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1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF LABOR AND TRAINING  
2 DIVISION OF PROFESSIONAL REGULATION

3

4 .....

PROCEEDINGS AT HEARING :

5 :

IN RE: :

6 :

MECHANICAL BOARD :

7 .....

8

DATE: SEPTEMBER 5, 2007

9 TIME: 9:00 A.M.

PLACE: 1511 PONTIAC AVENUE

10 BUILDING 70

CRANSTON, RI

11

12

13 PRESENT:

STANLEY DAVIES, CHAIRMAN

14 TIMOTHY BYRNE

DENNIS BRENNAN

15 MICHAEL CARREIRO

MICHAEL JANUARIO

16 JOHN WEBSTER

BOBBY JOE HARRIS

17 QUINLAN REGAN

CHESTER STEWART

18 TED WHITTAKER, INVESTIGATOR

CHARLES WRIGHT, INVESTIGATOR

19 VAL LOMBARDI, ESQUIRE

20

21

22

23 RHODE ISLAND COURT REPORTING

747 NORTH MAIN STREET

24 PROVIDENCE, RI 02904

(401) 437-3366

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1 (COMMENCED AT 9:07 A.M.)

2 MR. DAVIES: Good morning. It is

3 9:07, and we're opening the Mechanical Board

4 hearings. We're going to dispense with the

5 reading of the minutes and go right into the

6 hearings.

7 Our first hearing this morning is Gem

8 Plumbing, 3166. All those who are going to speak,

9 please stand and be sworn.

10 CLIFFORD WHITING, EDWARD WHITTAKER,

11 CHARLES WRIGHT, LEONARD GEMMA

12 (SWORN)

13 MR. DAVIES: Mr. Whittaker, would  
14 you read Case No. 3166?

15 MR. WHITTAKER: Date 5/11/2007,  
16 Violation 3166. Name of violator: Gem Plumbing &  
17 Heating, 1 Wellington Avenue, Lincoln, Rhode  
18 Island 02865. Location of violation: 50 Holden  
19 Street, Providence, Rhode Island.

20 Violation: On May 7, 2007, Mr. Clifford  
21 Whiting, Chief Mechanical Inspector for the City  
22 of Providence, witnessed two employees of Gem  
23 Plumbing & Heating performing work on heating  
24 lines at the above job location.

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1 When Mr. Whiting asked the two employees  
2 for a pipefitting license, Mr. Paul Newman  
3 produced a plumbing apprenticeship, registration  
4 number 19139, and William Jimenez produced a  
5 master plumbing license, number MP 00231.

6 Mr. Whiting then asked the two employees  
7 if they hung the heating equipment and they said  
8 no. They informed Mr. Whiting that two other  
9 employees of Gem Plumbing & Heating installed the  
10 heating lines; a Mr. Justin Smith, sheet metal  
11 journeyman one, and Mr. Jason Capwell, sheet metal  
12 journeyman one.

13           **Mr. Whiting then asked the project**  
14 **manager of the Foundry, Mr. Ted Sweck, who**  
15 **actually performed this work. Mr. Sweck stated**  
16 **that Paul Newman and William Jimenez installed the**  
17 **heating lines. Mr. Sweck stated that these four**  
18 **men from Gem Plumbing & Heating worked on hanging**  
19 **the unit and doing the ductwork. These are four**  
20 **violations, Rhode Island General Law 28-27-28,**  
21 **practice for which a license is required. Signed**  
22 **Charles W. Wright, Investigator.**

23           **MR. DAVIES: Do board members have**  
24 **any questions of Mr. Whittaker's statement?**

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1 **Hearing none, we're going to go to Mr. Gemma,**  
2 **would you take a seat up at the front of the**  
3 **table, please?**

4           **MR. KRAEMER: What for, to ask him**  
5 **questions?**

6           **MR. DAVIES: No. It's so if you**  
7 **want to ask any questions.**

8           **MR. WRIGHT: Board members, this**  
9 **is a violation that came in from Mr. Clifford**  
10 **Whiting, Chief Mechanical Inspector from the City**  
11 **of Providence. He sent me an e-mail stating the**  
12 **reasons for his complaint, which I have done since**  
13 **then, and Mr. Whiting is here for your questions.**

14 MR. DAVIES: Board members have  
15 any questions of Mr. Wright or his statement?

16 MR. CARREIRO: Not presently.

17 MR. DAVIES: Mr. Whiting, would  
18 you like to address the board?

19 MR. WHITING: No. The complaint  
20 was generated from the e-mail. Everything was  
21 said.

22 MR. DAVIES: Any questions of  
23 Mr. Whiting?

24 MR. CARREIRO: Question, through  
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1 the chair, Mr. Ted Sweck is the project manager  
2 for?

