

**Board of Electricity
Meeting Minutes
March 3, 2009**

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

Members Present:

Jim Freichels
Willy Hoskins
Kim Huxford
Daniel Klein
Timothy Malooly
John McConnell
John Schultz (DLI Commissioner's Designee)
Andy Toft

Members Available by Teleconference:

None

Members Absent:

Douglas Fingerson
Dick Owen
Tom Seanger
Joe Vespa

Staff Present:

Wendy Legge
Annette Trnka
Charlie Durenberger

Visitors:

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

I. Call To Order

The meeting was called to order by Chair Freichels at 9:05 a.m. and role was taken.

II. Approval of Meeting Agenda

Freichels announced that the meeting would be closing to discuss the Board's response to the Hearing held on Chapter 3800 on February 17, 2009, and stated the meeting would only re-open for the vote to adjourn. A motion was made by Schultz, seconded by Toft, to approve the meeting agenda. The vote was unanimous and the motion passed. Vespa was not present for this vote.

III. Approval of Previous Meeting Minutes

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

B. Enforcement

- i. DLI Enforcement Updates to Board – Charlie Durenberger. Durenberger reviewed the Department's enforcement process. He stated the Department has one investigator that is assigned to all the investigations in the electrical area, which covers everything from the power limited issues all the way through the Class A contractors. Durenberger stated that all of the Department's enforcement actions are posted on the Department's website, and encourages people to go there to look at what enforcement is doing. He stated that the Department is rather limited with only having Toni Harvey doing the electrical investigations and by necessity priorities have to be set. The first priority includes a situation where electrical work is being done in homes and businesses without Request for Electrical Inspections being filed and no inspections being done.

Malooly stated that part of this topic had come up at the last BOE meeting when one of the contract inspectors brought to the Board's attention that there's some confusion on the part of the contract inspectors in terms of what the process is when they write up a violation. He went on to state that a few years ago, an Administrative Penalty Order was passed as part of a larger bill and it was his understanding that the order would help relieve the process and make a process of violations easily handled at the field level by a field inspector who would have the ability to write up a violation documenting an issue on the spot and enabling punitive action to take place either right there or in a process that's short and to the point. He asked Durenberger to explain the Administrative Penalty Order.

Durenberger stated it is disturbing that a contract inspector has confusion about this process as Durenberger is always available to speak with anyone about enforcement at any time. He stated that a notice of violation cannot have a penalty in it. It is basically a red flag to state there is a problem, this is what needs to be done to correct the problem and this is the timeframe in which to have it corrected. Durenberger went on to state that when the Department does not get compliance, then it becomes an enforcement issue. If the Department is not getting cooperation then there it can be elevated to an Administrative Order or a Licensing Order, which are the only orders that can contain penalties, and they can only come from the Department after there has been an investigation. The fourth tool is a Stop Order, which is used if there's a dangerous installation that's been done. A Stop Order will be used to cease work, and then the person who received the Stop Order has the right to request a hearing within 10-15 days. Durenberger stated that it has never been the Department's intention, nor will it be at any time in the future, that the inspector can assess a penalty on any violations.

Legge stated that one of the reasons that the penalty cannot be given out in the field is that there would not be consistent processes, and that's why there's an internal

review and assessment determining a fair and consistent penalty. Legge stated that when an order goes out, there's a right to appeal. If it is appealed the Department will try to determine if there's an informal resolution. This information is not public at this level. If a resolution cannot be reached, it is filed with the Office of Administrative Hearings and at that point whatever is filed would become public information.

Durenberger stated that all the enforcement cases so far have either had the order issued and there hasn't been a hearing requested; or the Department has entered into a Consent Order where the Department has settled with the Respondent and they've agreed to the penalty, which are reflected on the website.

