

**Board of Electricity
Meeting Minutes
February 10, 2009**

**Minnesota Room – Department of Labor and Industry
443 Lafayette Road North, Saint Paul 55155
DLI.CCLDBOARDS@State.MN.US**

Members Present:

Douglas Fingerson
Jim Freichels
Kim Huxford
Daniel Klein
Timothy Malooly
John McConnell
John Schultz (DLI Commissioner's Designee)
Andy Toft
Joe Vespa

Members Available by Teleconference:

None

Members Absent:

Willy Hoskins
Dick Owen
Tom Seanger

Staff Present:

Wendy Legge
Annette Trnka

Visitors:

John Ploetz
Phil Raines
Scott Nutting
Jim Nimlos
Gary Thaden
Dan McConnell
David Fisch
Russ Ernst
Tony Mendoza
Judy Rubin

I. Call To Order

The meeting was called to order by Chair Freichels at 9:09 a.m. and role was taken. Willy Hoskins, Tom Seanger, Dick Owen, Tim Malooly & Daniel Klein were not present at the beginning of the meeting.

II. Approval of Meeting Agenda

The Agenda will be modified to accommodate the 10:00 a.m. Multi-State Reciprocity Membership conference call. A motion was made by Fingerson and seconded by Huxford to approve the meeting agenda as amended. The vote was unanimous and the motion passed.

III. Approval of Previous Meeting Minutes

A motion was made by Schultz and seconded by McConnell to accept the previous Meeting Minutes. The vote was unanimous and the motion passed.

IV. Regular Business

A. Expense Approval

- i. A motion was made by Schultz, seconded by Klein, to approve Expense Reports and Per Diems. The vote was unanimous, and the motion passed.

B. Enforcement

- i. Electrical Enforcement Activity Report – Quarter 4. Freichels reviewed the 4th Quarter Electrical Enforcement Activity Report provided by the Construction Codes and Licensing Division of DLI. Freichels asked about enforcement investigators and Schultz answered that right now, Toni Harvey is the only full-time investigator assigned to enforcement of unlicensed individuals doing electrical work. Toft asked in reference to violation 403 – unlicensed Class A Contractors – 27; and Schultz answered that it's referencing Class A electrical work that would require a contractor's license, and the violations are where a company or individual is performing Class A work where they're not licensed to do that work.

Huxford stated that he had looked at the website that lists the infractions and asked if there were any problems on the collection of fines levied. Schultz answered that the fines were being collected without incident.

V. Special Business

C. Reciprocal agreements

- i. Update on MN State Master Reciprocity Agreement (with ND, NE, & SD) ND. Schultz stated that North Dakota has agreed in principal to the Agreement. They have a copy of the actual agreement. Their next meeting is in March. Nebraska doesn't meet monthly. Schultz believes they only meet quarterly so he doesn't have an indication yet on what their response is. South Dakota's new Director is still acclimating and we are still waiting for their response. Both North Dakota and Nebraska have verbally stated the agreements look acceptable, however, they need formal Board action before they can make a definitive statement.
- ii. Review Update on South Dakota's ICC Exam – Schultz stated South Dakota is possibly changing the way their exam is being administered; however there has been no definitive answer.
- iii. Review new Multi State Reciprocity Agreement –
 - a. Conference Call at 10:00 a.m. with Multi-State Reciprocity Membership – Schultz reviewed the agenda for the Multi-State Reciprocity conference call meeting. Schultz stated he received the agenda late the afternoon before so he was unable to provide it to the Board prior to this morning. On the Agenda, item number 3 is the Adoption of Bylaws, which are the Bylaws the NERA are proposing. Schultz sent a letter dated December 19, 2008, which outlined what reservations Minnesota has with the Bylaws and stated he only received a response from the state of North Dakota. The Director from North Dakota shares the same concerns. He did not receive any responses in writing.

