employees making PAC contributions through payroll deductions, in accordance with WAC 390-17-110. Apollo sent the same required notice in January and September 2020, using the Attachment A **(Exhibit 5)** version of the Annual Notification for the September 2020 notification.

- 3.22 Apollo has in its possession a copy of the Annual Notification and a list of employees notified, and will maintain this information for a period of no less than five years, in accordance with WAC 390-17-110(4),
- 3.23 Apollo acknowledged it had only three dispatch forms generated by Local 598 for the 384 employee names identified by Mr. Nelsen as Apollo employees contributing to Local 598 PAC in March, April and/or May 2019. Apollo stated they produced only three dispatch/authorization forms for the employee's listed as contributors to Local 598 because they understood Mr. Nelsen's request to be for a specific time period, for new hire dispatch/authorization forms generated by Local 598, and during the period March-May 2019, Apollo hired only three employees from Local 598.
- 3.24 When Mr. Nelsen made his request for Apollo's Authorization forms on June 6, 2019, Apollo had Dispatch/Authorization forms from Local 598 for all employees making PAC contributions through payroll deductions, but they were non-compliant with RCW 42.17A.495 and WAC 390-17-100. As of June 6, 2019, Apollo had signed copies of its annual Notification for those same employees, Attachment D (**Exhibit 8**), which contained the non-discrimination and right to revoke language, but did not have compliant Authorization forms for the employees identified by Mr. Nelsen. Apollo sent the Attachment D (**Exhibit 8**) version of the Annual Notifications to Mr. Nelsen on June 27, 2019, which Mr. Nelsen identified as non-responsive because they were not compliant Authorization forms.
- 3.25 No employees dispatched after December 31, 2018, who were still employed in March 2019, nor employees terminated before March 2019 who Apollo was able to contact, signed Apollo's "*Hire-In Authorization to Withhold Funds for 598 PAC*" form for PAC contributions made during the March-May 2019 time period, prior to the PAC contributions being withheld. (i.e. Apollo had no compliant, signed and dated *Hire-In Authorizations* in its possession when Mr. Nelsen made his request for Dispatch/Authorization forms on June 6, 2019.)
- 3.26 Trey Bland stated Apollo had only "*Annual Notification Concerning Withholding Funds for 598 PAC*" (Attachment D) (**Exhibit 8**) forms signed through March 2019. He said, through the March-May timeframe Apollo also had only "*Annual Notification Concerning Withholding Funds for 598 PAC*" (Attachment D) (**Exhibit 8**) signed forms. Those forms were emailed to PDC staff on July 19, 2019. The *Hire-In Authorizations* (Attachment C) (**Exhibit 7**) were not used by Apollo until July 2019.
- 3.27 Mr. Bland stated, the "*Hire-In Authorization to Withhold Funds for 598 PAC*" forms were signed and dated after wages were withheld for contributions to Local 598 PAC during the March-May 2019 time-period. WAC 390-17-100(1) requires employers to have a compliant authorization on file before withholding wages for political contributions.
- 3.28 A copy of the current Local 598 Dispatch/Authorization form being used by Local 598 when dispatching union members to Apollo's work site was provided as Attachment F

(**Exhibit 9**) to Apollo's 9/21/20 response to staff's follow-up questions. Apollo has no authority over this form, but maintains a copy of all Local 598 signed Dispatch/Authorization forms.

3.29 Apollo uses its own "*Hire-In Authorization to Withhold Funds for 598 PAC*" form for all new hires, as follows: (Attachment B) (**Exhibit 6**) as of 9/17/2020; and (Attachment C) (**Exhibit 7**) from 7/1/2019 through 9/16/2020).

3.30 Currently, all "*Hire-In Authorization to Withhold Funds for 598 PAC*" forms are signed and dated before wages are withheld for contributions to Local 598 PAC.

3.31 For employees whose dispatch date was prior to January 1, 2019, and who signed Apollo's "*Annual Notification Concerning Withholding Funds for 598 PAC*" in March 2019, Apollo did not initially have these employees sign and date Apollo's "*Hire-In Authorization to Withhold Funds for 598 PAC*" form. Mr. Bland said Apollo is in the process of getting the revised "*Hire-In Authorization to Withhold Funds for 598 PAC*" (Attachment B) (**Exhibit 6**) signed by all current 598 employees. He said, once this has been completed, Apollo will have a compliant Authorization form on file for all current employees. He said Apollo hopes to have this process completed by 10/1/2020. The remaining documentation for compliant Authorization forms for the 117 affected employees was accomplished October 1, 2020.

3.32 Apollo has now obtained compliant version three authorization forms for all employees continuing to make political contributions through payroll deduction.

Alleged failure to allow employees to designate the total dollar amount for contributions to Local 598 PAC through payroll deductions by only providing the option of the suggested PAC contribution of 0.70% of wages

3.33 Staff reviewed the allegation that forms allowing an employee to designate a percentage of wages or salary to be deducted for political contributions, rather than a specific dollar amount, are prohibited by WAC 390-17-100. Staff reviewed the complainant's position that wording in WAC 390-17-100(2)(d), concerning what must be included in forms used for contributions to multiple recipients, applies equally to a contribution to one recipient, and the request for contributions must be expressed in dollars rather than in a percentage of wages or salary. The relevant language in WAC 390-17-100(2)(d), concerning deductions for contributions to more than one recipient, states, in part, that a form for payroll deduction must provide the following information: "... *If more than one political committee or candidate is specified, the total dollar amount per pay period (or per week, month or year) to be withheld for each committee or candidate...*". The complainant's position is also based on wording in the sample Political Contribution Withholding Authorization form displayed in WAC 390-17-100, which includes a space for indicating the dollar amount of a contribution for each recipient when an employee's deduction will be distributed to more than one recipient.

- 3.34 Staff found no evidence that the law prohibits employees from requesting a payroll deduction for political contributions based on a percentage of 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 as a percentage of wages or salary.