Malooly stated that he is not trying to assign blame or create animosity; he's trying to look for solutions to problems that are ongoing in the face of limited resources. He stated that there may be a distinction between the actual violations that may occur in the performing of the work; and if people/businesses are violating the law, such as operating outside of a license requirement. He's hoping to have more than one individual have some level of authority to help steer the practices of business within the law outside of code violations. Malooly stated that it doesn't appear that a red tag is available to someone who is operating without a license, which he views as an actual violation of an electrical performance activity and asked what is available to us that would help enforce behavioral practices. Durenberger stated that the only authority that can issue an Administrative Penalty Order is the Department of Labor and Industry. That order can only be issued after there's been an investigation. Anyone who receives an order has the right to request a hearing, so DLI tries to ensure that the case is iron clad before issuing an order, as hearings are very expensive.

Malooly stated that when he uses the phrase "we" he is acknowledging that this issue is under the Department's authority. Durenberger stated that it's easy to make the allegation that someone is doing work without a license, but the Department has to have tangible proof that someone is doing work without a license if the case goes to hearing. He stated that one of the biggest problems is that no inspections are required for this type of wiring. If that were changed, the Department would have a much easier time in enforcement. Malooly stated that he would like to have the opportunity to investigate this issue with the Department to find solutions.

Malooly also stated that he is of the understanding that the Department has a clean up bill which would change the violation status that a party cannot advertise to perform electrical services unless they are licensed. Legge stated that she was going to give an update on this issue today. The bill is House File 927. Subdivision 2 deals with false information/unlicensed advertising, which states "no person shall offer to perform services for which a license issued by the Commissioner is required unless a person holds an active license to perform those services.

Durenberger stated there is a section in the electrical statutes which forbids a person from offering to do electrical work unless you are a licensed electrician, but that

doesn't automatically apply to irrigation systems as irrigation systems don't automatically require wiring. Malooly stated that he understands that irrigation systems don't necessarily require wiring, but assuming that the bill passing, what is the mechanism that the Department sees as enforcement. Durenberger responded that it would still be an Administrative Order. Malooly asked if that would still have to be handled through the Department, that a contract inspector or other field representatives could do and Durenberger stated that an Administrative Order could only be done through the Department.

Legge stated that Schultz pointed out the requirement that no one shall perform or offer to perform electrical work with or without compensation without a contractor's license is already in the electrical law. Legge also stated that her understanding is that Malooly is asking that violators be given what is equivalent to a "ticket." In order to give someone at the field level the authority to give tickets, that would have to be done at the legislative level specifying what the penalty is and, if the authority is given, then training would be required to those giving the tickets in order to ensure consistency in those that are issued; and there would have to be due process for anyone given a ticket to dispute it.

Freichels asked Durenberger what the Department needs from the industry to help Toni do the investigation in a shorter time; and asked how long it takes to do an investigation. Durenberger stated that this isn't a process where you follow an investigation from beginning to completion. What typically happens is that Toni will send a letter stating it appears the contractor is engaging in unlicensed activity and requesting a response. The response may or may not be received, which will dictate how long the investigation will take; it's not a finite process. If it's just a yellow pages ad, that is considered a low priority over a violation which endangers persons or property.

The industry could best assist the Department by providing solid evidence with which the Department can proceed. Freichels asked what is considered solid evidence. Durenberger stated an invoice is perfect evidence to show what work was done by whom. The Department's resources are limited to one investigator and they are working within those constraints. Freichels stated that if there were pictures of an unlicensed person pulling wire; that would be proof. Freichels stated that the Board has heard at meetings and at hearings that people are upset that the Department wants to put additional requirements on registered unlicensed workers when the Department can't resolve the issue of unlicensed and unregistered activity. Durenberger stated that there is a public good involved in getting people registered and there are always going to be people who get away with speeding on the freeway and this is the same type of issue. If the Department had more investigators it would be a simpler process.

McConnell asked what would be required for the Department to have permits be required and Legge answered that would have to be done in legislation. Durenberger stated that the enforcement division funds itself; which is generated through license fees; inspection fees; among others. Malooly stated that his understanding is that many of the license fees go to a general fund. Durenberger

stated that isn't correct, the fees go into the Construction Codes and Licensing Division's fund. The only monies taken in that do not go into CCLD's fund are fines/penalties. There are quite a few departments within the Construction Codes and Licensing Division and the money is allocated among the departments.