3 MR. WHITING: For the Foundry.

4 MR. CARREIRO: And that would be  
5 for the project?

6 MR. WHITING: I'm not sure.

7 MR. CARREIRO: He's there all the  
8 time?

9 MR. WHITING: Yes.

10 MR. DAVIES: Any other questions?

11 MR. HARRIS: Were you called to  
12 this location or were you just driving by?

13 MR. WHITING: No. Actually, I was  
14 called for a complaint from a different

15 complainant, which I also turned in. It was  
16 sprinklerfitters working there without a permit,  
17 so that's why I was on-site.

18 MR. HARRIS: Thank you.

19 MR. DAVIES: Any other questions  
20 by board members? Okay, Mr. Whiting. Mr. Gemma,  
21 would you like to address the board?

22 MR. KRAEMER: Who called you?

23 MR. WHITING: It was an anonymous  
24 call asking me about the sprinklerfitters, if they

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1 had a permit. And I believe on the same day I  
2 sent an e-mail, because they didn't have a permit,  
3 and I was on-site for that reason.

4 MR. KRAEMER: Who was the  
5 sprinklerfitters' contractor?

6 MR. WHITING: I'd have to check  
7 with the -- if you want, I can look through this.  
8 I have all my e-mails I sent. But it wasn't the  
9 sprinklerfitter company that called me.

10 MR. KRAEMER: Mr. Whiting, what  
11 time did you get to the location?

12 MR. WHITING: Excuse me?

13 MR. KRAEMER: What time did you  
14 get to the location?

15 MR. WHITING: I still didn't hear

16 you.

17 MR. KRAEMER: What time did you  
18 arrive at the 50 Holden Street location?

19 MR. WHITING: I don't -- didn't  
20 keep track of the time.

21 MR. KRAEMER: Was it in the  
22 morning or the afternoon?

23 MR. WHITING: I don't remember.

24 MR. KRAEMER: Do you have notes

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1 that you took at the time?

2 MR. WHITING: I made an e-mail  
3 immediately and that's my notes.

4 MR. KRAEMER: Do you have that  
5 with you?

6 MR. WHITING: Yes, I do.

7 MR. KRAEMER: Can I see that?

8 (MR. KRAEMER PERUSES DOCUMENT)

9 MR. KRAEMER: Mr. Whiting, you  
10 said there was a Paul Newman on the location?

11 MR. WHITING: I'd have to look at  
12 my notes.

13 MR. KRAEMER: Without looking at  
14 your notes, you have no recollection of that, of  
15 who was there?

16 MR. WHITING: I do a lot of

17 inspections every day, that's why I made the  
18 e-mail, so I'd have a record to refer to it.

19 MR. KRAEMER: Well, before you  
20 look at your notes, do you have any recollection  
21 of actually who was on the site?

22 MR. WHITING: My recollection was  
23 that there was two, I believe they were plumbers,  
24 working on the heating line. Then I asked them if  
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1 they hung their units.

2 MR. KRAEMER: When you got there,  
3 what were they actually doing?

4 MR. WHITING: They were soldering  
5 pipes.

6 MR. KRAEMER: What else did you  
7 see these men do beside the pipes?

8 MR. WHITING: Work on the pipes,  
9 that's it.

10 MR. KRAEMER: Did you see anybody  
11 else work on-site?

12 MR. WHITING: No. I seen tools,  
13 but I didn't see the other men.

14 MR. KRAEMER: So you have no  
15 direct knowledge of any work being done on the  
16 site, except for the two men who's names you don't  
17 recall whom you saw soldering pipe?

18           **MR. WHITING:** The two men who were  
19 soldering pipe. I asked if they hung the unit,  
20 they gave me the four names.

21           **MR. KRAEMER:** I understand they  
22 told you that, but you yourself didn't see anybody  
23 doing anything other than soldering of the piping?

24           **MR. WHITING:** No. I seen the two  
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1 men start working on heating lines, with plumber's  
2 licenses.

3           **MR. KRAEMER:** Did you see both of  
4 them soldering?

5           **MR. WHITING:** They were both on  
6 the ladders.

7           **MR. KRAEMER:** So you saw two men  
8 on ladders, did you see them actually soldering?

9           **MR. WHITING:** One was soldering,  
10 the other was on the ladder.

11           **MR. KRAEMER:** What was he doing on  
12 the ladder?

13           **MR. WHITING:** Probably adjusting  
14 the pipes. They were working on the heating line.

15           **MR. KRAEMER:** Are you guessing?