Initial Hearing (Case Status Review)

- 3.35 On September 13, 2019, PDC staff held an Initial Hearing (Case Status Review) for Apollo Mechanical Contractors (3), Case 54746, and opened a formal investigation.

III. SCOPE

- 4.1 PDC staff reviewed the complaint, the response to the complaint, a complaint supplement filed after the response was received, and an additional response following receipt of the complaint supplement. In addition, staff reviewed two previous complaints of a similar nature, dismissed by staff, one with a formal written warning, and one for a lack of evidence concerning the activities of the Respondent.

IV. LAW

RCW 42.17A.495, WAC 390-17-100 and WAC 390-17-110 state, 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 stating, "No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee."

The employee may revoke the request at any time, and at least annually, by June 30 of each year, employees from whom funds are being withheld for contributions to a candidate or political committee shall be notified, in writing, of the nondiscriminatory provisions, and of each employee's right to revoke the authorization at any time.

In addition, employers and other persons who withhold or divert wages or salaries must: (1) maintain the completed forms for as long as the withholding or diversion continues; (2) keep the forms and other documents open for public inspection for three years after the last disbursement of wages or salaries; and (3) maintain a copy of the annual notification and a listing of employees notified for a period of no less than five years.

Respectfully submitted this 21st day of December 2020.

Electronically Signed Philip E. Stutzman

Philip E. Stutzman
Compliance Officer

EXHIBIT LIST

- Exhibit 1** Complaint filed July 8, 2019
- Exhibit 2** Response to Complaint filed July 19, 2019
- Exhibit 3** Complaint Supplement filed August 7, 2019
- Exhibit 4** Five-page Response to Staff's Follow-up Questions, Received 9/21/20, with Apollo's answers are in red type
- Exhibit 5** Attachment A to Apollo's 9/21/20 response to staff's follow-up questions
- Exhibit 6** Attachment B to Apollo's 9/21/20 response to staff's follow-up questions
- Exhibit 7** Attachment C to Apollo's response to staff's 9/21/20 follow-up questions
- Exhibit 8** Attachment D to Apollo's response to staff's 9/21/20 follow-up questions
- Exhibit 9** Attachment F to Apollo's response to staff's 9/21/20 follow-up questions

July 8, 2019

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

Public Disclosure Commission Staff,

Unfortunately, I write for the third time in less than a year to bring to your attention continued illegal political deductions from the wages of certain employees of Apollo Mechanical Contractors (“Apollo”)¹ represented by the United Association of Plumbers and Pipefitters Local 598 (“UA 598”).

In short, Apollo is violating RCW 42.17A.495 and WAC 390-17-100 by deducting political contributions from employees’ wages for the political action committee (“PAC”) operated by UA 598 without first receiving proper authorization.

Even though the Public Disclosure Commission (“PDC”) issued a warning letter to Apollo on February 14, 2019, informing the firm that none of the existing employee authorizations were valid, Apollo continues to divert employee wages to the PAC without legal authorization.

From March-May 2019, Apollo withheld at least \$32,545.73 from hundreds of its employees’ wages for UA 598’s PAC. However, Apollo was unable to produce *any* PAC deduction authorization forms for all but three of its employees. All other deductions were made in violation of RCW 42.17A.495(3) and WAC 390-17-100. Moreover, even the three signed authorizations did not fully comply with the law, as they artificially restricted employees’ ability to choose how much to contribute to the PAC.

Background

1. The First Complaint

UA 598 maintains and operates a political committee, as defined by RCW 42.17A.005(40), called the Plumbers & Steamfitters Local 598 PAC. *See Appendix page 2*, the PAC’s most recent form C1PC. The PAC is funded by contributions taken via payroll deduction from the wages of UA 598 members. Since 2014, over \$1.6 million has been withheld from employees’ wages and contributed to the PAC.

¹ Respondent’s contact information: Apollo Mechanical Contractors, 1201 W. Columbia Drive, Kennewick, WA, 99336. Trey Bland, operations manager: trey.bland@apollomech.com. Autumn Chamberlin, payroll clerk: autumn.chamberlin@apollomech.com. Sharon Houser (payroll/HR?): sharon.houser@apollomech.com.

UA 598 PAC Contributions	
Year	Amount
2014	\$235,749.56
2015	\$291,591.92
2016	\$296,377.64
2017	\$263,422.60
2018	\$281,129.98
2019	\$269,951.50
Total	\$1,638,223.20

Although it is not the employer, UA 598 develops the terms of “dispatch forms” that employers, including Apollo, use. The employees UA 598 represents must sign these “dispatch forms” before being assigned to work a particular job for a particular contractor.² The dispatch forms include authorization for the employer to deduct both union dues and PAC contributions.

UA 598 has utilized at least three versions of its dispatch forms during the five-year statute of limitations established by RCW 42.17A.770.

The terms of the **first version** of the dispatch form in use prior to October 2018 provided:

“I authorize the Employer to withhold and to pay working dues on my behalf at the current rate of 3%, IAP at 2.25%, and PAC at 0.7% of my 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.”

From October 2018 through March 2019, UA 598 used a **second version** of its dispatch form that provided:

“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. 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, 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

² The Public Disclosure Commission’s notice of resolution in Case No. 43676 found that, “[t]he withholding authorization accepted by the employer/contractors was developed by the union (United Association of Plumbers and Pipefitters Local 598), even though the employer/contractors have been and continue to be responsible when there are deficiencies in the authorization...” See **App. 3-9**, the PDC’s combined case closure letter.

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. 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. 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.”

Around March 2019, UA 598 developed a **third version** of its dispatch form providing:

“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 and state races as deemed necessary by PAC leadership. I understand that I have a right to refuse to so contribute without 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.”