The concerns that Minnesota plans to discuss during the teleconference is the 4/5 vote acceptance which Minnesota cannot agree to. Some of the other items, of lesser importance, however, they are still important are outlined in the memo. Schultz suggested that if the NERA are open to amendment to the document, he feels it would be better to amend the language and then distribute for review rather than try to approve the amended language today. Regarding the item number 4 on the Agenda; Schultz stated the Board's vote last year was to not include Texas in the multi-state agreement. Schultz stated that the adoption of the 4/5 majority vote would allow them to accept Texas without Minnesota's approval. Daniel Klein arrived at 9:27 a.m.

Regarding item number 5 on the Agenda, Schultz stated the NERA's annual meeting was scheduled to be in New Hampshire. Other member states have stated they are concerned about being able to attend that meeting due to restrictions on travel budgets. Being that the annual meeting can't be done by teleconference, it's only the members present who would be allowed to vote so there is a concern regarding a quorum.

Freichels asked Wendy Legge if the current Bylaws of the NERA states the membership has to be unanimous in order to make amendments to the Bylaws. Schultz stated that on the letter which Minnesota sent on December 19th to the NERA lists as its first bullet the question of whether the NERA is amending the current Bylaws or creating new Bylaws. Schultz stated, however, that it appears the proposed Bylaws is a new document and not an amendment of the previous Bylaws. There was no response by any other member state.

Legge stated she felt it would be appropriate at the beginning of the discussion of the adoption of Bylaws whether it is a proposed amendment to the existing Bylaws, and if so, what do the current Bylaws say regarding amendment to them. She stated that if it is an amendment to the current Bylaws then they have to follow the current Bylaws to amend them. Schultz stated they clearly aren't drafted in amendment form. Legge stated they aren't in amendment form, but as a practical matter, they are in fact an amendment. Malooly arrived at 9:32 a.m.

If they are not an amendment, the NERA would have to terminate the current Bylaws, which can only be done by giving in writing thirty days notice to the members. Toft stated that the current Bylaws were created by the Multi-state Reciprocal Electrical Licensing Group and the new Bylaws have been drafted under the group name of the National Electrical Reciprocal Alliance.

Legge stated that they would still have to terminate the current agreement and that she's not sure why they're calling it "by-laws" when it appears that it's a new alliance and a new agreement for that alliance, which doesn't have the clause stating previous Bylaws would automatically terminate and the new Bylaws would supersede all previous agreements.

Dan McConnell of IBEW stated that he's heard that Washington State is cancelling all their reciprocal agreements and starting anew. Schultz stated he's heard nothing about that to this point and said that Washington has not communicated anything to that effect to date.

Toft asked about the letter Schultz sent on December 19 on the first bullet which states that individual states should have the discretion to accept or deny; and regarding the new agreement by the NERA, it doesn't include such an option. Schultz responded the new agreement doesn't give that discretion to individual states and feels that philosophy should be in the agreement. Toft stated that he feels the Board can't agree to the new agreement at all. Schultz stated that the Board had stated that they would not be able to agree to this new agreement as it is currently written last year. Legge stated that the current Bylaws can't be cancelled for 30 days before the new Bylaws can be adopted, as the cancellation has to be done in writing.

VI. Committee Reports

- A. Construction Codes Advisory Council – Tom Seanger. Schultz stated that not all the members have been appointed to the Council yet, so the Council has not yet had their first meeting.

VII. Complaints

There have been no complaints to the Board.

VIII. Chapter 3800

- A. Electrical Licensing and Continuing Education

Discussion of changes to proposed rules suggested by written comments and requests for hearing received in response to the Dual Notice. Legge gave a report stating by the deadline of January 21, 2009, the Board had received 181 timely hearing requests. Requests that came in after the deadline totaled 30. It only takes 25 requests for hearing to require a hearing be held. Legge stated that the majority of the requests focused on the issue of continuing education for unlicensed individuals.

The Chair called for a 15 minutes recess at 9:45 a.m. The meeting to resume at 10:00 for the conference call. The Chair called the meeting back to order at 9:58 a.m. The conference call started at 10:03 a.m.

The meeting then took a break at 12:00 p.m. and resumed at 12:09 p.m.

The Chair reviewed the amount of Requests For Hearing letters received on Chapter 3800 and stated that in order to avoid a hearing, 162 would have to withdraw their requests, and although that possibility was remote, he opened the

discussion up to the Board and to the public. There were no requests to be heard.