16           **MR. WHITING:** I asked them what  
17 they were doing.

18           **MR. KRAEMER:** No. No. No. Did

19 you actually observe?

20 MR. WHITING: Yes. I observed one  
21 of them soldering pipes.

22 MR. KRAEMER: The other guy was  
23 just standing on the ladder?

24 MR. WHITING: Correct.

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1 MR. KRAEMER: You have no direct  
2 knowledge of what work he did, other than standing  
3 on the ladder?

4 MR. WHITING: I asked him.

5 MR. KRAEMER: I understand that,  
6 but you didn't observe him doing anything?

7 MR. WHITING: No. But I heard his  
8 answer.

9 MR. KRAEMER: What did he look  
10 like?

11 MR. WHITING: I don't remember.

12 MR. KRAEMER: Was he white, black,  
13 Hispanic?

14 MR. WHITING: I don't remember.

15 MR. KRAEMER: Is he in this room  
16 today?

17 MR. WHITING: I don't remember.

18 MR. KRAEMER: Is he in this room  
19 today?

20 MR. WHITING: If I don't remember  
21 what he looked like, how would I know if he was in  
22 this room today?

23 MR. KRAEMER: And in your  
24 statement, you referred to two other individuals  
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1 installing heating lines and that's something you  
2 learned because somebody else told you that?

3 MR. WHITING: That's not in my  
4 statement. Do you mind if I look at my statement?

5 MR. KRAEMER: In a minute. You  
6 said you -- other than what you were told and what  
7 you told us about, you testified now about the two  
8 men; one was standing on the ladder, one was  
9 soldering, did you observe anybody else doing any  
10 work at the location?

11 MR. WHITING: No.

12 MR. KRAEMER: Do you know whether  
13 Gem had licensed pipefitters on-site at that  
14 location other than when you were present?

15 MR. WHITING: I was told they  
16 were.

17 MR. KRAEMER: I'm not asking what  
18 you were told, because that's hearsay, I'm asking  
19 what you observed?

20 MR. WHITING: You've asked me ten

21 times, I've told you I've seen two men and they  
22 had a plumbing license. Those are the only two  
23 that I seen. So the answer to the other questions  
24 would be no.

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1 MR. KRAEMER: Thank you.

2 MR. DAVIES: Any board members  
3 have any questions of Mr. Whiting or Mr. Gemma's  
4 attorney?

5 MR. BRENNAN: Mr. Gemma, is this a  
6 very large job at the Foundry, or a small job?

7 MR. GEMMA: Yes.

8 MR. BRENNAN: Is this a prevailing  
9 wage job?

10 MR. GEMMA: No.

11 MR. BRENNAN: Do you have a job  
12 supervisors on the job, clerk of the works?

13 MR. GEMMA: Yes.

14 MR. BRENNAN: Was he present when  
15 these men were there?

16 MR. GEMMA: No. Well, depending  
17 what you consider as "there," we have a roaming  
18 supervisor to ensure that all the jobs, no  
19 problem.

20 MR. BRENNAN: According to the  
21 complaint that I'm reading here, it says that

22 Mr. Sweck said that four men worked on the job;

23 Mr. Whiting, at the day or time that you can

24 recall from your notes or here, did you see the

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1 four men, or did you see the two men and you took

2 Mr. Sweck's word that there were two other men

3 there?

4 MR. WHITING: I seen the two men

5 and the two men told me there were four tin

6 knockers. And the supervisor of the job, the

7 project manager confirmed that, and they both gave

8 me the same names.

9 Then I called Gem Plumbing & Heating up,

10 gave the first names, they gave me their last

11 names. The project manager from Gem, he told me

12 that they were working on the job.

13 MR. BRENNAN: Knowing where the

14 Foundry is, do you have enough master pipefitters

15 to cover a job like this in your employ?

16 MR. GEMMA: Absolutely.

17 MR. BRENNAN: So one should have

18 been on the job?

19 MR. GEMMA: Yes.

20 MR. CARREIRO: Just a

21 clarification on your question, Mr. Brennan.

22 MR. BRENNAN: Yes.

23 MR. CARREIRO: You asked how many  
24 masters he has on the job.

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1 MR. BRENNAN: Master pipefitters  
2 that Gem had on the job.

3 MR. CARREIRO: Master license, as  
4 opposed to journeyman.

5 MR. BRENNAN: Yes, I did. I asked  
6 him about master pipefitters.

7 MR. DAVIES: Any other board  
8 members? Yes, Mr. Byrne.

9 MR. BYRNE: Mr. Gemma, I'm  
10 assuming that Ted Sweck is the project manager or  
11 clerk of the works for of the Foundry?