On November 19, 2018, the Freedom Foundation filed a complaint with the PDC against UA 598, its PAC and the 35 employers that had deducted PAC contributions from the wages of UA 598-represented employees in October 2018, including Apollo. The PDC assigned a unique case number to each of the 37 respondents.³

The complaint alleged, among other things, that the first and second versions of UA 598’s

³ PDC case numbers: 43672, 43673, 43675, **43676** (Apollo), 43677, 43678, 43679, 43680, 43681, 43682, 43683, 43684, 43685, 43686, 43687, 43688, 43689, 43690, 43691, 43692, 43693, 43694, 43695, 43696, 43697, 43698, 43699, 43700, 43701, 43702, 43703, 43704, 43705, 43706, 43707, 43708, and 43709.

dispatch forms in use at the time did not comply with RCW 42.17A.495(3), which provides:

“No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The employee may revoke the request at any time. At least annually, the employee shall be notified about the right to revoke the request.”

Similarly, the complaint alleged the forms were out of compliance with WAC 390-17-100, which states:

- “(1) 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:
- (a) The purpose of making one or more contributions to any political committee required to report pursuant to RCW 42.17A.205, 42.17A.215, 42.17A.225, 42.17A.235 or 42.17A.240; or
 - (b) Use, specifically designated by the contributing employee, for political contributions to candidates for state or local office.
- (2) Forms used for payroll deduction may either conform to the suggested format below or be in a different format including an electronic format if it provides 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 (or per week, month or year) 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’; or a statement that informs the employee of the prohibition against employer and labor organization discrimination described in RCW 42.17A.495;
 - (g) The individual's signature or other reliable and secure verification that the individual is authorizing the withholding or diversion; and
 - (h) The date on which the form was completed.”

In its notice of resolution issued February 14, 2019, the PDC found that, “the current

authorization form being accepted by the 35 employer/contractors [first version above] does not conform to the requirements in RCW 42.17A.495 and WAC 390-17-100.”

In a warning letter, the PDC,

“...reminded the employer/contractor respondents that they need to understand and comply with their responsibility to: (1) receive a proper authorization before withholding wages or salaries for a PAC contribution...” (Emphasis added)

Finally, the warning letter concluded that,

“...the current revised authorization [second version above] that includes a statement that the 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 is not acceptable, and [] the ‘Political Contribution Withholding Authorization’ form must inform the employee that their request may be revoked at any time.” (Emphasis added)

See App. 3-9.

2. The Second Complaint

Nonetheless, in January 2019, the PAC reported receiving \$39,916.45 from about 600 individuals. In February, the PAC received \$39,571.99 in contributions from about 650 individuals. In March, the first full month after the PDC issued its warning letter, the PAC reported receiving \$49,593.69 in contributions from about 730 individuals. And in April 2019, UA 598’s PAC disclosed receiving \$43,098.41 in contributions from about 780 individuals. *See App. 10-411*, the PAC’s forms C3 filed in 2019.

In other words, the PDC’s invalidation of UA 598’s PAC deduction authorization forms had no discernable effect on the PAC’s contribution rate, which is curious to say the least.

Accordingly, the Freedom Foundation requested that UA 598 provide it an opportunity 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,” in accordance with RCW 42.17A.495(4). The Foundation was permitted to inspect records at the union’s headquarters in Pasco on May 8, 2019.

The Freedom Foundation’s inspection revealed the union possessed only 13 legally valid dispatch forms and continued to receive contributions to its PAC from hundreds of employees on the basis of invalid authorizations.

Consequently, in a second complaint filed with the PDC on May 21, 2019, the Freedom Foundation alleged that 19 employers, including Apollo, had violated RCW 42.17A.495 and WAC 390-17-100 by deducting contributions to UA 598’s PAC from employees’ wages without

proper authorization. The PDC assigned a unique case number to 18 of the 19 respondents.⁴

On June 3, 2019, the PDC purported to dismiss the cases under RCW 42.17A.755(1). In a case closure letter to Apollo, the PDC noted:

- “The PDC’s action was taken because Freedom Foundation did not submit evidence of violations based on direct contact with individual employers/contractors.”
- “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... [E]mployers/contractors remain responsible for direct compliance with the law and rules even if the union or its political committee provides records to a requester.”
- “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.”

See **App. 412-417**, the PDC’s dismissal letter.

3. The Present Complaint

On June 6, 2019, the Freedom Foundation sent a letter to Apollo via email and USPS certified mail requesting an opportunity to inspect, in accordance with RCW 42.17A.495(4), the authorization forms of those Apollo employees listed as contributors to UA 598’s PAC in March, April and/or May 2019 on the PAC’s C3 forms. The letter requested to be provided such an opportunity on or prior to June 28, 2019. See **App. 418-426**, the Freedom Foundation’s letter to Apollo.

On June 27, 2019, Apollo payroll clerk Autumn Chamberlin emailed the Freedom Foundation two PDF files containing 190 pages of documents, copying Apollo employee Sharon Houser. See **App. 427-432**, the emails exchanged between Ms. Chamberlin, Ms. Houser and Maxford Nelsen.

The Freedom Foundation’s review of the documents found that most were signed statements by various Apollo employees acknowledging they had been provided with an annual notice of their right to cease contributing to UA 598’s PAC via payroll deduction. Such notices are required by RCW 42.17A.495(3) and by WAC 390-17-110. The documents also contained several written requests by employees to cancel PAC deductions from their wages.

However, *only three dispatch forms were provided authorizing the PAC deductions in the first place*. All were signed, version three forms. See **App. 433-438**, a summary of the dispatch forms provided by Apollo, and **App. 439-628**, the documents provided by Apollo.

⁴ PDC case numbers: 51802, **51803** (Apollo), 51804, 51805, 51806, 51807, 51808, 51809, 51810, 51811, 51812, 51813, 51814, 51815, 51816, 51817, 51818, and 51819. No case number was assigned regarding the allegations against Critical Path Resources.