Toft asked when a complaint gets filed, is there a way to track it for the complainant; does each complaint get a number assigned that can be tracked by the inspector that filed the complaint or violation. Durenberger stated yes, every complaint that is opened as an investigative file is assigned an investigative file number. It cannot be tracked online; the only way to track it is to talk to Toni and ask what stage the file is at. Schultz stated that he believes what Toft is referring to is a violation report that is created by the inspector, which is forwarded to the area representative. Those reports are not tracked with a tracking number. Toft asked if there was a way they could be tracked. Schultz stated that routine violations are tracked differently than the more serious violations and to track all those within their current processes would bog down the system for no real purpose in the end. Toft stated the purpose would be to have resolution for violations. He would hate to see the contract inspectors out there writing up violations and then not know what happens to it. Schultz stated they are informed of the outcome because there are resolved. For instance; if it's a "Failure to File," there's an investigative fee that's paid by the contractor and they are all resolved.

Schultz stated that if there becomes a pattern that's developed by a particular contractor it should then rise to an enforcement action or disciplinary action, which is at a different level. Toft asked if there shouldn't be a time frame for a violation to be resolved. Schultz stated that there is a time frame in which routine violations are resolved and as discussed in the last meeting, where there's a developed history by a particular contractor where that wasn't resolved, as it's still under investigation. As we look forward to the new IT system, inspectors will have "real time" access to the inspection database. So if a contractor calls to schedule an inspection, the inspector will be able to look at the database and tell those who are scheduling inspections that the Request for Inspection form and fee has not been filed yet. Part of the problem that the Department has right now is that the requests are mailed and there is a time period of approximately 1 week to a week and a half to get those requests to the inspectors by mail.

Durenberger stated that he would like to clarify that there's a distinction between violations and the cases that rise to the enforcement level. He stated that he has an office in this building on the second floor and he is available to anyone in person, by e-mail or by phone who has any questions at any time. If a complainant; whether that be a homeowner, attorney, building official, or legislator; is not happy with the progress the file is being made, he talks to the investigator to clarify where it's at and that's a process that's worked for a long time.

Malooly stated that it's great that Charlie is willing to talk to anyone about these issues, but he is just one person. He stated that if the public knew that Durenberger would take phone calls regarding enforcement issues; that he would soon find himself too bogged down with phone calls. He stated that there should be a process

where these issues can be dealt with effectively and efficiently and try to make things work, and stated that he looks forward to finding a solution together.

Durenberger stated that the issue he's trying to address is; how can he fix a problem if he's not made aware that there is a problem. Regarding efficiency, even if he gets bogged down with phone calls he'd prefer that over there's a problem not getting resolved that he's responsible for. Malooly stated that he appreciates Durenberger's position, and he's just looking for workable answers.

Scott Nutting stated that as the contract electrical inspector who brought this issue before the Board, he would like to work with the Department and is asking what the Department needs from the inspectors; what is the Department using for evidence, perhaps they can come up with an invoice with the violation letters and send it in. He stated his concern is those that are continually trying to beat the system, and is wondering what contract inspectors can do on repeat offenders.

Durenberger stated that shortly there's going to be two Licensing Orders that revoke two contractor's licenses. The reason that these Orders take so long is because Toni's got to put together in the Order all of the facts and all of the things that the contractor did, which on this particular one, was 16 pages long; to identify all of the jobs the contractor didn't file on, or call for inspections, or was issued a Correction Order that he didn't comply with, was issued warnings by the Board and disregarded them. Durenberger stated he felt it may be helpful if the Board members could see what one of the Orders look like when it gets to the point of revoking someone's license.

V. Special Business

- A. Reciprocal agreement(s)
 - i. Update on MN State Master Reciprocity Agreement (with ND, NE, SD)
 - ii. Review Update on South Dakota's ICC exam
 - iii. Review new Multi State Reciprocity Agreement

Schultz stated he had a conversation with J.J. Lynn from South Dakota and was told that South Dakota has changed their licensing examination process slightly. They've gone to a different proctor and now the test can only be taken in Sioux Falls.

VI. Committee Reports

- A. Construction Codes Advisory Council – Tom Seanger – Schultz stated that the first meeting has been scheduled tentatively for April 9th.

VII. Complaints

There have been no complaints addressed to the Board.

