



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Labor and Industries

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Joel Sacks, Director
Department of Labor and Industries

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-010 at the Department of Labor and Industries.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Todd Bishopp, Audit Coordinator
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

Our Office received a complaint asserting a Department of Labor and Industries (Department) lead electrical inspector (Subject 1) and an electrical supervisor (Subject 2) have endangered the safety of citizens by instructing an electrical inspector to sign off on electrical deficiencies before they were corrected. It was also asserted that Subjects 1 and 2 extended a contractor a special privilege when they directed the electrical inspector to mark the deficiencies as corrected.

We were unable to determine whether the Subject 1 committed an improper governmental action and found no reasonable cause to believe Subject 2 committed an improper governmental action.

Background

State law requires a permit for most new, remodel and maintenance electrical work. Once the work is complete, and before covering, an electrical inspection is conducted to ensure the installation meets the minimum electrical safety requirements. The Department tries to complete the inspections within 48 hours of receiving the request, excluding holidays and weekends. When the electrical inspector finds deficiencies in the installation, the permit holder must make repairs or changes within 15 days, and a re-inspection is conducted. The inspection must be completed and approved while the work is accessible.

The Department maintains a Permit and Inspection Recording System (PAIRS) to document and track electrical permits and inspections. The system includes inspection details, such as the request date, who created the request, inspection date, inspector's name, number of minutes on site, number of corrections written and completed, and inspector comments.

For this investigation, we reviewed inspection details in PAIRS, a Department investigative report, and conducted interviews.

About the Investigation

On June 21, 2016, Inspector 1, a new inspector with the Department, was instructed to conduct an inspection outside of his normal area for Inspector 2, who was on leave. Inspector 1 was unable to inspect all of the electrical work on the site because he could not gain entrance to the home. He said he documented one deficiency and assumed a second inspection would be required because he was not able to access the home.

On June 24, 2016, Inspector 2, a veteran electrical inspector, conducted the second inspection of the above-referenced site, which included access to the home. He found the deficiency corrected, but noted nine additional deficiencies, one of which was a wire for a 200-amp service used for a 400-amp service; according to Inspector 2, this created a potential fire hazard due to the possibility of the wire overheating.

According to Subject 1, after the second inspection, Subject 2 received a phone call from the contractor, who complained about the discrepancies between the two inspections.

On June 27, 2016, Inspector 1 said he received a call from Subject 1 instructing him to return to the job site to see what he could do with the additional deficiencies written by Inspector 2.

On June 28, 2016, when Inspector 1 returned to the job site, some of the deficiencies noted by Inspector 2 were unclear so he called Subject 1 for assistance. According to Inspector 1 and Subject 1, Subject 1 instructed him to mark as corrected any deficiencies he did not see. Inspector 1 said he marked some of the deficiencies as corrected, but left four for the permit holder to correct.

The following day, Inspector 1 said he received another phone call from Subject 1, who directed him to go back to the job site and “make them [the deficiencies] go away.” Inspector 1 said it was such an odd request that it sticks out in his mind. He said he did not feel he had any other choice, so he went back to the job site and marked all remaining deficiencies as corrected.

According to Inspector 2, when he had not been instructed to re-inspect the job site, he returned to the site in August to check on the deficiencies. He found that some of the deficiencies were still present. He checked PAIRS and found Inspector 1 had noted all deficiencies as corrected.

Inspector 2 contacted Inspector 1, who explained that he had been directed to “make them go away.”

We interviewed Subject 1, who said he told Inspector 1 “to make it go away;” however, it was in the context of “if it does not make sense, or if it does not apply” to make the deficiencies go away. He said neither he nor the inspectors actually have the ability to make the deficiencies go away; they can only mark them as corrected. He said Inspector 1 was having a hard time understanding the deficiencies because Inspector 2 failed to give enough specifics regarding the deficiencies. Subject 1 said he gave the best response to the information he received over the phone.

Subject 2 said it was a poor choice of words by Subject 1, but Subject 1 did not mean for Inspector 1 to mark any deficiencies as corrected if they were not.

Subject 1 said he was just trying to get the inspection process completed, as there had been numerous visits to the job site, more than what is typical. He said Subject 2 told him to get someone out to the job site to conduct a fair inspection, but never told him to instruct someone to make the deficiencies go away.