On June 28, 2019, after reviewing the documents, I emailed Ms. Chamberlin and Ms. Houser to confirm that Apollo had no other dispatch forms in its possession authorizing the March-May PAC deductions. Ms. Houser replied that the three dispatch forms provided were the only ones in Apollo's possession. *See App. 429.*

Allegations

1. Deduction of PAC contributions from employees' wages without legal authorization.

Despite receiving a warning letter from the PDC on February 14, 2019 and receiving a *second* letter from the PDC on June 3, 2019 encouraging it to "consult with your legal counsel to ensure you are fully compliant with RCW 42.17A.495," Apollo has continued to deduct political contributions to UA 598's PAC from hundreds of its employees without first obtaining authorizations that comply with RCW 42.17A.495(3) and WAC 390-17-100. In March-May 2019 alone, it deducted at least \$32,545.73 in contributions to the union's PAC from employee wages without any authorization.

2. The version three dispatch forms generated by UA 598 and utilized by Apollo do not permit employees to choose the amount of their contribution(s).

UA 598's version three dispatch forms in use by Apollo also violate WAC 390-17-100 by failing to permit the employee to designate the amount of the contribution to be withheld from their wages. Instead, the dispatch forms require employees to agree to have 0.7 percent of their wages deducted for PAC contributions. However, the template form set forth in WAC 390-17-100 permits the employee to designate the specific dollar amount he or she wishes to contribute.

Enforcement Options

RCW 42.17A.755(1) provides that, when presented with a citizen complaint, the PDC "must" either: (1) dismiss it or otherwise resolve it as a remedial or technical violation; (2) initiate an investigation, conduct hearings and take enforcement action; or, (3) refer the complaint to the attorney general.

1. The PDC should not dismiss the complaint as the allegations are not "obviously unfounded or frivolous."

WAC 390-37-005(2)(a) and WAC 390-37-060 provide the PDC may dismiss a complaint if it is "obviously unfounded or frivolous, or outside of the PDC's jurisdiction."

There should be no disputing the PDC's jurisdiction over the present complaint against Apollo, as a matter of law. Similarly, there should be no disputing the supporting documentation, given that it came directly from UA 598 and Apollo. By withholding political contributions from employees' wages without any legal authorization, Apollo's actions directly and obviously contradict RCW 42.17A.495. The complaint is not "obviously unfounded or frivolous."

2. The allegations against Apollo involve “actual violations,” not “remedial violations” or “requests for technical correction.”

RCW 42.17A.005(2) defines an “actual violation” as one “that is not a remedial violation or technical correction.” Thus, violations are considered “actual violations” by default unless they meet the criteria to be considered lesser “remedial” or “technical” violations. Since Apollo’s deduction of PAC contributions from its employees’ wages without legal authorization involves neither “remedial violations” nor “technical corrections,” it involves, by definition, “actual violations.”

a. Apollo’s violations were not “remedial.”

As defined by RCW 42.17A.005(45), a “remedial violation” is one that meets *all* the following criteria:

- “(a) Involved expenditures totaling no more than the contribution limits set out under RCW 42.17A.405(2) per election, or one thousand dollars if there is no statutory limit;
- (b) Occurred:
 - (i) More than thirty days before an election, where the commission entered into an agreement to resolve the matter; or
 - (ii) At any time where the violation did not constitute a material violation because it was inadvertent and minor or otherwise has been cured and, after consideration of all the circumstances, further proceedings would not serve the purposes of this chapter;
- (c) Does not materially affect the public interest, beyond the harm to the policy of this chapter inherent in any violation; and
- (d) Involved:
 - (i) A person who:
 - (A) Took corrective action within five business days after the commission first notified the person of noncompliance, or where the commission did not provide notice and filed a required report within twenty-one days after the report was due to be filed; and
 - (B) Substantially met the filing deadline for all other required reports within the immediately preceding twelve-month period; or
 - (ii) A candidate who:
 - (A) Lost the election in question; and
 - (B) Did not receive contributions over one hundred times the contribution limit in aggregate per election during the campaign in question.”

Apollo’s violations did not involve making or disclosing political expenditures, so prong (a) above is inapplicable.

Apollo’s ongoing deduction of political contributions from employees’ wages without legal authorization has occurred for several years, including during periods within 30 days of an election. Further, Apollo’s actions directly contradict an FCPA statute.

They result from Apollo's standard practice and procedure. They are not "inadvertent" and, far from being "cured," have continued unabated despite multiple warnings from the PDC. Prong (b) is not satisfied.

The illegal deduction of \$32,545.73 from employees' wages by Apollo in March-May 2019 alone not only harms the affected employees, but also materially harms the public by allowing UA 598's PAC to influence Washington elections using illegally-seized funds. Thus, prong (c) is not satisfied.

Lastly, Apollo has not ceased the illegal deductions despite receiving two formal notices from the PDC in 2019 about complying with RCW 42.17A.495, so prong (d)(i) is not satisfied. And because Apollo is not a candidate, prong (d)(ii) is inapplicable.

In short, Apollo's violations meet none of the criteria necessary to be considered "remedial."

b. Apollo's violations did not involve "requests for technical corrections."

RCW 42.17A.005(51) defines "technical correction" as:

"...a minor or ministerial error in a required report that does not materially impact the public interest and needs to be corrected for the report to be in full compliance with the requirements of this chapter."

Apollo's violations do not fall under this definition, because the statute at issue, RCW 42.17A.495, does not pertain to disclosure of contributions or expenditures or require that Apollo file any reports with the PDC. Consequently, the definition of "technical correction" simply does not include Apollo's violations of the employee-authorization provisions of that statute.

3. The PDC cannot resolve the present complaint against Apollo with another written warning as involving "minor violations."

WAC 390-37-060(1)(d) purports to authorize the PDC to "resolve any complaint that alleges minor violations of chapter 42.17A by issuing a formal written warning."