VIII. Chapter 3800 (Electrical Licensing and Continuing Education)

- A. Public Board session on Chapter 3800 proposed rules and ALJ Hearing: Discuss whether the Board wishes to make any changes to the proposed rules at this time. Legge stated that the reason for part of this discussion being public and part being closed is because any consideration the Board wants to give to amending the proposed rules will be done publically. Once the Board makes any decision on whether to amend the rules or not, then the meeting will be closed for attorney/client privileged discussion of the Board's position on the rules and response to the Judge on the Board's position.

Freichels opened the discussion to the public. Tony Mendoza, representing the Minnesota Cable Communications Association, addressed the Board and stated that the changes that Ms. Legge has proposed are acceptable and appreciated by the Association. He stated that the only other issue, which is more likely a Department issue, is that the Association would like to have corresponding consistent changes to the forms that are used by the Department to implement that are part of the Data Practices Act regarding unlicensed individuals' application process. Legge stated that the purpose of this would be to allow an applicant for registration to maintain privacy of the home address by giving an alternative public address, although the home address would still be required by the Department. Freichels stated that there was information at the hearing with the problem of identity theft. Legge stated that the Data Practices Act does dictate that all information given on an application is public information except for any non-designated address. Malooly stated that his understanding is that the home address would still be required but would be made private. Legge stated that the option would be available to the applicant to list a different address that would be made public and keep the home address private. The Tennessee warning, which is an explanation of what will be public information, would be included on the form.

Schultz made a motion, seconded by Klein, to modify the proposed rule language on 3800.3525, Subpart 2; and 3800.3603, Subparts 1 and 7.

Malooly asked why the rule language crosses out the word "Board" and substitutes "Department." Legge answered that's not a modification, that's already in the proposed rule. The rationale behind that is as a practical matter, the Department administers the educational requirements and needs the attendance list. The modifications proposed today are listed in italics, which adds "or registrant" to recognize that registrants who are going to be receiving continuing education also need a certificate of completion.

There was no further discussion. The vote was unanimous and the motion passed.

Russ Ernst, representing MNESTA, stated that he attending the hearing held on February 17th and was open to any questions regarding MNESTA's proposal. Malooly stated that the parties he represents oppose the continuing education requirement and asked Mr. Ernst for his response on Malooly's group's assertion that the continuing education requirement and feels that it is an unworkable and unreasonable requirement. Ernst stated that they partially support the requirement on registration; but don't entirely agree with the CEUs, due to different individuals that may never pursue a license for whom CEUs would not be necessary.

Freichels asked the Board if anyone wanted to make a motion to include the MNESTA language to the proposed rules which will be submitted to the Administrative Law Judge. Hearing none, this proposal was dismissed.

Malooly made a motion to remove entirely the continuing education requirement for registered unlicensed workers contained in the proposed rules under consideration. There was no second to the motion and the motion failed.

IX. Open Forum

There were no requests for Open Forum.

X. Board Discussion

The Board announced the public portion of the meeting has concluded. The Board's only other open portion of the meeting would be for the adjournment. The Board closed the meeting at 10:36 a.m.

XI. Announcements

A. Next Regularly Scheduled Meetings

- i. Tuesday, April 7, 2009, 9:00 a.m. – Minnesota Room, DLI
- ii. Tuesday, May 5, 2009, 9:00 a.m. – Minnesota Room, DLI

XII. *Closed Board Session**

A. Closed Board Session on Chapter 3800 Rulemaking: The Attorney-Client Privilege authorizes the closing of this session***

- i. Discuss Board's written comments to be filed with Administrative Law Judge Barbara Neilson on March 9, 2009 (*attorney-client privileged draft will be discussed.*)
- ii. Discuss process for determining what written reply comments (if any) the Board will file with Administrative Law Judge Barbara Neilson on March 16, 2009.

XIII. Adjournment

The Board reconvened the open portion of the meeting at 11:08 a.m.

A motion was made by McConnell, seconded by Hoskins, to adjourn the meeting of the Board of Electricity, the vote was unanimous and the motion passed. Board adjourned at 11:09 a.m.

Respectfully Submitted,

John Schultz

John Schultz