VIII. Open Forum

Scott Nutting of the Contractor Electrical Inspectors Association stated that the processing time of the violations isn't clear and wanted to ask if there was a general timeline of processing violations. Schultz stated that he works closely with the enforcement section and there is a heavy workload. There is a set process they are required to go through. The timeline varies significantly due to workload, the response from the respondent and the complainant. The Failure to File complaint has to be done in a formal basis, otherwise there is not a complaint to process. There are some complaints that are set aside or dismissed because there isn't adequate information or it isn't a situation where there is enough evidence to move it forward to a hearing. Scott asked if that was more of a Department issue rather than a Board issue and Schultz answered that enforcement is entirely up to the Department. Schultz went on to state that the Enforcement Unit includes 10-12 investigators, those of whom will investigate all of the violations for plumbing, residential contracting, electrical, high pressure piping and boilers. There is only one investigator assigned full-time to investigate electrical complaints. Mr. Nutting asked if writing the violations and sending them to the area representative is initiating a formal process. Schultz answered that simply because a violation is being sent to the area rep, it doesn't mean it gets to the Enforcement Unit. Mr. Nutting stated that is where the confusion lies.

John Ploetz of the Minnesota Electrical Association stated that there have been a fair number of master electricians who did not receive notices that their licenses are up for renewal and a fair number of those had not moved for 10-15 years, so the question is why they didn't receive their notice. Mr. Ploetz stated that it is his understanding that all of the information has been consolidated to one database for electrical and wonders why there is still such a large number not being notified. Schultz stated that he was aware of some problems with renewals and although he couldn't comment on the specific problems, he knew that during the switch over of the database there were problems during the conversion in August and September. Schultz went on to state that because the Department knew of the upcoming conversion, in some instances notices were mailed 4-5 months prior to the expiration. The Department believes that in some instances applicants either forgot or misplaced the renewal notice. Schultz went on to state that whether the notice has been received or not, it is ultimately the individual's responsibility to renew and should have an awareness of when their renewal dates are. All that's required to renew is to take a copy of the license they currently carry and send it to the Department of Labor and Industry with the appropriate fee. Mr. Ploetz stated that on a positive note the renewals are being processed in a timely fashion.

Mr. Ploetz stated there is a registration form for unlicensed people on the website, but not one for journeyman masters or power limited technicians. Schultz stated that there isn't a renewal form on the website. Mr. Ploetz asked why there can't be a renewal form available that lists the "mail to" address on the website. Schultz stated that he could discuss it with the licensing department but wondered if it would be more confusing for licensees regarding when their renewal date is. Schultz states that he fears if there is a form online, individuals will renew at will rather than at their renewal time.

Toft asked if he could return to the topic Mr. Nutting brought up about complaints filed with the Department and asked if the complaint was sent to the Board, could the Board then find out the status of the complaint. Schultz stated that if an inspector is filling out a violation report, it's not a formal complaint. The violation report is sent to the area representative in that district, who then takes some action on the violation, such as a letter of compliance being written to the contractor. As an example there are approximately 90 inspectors under contract and if every violation letter resulted in a complaint, the workload would be such that the Department of Labor and Industry would be unable to handle them. The violations often are a single failure to file for an electrical inspection. Toft asked what the status of these particular violations and is there a way to track them and what is the time frame. Schultz stated that the complaints are never discarded; they are brought to resolution. Schultz went on to state that complaints are also prioritized by the severity of the violation.

Legge stated that by statute, if the complaint comes to the Board vs. the Department, the Board then shall forward the complaint to the Department. The Board could solicit complaints be directed to the Board before the Department and then forward the complaint to the Commissioner. The Commissioner shall advise the Board of the status of the complaint within 90 days after the Board's written submission is received or within 90 days after the Board is provided with a written request for additional information or documentation from the Commissioner, whichever is later. The Commissioner shall advise the Board of the disposition of a complaint referred within 180 days after the Board's written submission is received. The Commissioner shall annually report to the Board a summary of the actions taken in response to complaints referred by the Board. Legge stated there are specific requirements of the Commissioner in terms of giving notice to the Board regarding complaints. Since there's still an interest of maintaining privacy of not public data, Legge's recommendation to the Commissioner would be to provide information back in a manner which will protect the identities of those listed in the complaint, such as assigning numbers to represent the parties involved. Legge stated that the last time soliciting complaints was discussed, the Board had decided not to do so, as it would place additional burdens on DLI staff. Legge stated that someone from the Board could volunteer to take on the duties that would go along with the referral of complaints.