WAC 390-37-061 provides:

- "(2) A minor violation is an actual violation that occurs:
- (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 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."

a. WAC 390-37-060(1)(d) and WAC 390-37-061 conflict with and are preempted by RCW 42.17A.755 and RCW 42.17A.001(1).

While the PDC has been granted authority to engage in rulemaking, any rules it adopts must “carry out the policies and purposes” of the FCPA,⁵ and otherwise be consistent with its textual commands.

As such, regulations governing “minor violations” may arguably have been valid at the time they were first adopted by the PDC in 2016, but passage of HB 2938 in 2018 rendered them a dead letter, as violative of the new statute.

Specifically, RCW 42.17A.755(1) now requires the PDC to take one of several actions after a complaint has been submitted. It “must” either: (1) dismiss the complaint; (2) resolve it as a remedial violation or request for technical correction; (3) initiate an investigation, conduct hearings and issue an enforce an appropriate order; or (4) refer the complaint to the Attorney General.

Neither RCW 42.17A.755 nor any other statute permits the PDC to designate some “actual violations” as merely “minor” and resolve them with a warning letter.

Accordingly, WAC 390-37-060(1)(d) and WAC 390-37-061 conflict with RCW 42.17A.755, do not “carry out the policies and purposes” of the FCPA established by RCW 42.17A.001(1), and are of no legal effect.

b. Apollo’s violations were not “minor” for the purposes of WAC 390-37-061.

Even if the enforcement process for “minor violations” established by WAC 390-37-061 was valid and statutorily authorized, Apollo’s violations still would not qualify as “minor” for purposes of the regulation.

WAC 390-37-061(2)(a) and (2)(b) apply to the disclosure of required information to the PDC and are inapplicable to violations of RCW 42.17A.495, much like the definition of “technical corrections.”

Further, the illegal deduction of \$32,545.73 from employees’ wages by Apollo in March-May 2019 alone harms the affected employees and materially harms the public by allowing UA 598’s PAC to influence Washington elections using illegally-seized funds, so WAC 390-37-061(2)(c) is not satisfied.

Conclusion

Apollo continues to deduct contributions from hundreds of employees on the basis of legally invalid authorizations, even after being warned multiple times that the authorizations are invalid. In the space of merely three months, Apollo has illegally deducted at least \$32,545.73 from hundreds of its employees for political activity the employees may not support. Notably, the

⁵ RCW 42.17A.110(1).

warning letter explicitly stated that “[t]he Commission will consider this formal warning in deciding on further Commission action if there are future violations of PDC laws or rules.” *See App. 3.*

This situation is somewhat unique in that the violations of the FCPA committed by Apollo may largely result from the actions of UA 598. Nonetheless, as the PDC has already observed, Apollo may not pass-off its legal responsibility to comply with the FCPA to UA 598, and the law provides the employer must be held accountable for FCPA violations resulting from the union’s behavior and policies.

Further, the contributions to the PAC illegally deducted from employees’ wages have allowed UA 598 to significantly influence, through political contributions and expenditures, dozens of elections around the state.⁶ The extent of UA 598’s undue influence on these elections is difficult to neatly quantify, but the sheer number of elections and the amount of money involved make the issue one of substantial public concern.

Indeed, influencing Washington elections with money illegally collected from employees’ wages is a far more fundamental violation of the FCPA than more commonplace failures to properly disclose contributions and expenditures.

Given that these are “actual violations,” as defined by RCW 42.17A.005(2), and have continued to occur even after formal warnings from the PDC, we respectfully request that the PDC resolve this complaint through an investigation and enforcement action pursuant to RCW 42.17A.755(1)(b) or, alternatively, that it refer the matter to the Attorney General pursuant to RCW 42.17A.755(1)(c).

It is imperative that state authorities act decisively to put a stop to the ongoing illegal deductions from employees’ wages to deter such behavior in the future. Please do not hesitate to contact me if the Freedom Foundation can be of any further assistance in this matter.

Sincerely,



Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552, Olympia, WA 98507
(360) 956-3482
mnelsen@freedomfoundation.com

⁶ PDC records indicate the PAC contributed to at least 12 candidates and two other PACs in 2018 alone.
https://www.pdc.wa.gov/reports/expenditures_download?filer_id=PLUMSF%20301&election_year=2018

Trey Bland

Replied July 18, 2019

To: "PDC Support" <pdcc@pdc.wa.gov>

Cc:angie.haisch@apollomech.com

Good Afternoon Mx. Blackhorn, First I want to apologize for the introduction of Mr. in the voicemail I left you. I did not know the meaning of Mx., I should have looked that up prior to leaving you a message.

I want to give you a short Apollo history on the Alleged violations in the PDC Case Number 54746. Earlier this year these Allegations started with Local 598. During the Feb-March time frame, Apollo implemented Annual signature sheets for current employees. Since then we have implemented a PAC New Hire Authorization for 598 employees..

Both blank forms are attached. Apollo had all Local 598 employees who's dispatch date was prior to 1/1/2019 fill out and sign the Annual notification. (copies of these were forwarded to Mr. Nelson 6/28/19)

Apollo also had all Local 598 Employees dispatch after 12/31/2018 that were still employed by Apollo in March and the employees terminated prior to march we could get in touch with, fill out our New Hire Authorization, similar to one provided by Local 598. (Copies of these have not been given to Mr. Nelson)

Mr. Nelsen's latest request of Forms were centered around the Local 598 Dispatch Form. The Local 598 Dispatch form is generated and solely controlled by Local 598. Of the Names he requested, we had three dispatch forms which were pages 55, 59, and 68 of the documents Apollo provided to Mr. Nelsen.

If you would like copies of all signed forms, we will gladly get them to you. If so, let me know if you want them mailed or emailed.

It is Apollo's intent to conform with all Washington State RCW's and WAC's. We believe we have done our due diligence on this subject. If you feel we have not, please help us so we can put this issue to rest.

Trey Bland

Apollo Mechanical Contractors

Please return this form to payroll before
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.