Inspector 1 said he did not misinterpret the direction he was given by Subject 1. He said he was told to drop everything and get back to the job site. Subject 1 told him “we” do not want Inspector 2 back on the property and “we” need you to make the deficiencies go away. Inspector 1 said he did exactly as instructed.

During our investigation, we discovered the Department was conducting an internal investigation regarding Subject 2 and his interactions with various electrical contractors. The investigation included a technical review made by a Department technical electrical specialist. We reviewed his report and interviewed him.

According to his report and in relation to this inspection, he noted all 10 deficiencies issued to the contractor had been marked as corrected. On November 1, 2016, he visited the site to verify the validity of the corrections and noticed that some of the deficiencies noted as corrected were not.

One of the deficiencies remaining was the 200/400 amp service wiring as noted in the June 24 inspection. The specialist asked to have the permit reopened so the permit holder could correct the deficiencies.

When asked whether any of these deficiencies were safety threats, the specialist said, “With each of these deficiencies, there was the potential for a safety risk to the property or people who may come in contact with them, as there is with all electrical deficiencies. The risk was not imminent, but if a failure occurred, down the road there was potential for an electrical safety risk.”

Subject 1 said he could not comment on the technical review because the specialist based his review on his visit to the job site and he [Subject 1] never went to the job site.

In January 2017, a third inspector conducted a final inspection and noted all deficiencies as corrected.

We were unable to determine whether Subject 1 committed an improper governmental action. Subject 1 and Inspector 1 provided differing accounts of the conversations regarding the inspection and there was no evidence available to corroborate either account. Based on information from Subject 1, we found no reason to believe Subject 2 was involved in the directive.

Regarding the assertion of special privilege, we found no evidence to substantiate the assertion. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

State Auditor’s Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 19.28.101 – Inspections – Notice to repair and change – Disconnection – Entry – Concealment – Accessibility – Connection to utility – Permits, fees – Limitation – Waiver of provisions during state of emergency.

(3) Whenever the installation of any wiring, device, appliance, or equipment is not in accordance with this chapter, or is in such a condition as to be dangerous to life or property, the person, firm, partnership, corporation, or other entity owning, using, or operating it shall be notified by the department and shall within fifteen days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger to life or property and to make it conform to this chapter. The director, through the inspector, is hereby empowered to disconnect or order the discontinuance of electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with this chapter. Upon making a disconnection the inspector shall attach a notice stating that the conductors have been found dangerous to life or property and are not in accordance with this chapter. It is unlawful for any person to reconnect such defective conductors or equipment without the approval of the department, and until the conductors and equipment have been placed in a safe and secure condition, and in a condition that complies with this chapter.

RCW 19.28.111 – Nonconforming installations – Disputes – Reference to board.

It is unlawful for any person, firm, partnership, corporation, or other entity to install or maintain any electrical wiring, appliances, devices, or equipment not in accordance with this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute or in doubt, the board shall, upon application of any interested person, firm, partnership, corporation, or other entity, determine the methods of installation or maintenance or the materials, devices, appliances, or equipment to be used in the particular case submitted for its decision.

RCW 19.28.321 – Enforcement – State electrical inspectors – Qualifications – Salaries and expenses, states in part;

The director of labor and industries shall appoint a chief electrical inspector and may appoint other electrical inspectors as the director deems necessary to assist the director in the performance of the director's duties. The chief

electrical inspector, subject to the review of the director, shall be responsible for providing the final interpretation of adopted state electrical standards, rules, and policies for the department and its inspectors, assistant inspectors, electrical plan examiners, and other individuals supervising electrical program personnel. If a dispute arises within the department regarding the interpretation of adopted state electrical standards, rules, or policies, the chief electrical inspector, subject to the review of the director, shall provide the final interpretation of the disputed standard, rule, or policy.

RCW 19.28.331 – Inspection reports.

If any inspection made under this chapter requires any correction or change in the work inspected, a written report of the inspection shall be made by the inspector, in which report the corrections or changes required shall be plainly stated. A copy of the report shall be furnished to the person, firm, partnership, corporation, or other entity doing the installation work, and a copy shall be filed with the department.

RCW 42.40.020 – Definitions.

As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(6)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

(iii) Which is of substantial and specific danger to the public health or safety;

RCW 42.52.070 – Special privileges.

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.