Malooly stated that one of his goals is to assist staff improve its enforcement mechanism and process. He suggests that the Board could take a new look at enforcement and complaints and see what the Board can do to help facilitate better processes in the enforcement mechanisms. Malooly stated that in the enforcement 4th quarter report, there are 88 elements that are being investigated to come to conclusion in 3 months and there are 100 individuals involved in the creation of those 88 elements in bring them to resolution. He went on to state that it appears something is missing in the ability to move forward quicker to gather and accomplish the enforcement mechanisms that everyone is looking for. Malooly stated that there were in excess of 10,000 irrigation systems installed in the summer of 2008 and approximately 80% of those installations were done with unlicensed workers, yet there is only an indication that 16 investigations are under way in the last quarter of the year.

Malooly offered to help individually and asked if the Board is interested in helping to ensure the health, safety and welfare of the consuming public. Malooly went on to ask if it could be included in the Agenda of the next meeting March 3rd, requesting the contract inspectors and someone representing the Department of Labor and Industry attend. The goal would be to

implement a process review, process assistance or some other measure that results in a smoothly operating that can resolve matters quicker. Freichels asked if Malooly was requesting the involvement of Charlie Durenberger of the Department of Labor and Industry and also electrical inspectors. Malooly answered that he felt that would be wise as they are doing the work of writing violations and went on to add that he was unsure if there are other stakeholders in this topic that should be included. Freichels asked if anyone else had any other suggestions of anyone who should be invited in this discussion besides Toni Harvey, Charlie Durenberger and electrical inspectors. Malooly stated he feels it would be beneficial if this issue could be discussed at the next meeting to clarify what could be done to help.

Legge stated she would suggest that at the next meeting on March 3rd or a subsequent special meeting to be called, there would be a meeting at which the Board considers any suggested wording changes that are raised at the hearing and also to have an attorney/client privileged portion of the meeting at which the draft response to comments is discussed. She suggests that the Board block out the whole day for March 3rd. Legge added that regarding legislative activity, Representative Mahoney has offered to author the Department's clean-up bill in the CCLD area. Almost all the portions of the bill are related to plumbing and there is a small portion related to high pressure piping. There's nothing in the bill specific to electrical rules, however, there are amendments to the general enforcement provisions. The proposed language would include that would specifically state it's a violation for a person to offer to perform services for which a license issued by the Commissioner is required, unless the person holds an active license to perform those services. Legge stated as an example if there is an unlicensed person offering to perform electrical work, even if the Department can't find that the work was done, the fact that the party advertised to do the work would specifically be a violation. Legge went on to state that language is already included in electrical laws, however, not all areas in CCLD have that language. This language will make it crystal clear that false advertising by an unlicensed person would be subject to all the of the different enforcement remedies that the Department has available.

Freichels then stated he would like to approve Per Diems and expenses stating he had reviewed them and found them in order. Schultz made a motion, seconded by Klein, to accept the Per Diems and expense reports. The vote was unanimous and the motion passed.

IX. Board Discussion

Huxford asked if on March 3rd the Board is going to be discussing the hearing, will enforcement get on the following month's agenda. Freichels answered yes, it will be added to the agenda.

X. Announcements

A. Next Regularly Scheduled Meetings

- i. Hearing – Tuesday, February 17, 2009, 9:30 a.m. – Minnesota Room, DLI
- ii. Tuesday, March 3, 2009, 9:00 a.m. – Minnesota Room, DLI

XI. Adjournment

A motion was made by McConnell, seconded by Vespa, to adjourn the meeting of the Board of Electricity, the vote was unanimous and the motion passed. Board adjourned at 12:44 p.m.

Respectfully Submitted,

Douglas Fingerson

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