HIRE-IN AUTHORIZATION TO WITHHOLD FUNDS FOR 598 PAC

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 dispatch.

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. If employed with **Apollo Mechanical Contractors** we will provide an annual notice for signature.

Below is the individual authorization confirmation for **Apollo Mechanical Contractors** 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 Apollo Mechanical Contractors believes authorization has been given and language on dispatches covers the employee's right to opt in or out **Apollo Mechanical Contractors** is clarifying the individual employed 598 member's intent as it pertains to Local 598's PAC fund.

I, _____ authorize Apollo Mechanical Contractors to

Employee Name - Printed

_____ withhold 598 PAC funds from my weekly paycheck.

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

Employee signature

Date

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 benefits 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 stylized, cursive script.

Maxford Nelsen
Director of Labor Policy
Freedom Foundation
P.O. Box 552, Olympia, WA 98507
(360) 956-3482
mnelsen@freedomfoundation.com

Trey Bland,

Thank you for your response to the complaint filed by Maxford Nelsen of the Freedom Foundation. I am following up with questions and steps needed to move Case 54746 toward resolution.

1. Apollo's July 18, 2019 response stated, during the February-March 2019 time frame, Apollo created and implemented what it called Annual signature sheets for current employees, titled "*Annual Notification Concerning Withholding Funds for 598 PAC*." Following the February-March 2019 time frame, Apollo created and implemented a PAC New Hire Authorization form titled, "*Hire-In Authorization to Withhold Funds for 598 PAC*" for newly hired employees who are dispatched to a work site by UA Local 598.
2. The "*Annual Notification Concerning Withholding Funds for 598 PAC*" appears to comply with the annual notification required by WAC 390-17-110, except as noted below, notifying participating employees of the nondiscrimination provisions of RCW 42.17A.495(2) and the employee's right to revoke, at any time, their authorization for withholding wages for political contributions. The present form states, "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." Please note, WAC 390-17-110(2)(b) states, "The written notification shall identify where an employee can submit the revocation, which shall be either: (i) The name and address of employer's contact; or (ii) The name and address of the person or entity responsible for the disbursement of funds in payment of wages or salaries." The rule does not allow you to use the union's address in your annual notification to your employees. This means the "*Annual Notification Concerning Withholding Funds for 598 PAC*" form needs to be changed to provide the employer's address rather than the union's address for where an employee can submit a revocation. Please make this change to the Annual Notification form, and send me a copy of the updated form. **Trey Bland- Apollo has modified our "*Annual Notification Concerning Withholding Funds for 598 PAC*" (Attachment A) as suggested and has sent them out to all current 598 dispatched employees for signature. Our intent is to have them back in our office by 10/1/2020.**
3. In March 2019, 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, and return it to payroll by March 31, 2019. Copies of the signed, Annual Notifications were forwarded to Mr. Nelsen on June 27, 2019. However, Mr. Nelsen did not consider the signed, Annual Notifications to be employee authorizations, and did not include these forms in his count of compliant authorization forms. We agree with Mr. Nelsen's assessment that the "*Annual Notification Concerning Withholding Funds for 598 PAC*" form is not a valid substitute for the required employee authorization form, and that the Apollo employees who signed the employer's Notification form must sign a compliant employee Authorization form. **Trey Bland- Apollo has modified our *Hire-in Authorization to Withholding Fund for 598 PAC* (Attachment B) as suggested in note 5. This form (Attachment B) will be used for all future 598 new hires.**

4. In March 2019, Apollo 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. This form was created by Apollo. It is similar to the dispatch/authorization form created by Local 598 for its members to sign when dispatched to a work site.
5. In reviewing Apollo's "Hire-In Authorization to Withhold Funds for 598 PAC" form, staff noticed that the form cites WAC 390-17-110, "Employee Notification of Withholding Provisions" which is the rule detailing the employer's responsibilities in providing an annual notification to employees about non-discrimination protections and the employee's right to revoke their contributions at any time. While the Authorization form appears to be compliant, the more appropriate rule to cite in the form is WAC 390-17-100, "Contribution Withholding Authorizations." WAC 390-17-100(2)(f) includes the non-discrimination language that is provided in the current Authorization form, and would be the more appropriate citation. **Trey Bland- Apollo has modified our "Hire-In Authorization to Withhold Funds for 598 PAC" (Attachment C) form to incorporate WAC 390-17-100 in lieu of WAC 390-17-100(2)(f) (Attachment B) as suggested.**

Annual Notification by Employer or Union, Required by WAC 390-17-110

6. PDC staff is aware that in March 2019, Apollo asked all employees making contributions through payroll deduction to Local 598 PAC whose dispatch date was prior to January 1, 2019, to complete and sign Apollo's Annual Notification. Did Apollo, or Local 598 on behalf of Apollo, provide the required Annual Notification by June 30, 2019 to all employees not contacted in March 2019, who were making contributions through payroll deductions? **Trey Bland – Yes, Attachment C provided by Apollo**
7. Did Apollo, or Local 598 on behalf of Apollo, provide the required Annual Notification by June 30, 2020 to all employees making contributions to Local 598 PAC through payroll deduction? **Trey Bland - Yes, Attachment C provided by Apollo.**
8. On what dates were the required 2019 and 2020 Annual Notifications provided? **Trey Bland – Twice in 2019, March and June. Twice in 2020, January and September. September 2020 is with the revised "Annual Notification Concerning Withholding Funds for 598 PAC" (Attachment A)**
9. Please provide a copy of the Annual Notification form used to provide the required notice in 2019 and 2020. **Trey Bland – See Attachments A & D.**
10. Does Apollo, or Local 598 on behalf of Apollo, if Local 598 provided the Annual Notifications, have in its possession a copy of the annual notice and a list of employees

notified, and will that entity maintain this information for a period of no less than five years, in accordance with WAC 390-17-110(4)? **Trey Bland – Yes, Apollo has copies and a list**

Authorization by Each Employee, Required by WAC 390-17-100

11. Apollo acknowledged they had only three dispatch forms generated by Local 598 for the 384 employee names identified by Mr. Nelsen as Apollo employees contributing to Local 598 PAC in March, April and/or May 2019. Why did Apollo have only three dispatch/authorization forms for the employee's listed as contributors to Local 598? **Trey Bland – Based on my understanding of Mr. Nelsons request, it was for a specific time period. During that time period Apollo only hired (3) employees from 598. Those 3 dispatches were forwarded on.**
12. When Mr. Nelsen made his request on June 6, 2019, did Apollo have signed and dated "*Hire-In Authorization to Withhold Funds for 598 PAC*" forms for the remaining names requested by Mr. Nelsen, even though they were not provided to him because you understood his request to be limited to examining the Local 598 Authorization Forms? **Trey Bland – No, we had the "*Annual Notification Concerning Withholding Funds for 598 PAC*" (Attachment D) for all others on the list and they were sent to Mr. Nelson on 6/27/19**
13. How many employees dispatched after December 31, 2018, who were still employed in March 2019, and employees terminated before March 2019 who Apollo was able to contact, signed Apollo's "*Hire-In Authorization to Withhold Funds for 598 PAC*" form for PAC contributions made during the March-May 2019 timer period? **Trey Bland - 0** (i.e. How many *Hire-In Authorizations* did Apollo have in its possession when Mr. Nelsen made his request for Dispatch/Authorization forms on June 6, 2019?) **Trey Bland – 0** Please provide copies of those authorization forms. You may email PDF copies of those forms rather than send paper copies. **Trey Bland - We only have "*Annual Notification Concerning Withholding Funds for 598 PAC*" (Attachment D) signed through March 2019, see attachment E. Through the March-May timeframe we also only have "*Annual Notification Concerning Withholding Funds for 598 PAC*" (Attachment D) signed forms. These were emailed to Fox Blackhorn on 7/19/19 (5 separate emails). These files are too big to attach to this email. Let me know if you would like me to email to you in separate emails. The *Hire-In Authorizations* (Attachment C) were not used by Apollo until July of 2019.**
14. Were the "*Hire-In Authorization to Withhold Funds for 598 PAC*" forms signed and dated before or after wages were withheld for contributions to Local 598 PAC during the March-May 2019 time-period? (WAC 390-17-100(1) requires employers to have a compliant authorization on file before withholding wages for political contributions.) **Trey Bland - After**
15. Please provide a copy of the current Local 598 Dispatch/Authorization form being used when union members are dispatched to Apollo. **Trey Bland - please see Attachment F, this is a Local 598 form only, Apollo has no authority over this form. Apollo does have a copy of all 598 signed Dispatch/Authorization forms for all hired 598 employees.**

16. Does Apollo rely solely on the Local 598 Dispatch/Authorization form, or does Apollo have employees also sign its “*Hire-In Authorization to Withhold Funds for 598 PAC*” form?
Trey Bland – No, Apollo uses its own “*Hire-In Authorization to Withhold Funds for 598 PAC*” (Attachment B as of 9/17/2020) (Attachment C 7/1/2019 through 9/16/2020) form for each new hire.
17. Currently, are all Authorization forms signed and dated before or after wages are withheld for contributions to Local 598 PAC? **Trey Bland – Before**
18. For employees whose dispatch date was prior to January 1, 2019, and who signed Apollo’s “*Annual Notification Concerning Withholding Funds for 598 PAC*” in March 2019, has Apollo also had these employees sign and date Apollo’s “*Hire-In Authorization to Withhold Funds for 598 PAC*” form? **Trey Bland – No, we are in the process as I write in getting the revised “*Hire-In Authorization to Withhold Funds for 598 PAC*” (Attachment B) signed by all current 598 employees.**

To Resolve This Matter

19. To resolve this matter, PDC staff is asking Apollo to have in its records, for all employees who have made contributions to Local 598 PAC (or to other political committees) from March 2019 to the present, through payroll deductions, a signed, compliant Authorization form, either through a union generated dispatch/authorization form, or through a form generated by Apollo. The Authorization form must comply with WAC 390-17-100. To be valid, the employee must affirmatively authorize the contribution. If these forms are not already in Apollo’s possession, Apollo will need to obtain these forms. We are asking you to comply with this requirement for all individuals who are currently employed with Apollo.
Trey Bland – Apollo is in the process as I write in getting the revised “*Hire-In Authorization to Withhold Funds for 598 PAC*” (Attachment B) signed by all current 598 employees. We do currently have signed forms (Attachment C) for all new hires since July 1, 2019.
20. As indicated above, employees who have acknowledged receipt of an “*Annual Notification Concerning Withholding Funds for 598 PAC*,” by signing a copy of a Notification issued by Apollo, or by UA Local 598 on behalf of Apollo, must also have a compliant Authorization form on file with Apollo. While you may have employees confirm each year whether they want to continue making contributions to Local 598 PAC, this step is not required by law or rule. The Authorization is valid until revoked. **Trey Bland – Our *Hire-in Authorization to Withholding Fund for 598 PAC* (Attachment B) has been sent out to all current 598 dispatched employees.**
21. This means, compliant authorization forms will need to be obtained for:
- Employees who were members of Local 598 whose dispatch date was prior to January 1, 2019, who were employed during the March-May 2019 time period, and who signed Apollo’s “*Annual Notification Concerning Withholding Funds*

for 598 PAC” but have not signed a compliant Authorization form, if still employed by Apollo. Trey Bland – In process, being asked to sign the revised “Hire-In Authorization to Withhold Funds for 598 PAC” (Attachment B)

- Employees who were members of Local 598 whose dispatch date was after December 31, 2018, who were employed during the March-May 2019 time period, if still employed by Apollo. *Trey Bland – Employees hired after 7/1/19 already signed the “Hire-In Authorization to Withhold Funds for 598 PAC” (Attachment C) on their hire date. To minimize confusion, all current 598 employees are being asked to sign the revised “Hire-In Authorization to Withhold Funds for 598 PAC” (Attachment B).*
- Employees who were members of Local 598 whose dispatch date was after December 31, 2018, and who were employed after May 2019, if still employed by Apollo. *Trey Bland – Employees hired after 7/1/19 already signed the “Hire-In Authorization to Withhold Funds for 598 PAC” (Attachment C) on their hire date. To minimize confusion, all current 598 employees are being asked to sign the revised “Hire-In Authorization to Withhold Funds for 598 PAC” (Attachment B).*

22. By what date can all additional compliant authorization forms be signed and dated? Once this task is completed, I want to discuss with you a way to resolve the complaint. *Trey Bland – It is our intent to have all revised “Hire-In Authorization to Withhold Funds for 598 PAC” forms (Attachment B) and revised “Annual Notification Concerning Withholding Funds for 598 PAC” (Attachment A) back in our office by 10/1/2020.*

Let me know if you have questions. Thank you.

Phil Stutzman, Compliance Officer
Public Disclosure Commission

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, **Apollo Mechanical Contractors** in writing at, 1133 West Columbia Drive, Kennewick, Washington 99336.

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

HIRE-IN AUTHORIZATION TO WITHHOLD FUNDS FOR 598 PAC

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 390-17-100 that addresses withholding provisions as they relate to PAC funds. Below is a portion of that WAC.(WAC 390-17-100 see below)

- 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:**

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 opted out or in on an annual basis. If notice is not given the authorization automatically renews for another year. If employed with **Apollo Mechanical Contractors**, we will provide an annual notice for signature.

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, **Apollo Mechanical Contractors in writing at 1133 West Columbia Drive, Kennewick, Washington 99336.**

Below is the individual authorization confirmation for **Apollo Mechanical Contractors** 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 Apollo Mechanical Contractors believes authorization has been given and language on dispatches covers the employee's right to opt in or out **Apollo Mechanical Contractors** is clarifying the individual employed 598 member's intent as it pertains to Local 598's PAC fund.

I, _____ authorize **Apollo Mechanical Contractors** to
Employee Name - Printed

_____ **withhold** 598 PAC funds from my weekly paycheck.

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

Employee signature

Date

WAC 390-17-100 Contribution withholding authorizations for payroll deductions. (1) 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: (a) The purpose of making one or more contributions to any political committee required to report pursuant to RCW 42.17A.205, 42.17A.215, 42.17A.225, 42.17A.235 or 42.17A.240; or (b) Use, specifically designated by the contributing employee, for political contributions to candidates for state or local office. (2) Forms used for payroll deduction may either conform to the suggested format below or be in a different format including an electronic format if it provides 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 (or per week, month or year) 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"; or a statement that informs the employee of the prohibition against employer and labor organization discrimination described in RCW 42.17A.495; (g) The individual's signature or other reliable and secure verification that the individual is authorizing the withholding or diversion; and (h) The date on which the form was completed. (3) Forms used for payroll deduction may have information in addition to that listed in subsection (2) of this section. A form that satisfies subsection (2) of this section constitutes the written authorization of the individual authorizing the withholding or diversion. (4) 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. Political Contribution Withholding Authorization No employer or other person may withhold a portion of a Washington State resident's earnings (or that of a nonresident whose primary place of work is in Washington) in order to make contributions to a political committee that must report to the Public Disclosure Commission or to a candidate for state or local office without written Certified on 10/25/2019 WAC 390-17-100

According to state law, no employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee. [Statutory Authority: RCW 42.17A.110(1) and 2018 c 304. WSR 18-24-074, § 390-17-100, filed 11/30/18, effective 12/31/18. Statutory Authority: RCW 42.17A.110 and 42.17A.495. WSR 13-12-016, § 390-17-100, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-17-100, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 03-08-052, § 390-17-100, filed 3/28/03, effective 4/28/03; WSR 93-16-064, § 390-17-100, filed 7/30/93, effective 8/30/93.]

HIRE-IN AUTHORIZATION TO WITHHOLD FUNDS FOR 598 PAC

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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 dispatch.

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. If employed with **Apollo Mechanical Contractors** we will provide an annual notice for signature.

Below is the individual authorization confirmation for **Apollo Mechanical Contractors** 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 Apollo Mechanical Contractors believes authorization has been given and language on dispatches covers the employee's right to opt in or out **Apollo Mechanical Contractors** is clarifying the individual employed 598 member's intent as it pertains to Local 598's PAC fund.

I, _____ authorize Apollo Mechanical Contractors to

Employee Name - Printed

_____ withhold 598 PAC funds from my weekly paycheck.

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

Employee signature

Date

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.

1328 Road 28
Pasco, WA 99301

U.A. LOCAL 598 DISPATCH FORM

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

Contractor :
Site Name :
Site Address :

Report Date :
Report Time :

Job Steward :
Assigned To :
Comments :

Pay	Rate	:
Job	Desc	:
Job	Type	:
Hiring List :		

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 : _____

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 : _____

Member Copy

1328 Road 28
Pasco, WA 99301

U.A. LOCAL 598 DISPATCH FORM

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

Contractor :
Site Name :
Site Address :

Report Date :
Report Time :

Job Steward :
Assigned To :
Comments :

Pay Rate : _____
Job Desc :
Job Type :
Hiring List :

Site Notes:

PAC Authorization

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Signature : _____ Date : _____

Employer Copy

1328 Road 28
Pasco, WA 99301

U.A. LOCAL 598 DISPATCH FORM

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

Contractor :
Site Name :
Site Address :

Report Date :
Report Time :

Job Steward :
Assigned To :
Comments :

Pay Rate : _____
Job Desc :
Job Type :
Hiring List :

Site Notes:

PAC Authorization

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Office Copy