12 MR. GEMMA: I believe so.

13 MR. BYRNE: Are the men required  
14 to sign in when they go in to the job?

15 MR. GEMMA: I don't have any  
16 knowledge if they're signing in or not. If I  
17 could say one thing though. The allegation is  
18 that the sheet metal people hung the heating pipe.  
19 I absolutely deny that allegation.

20 Certainly to the best of my knowledge,  
21 and we can check my records, my sheet metal people  
22 do not do piping.

23 MR. DAVIES: Any other questions

24 of the board members in regards to this case? Do  
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1 I have a motion?

2 MR. KRAEMER: As long as Mr. Gemma  
3 is answering questions. Did you take a look at  
4 your records and see whether any pipefitters  
5 worked on this job?

6 MR. GEMMA: Yes.

7 MR. KRAEMER: And were there  
8 licensed pipefitters working on the job, according  
9 to your records?

10 MR. GEMMA: I'm not sure if they  
11 were licensed pipefitters.

12 MR. KRAEMER: Do you recall who  
13 they were?

14 MR. GEMMA: I believe Tom Falco  
15 was on the job, licensed pipefitter journeyman.  
16 Michael Jolica (Phonetic) was on the job, who  
17 oversaw -- actually, he was overseeing the  
18 pipefitters. And I believe that there might have  
19 been, Arnold Ness was on the job, he had hours on  
20 the job. Willie Jimenez is a master plumber, got  
21 his apprentice license the next day.

22 MR. KRAEMER: Is it your practice  
23 to have pipefitters do the work that pipefitters  
24 are required by law to do?

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1           **MR. GEMMA: Absolutely. To the**  
2 **best of our ability.**

3           **MR. STEWART: Were they on the job**  
4 **every day, those gentleman you just mentioned**  
5 **their names?**

6           **MR. GEMMA: I looked at the time**  
7 **sheets. I don't know every job that goes on, I**  
8 **don't know the duration of every job; how many**  
9 **hours of pipefitting, how many hours of sheet**  
10 **metal stuff. But I can tell you this, they were**  
11 **on the job. I'm not sure, I didn't check the**  
12 **whole job records.**

13           **MR. STEWART: Do you pull men in**  
14 **and out of jobs, moving them around, so they can**  
15 **be there today and not be there tomorrow, and then**  
16 **have somebody else there tomorrow doing the work?**

17           **MR. GEMMA: I try not to do that**  
18 **because it becomes very inefficient. What I try**  
19 **to do is, so many, three or four days' worth of**  
20 **pipefitting work, with the pipefitters on there**  
21 **for three or four days, and then move them to**  
22 **another job.**

23           **But you know to the best, and my people**  
24 **are well-informed and stuff to the best of our**

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1 ability. I certainly make every attempt possible  
2 that every person that's supposed to be on the job  
3 is licensed on the job. That's it, I don't want  
4 to come up to the board.

5 MR. CARREIRO: Observation  
6 question, more of an observation, just to the  
7 board, you're the lawyer for Gem?

8 MR. KRAEMER: Yes.

9 MR. CARREIRO: The litigator  
10 attempted in his proof here this morning to state  
11 that the city inspector for the City of Providence  
12 was there on hearsay. And then when he questioned  
13 Mr. Gemma as to who did what, to the best -- I  
14 mean, it was hearsay.

15 So I mean, in other words, what we've  
16 got to look at is if we're going to use the  
17 argument that to the best of my knowledge as the  
18 city inspector says, or what he visualized. The  
19 city inspector visualized two plumbers soldering.

20 Okay. You come forward with testimony  
21 to the best of my knowledge, so I guess what our  
22 board has to do is go by what the city inspector  
23 saw.

24 MR. KRAEMER: Well, actually, and

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1 you can confer with your counsel --

2 MR. CARREIRO: That goes through  
3 the chair, please.

4 MR. DAVIES: Yes.

5 MR. KRAEMER: Today we had --  
6 first of all, I'll respond to that, and I'm sure  
7 you'll confer with your counsel later on. The  
8 burden of proof in terms of whether a violation  
9 occurred is the -- lies with whoever is bringing  
10 the charge. That's a basic matter of due process.

11 So the question really isn't what -- the  
12 question is what has been proven. What's been  
13 proven is that Mr. Whiting saw two people and he  
14 testified to what he saw. His testimony as to  
15 what he was told by a Gem workmen and his  
16 testimony as to what he was told by Mr. Sweck who  
17 is not here, these are witnesses who are not here,  
18 and it is hearsay.

19 And one of the things I would do before  
20 direct cross is to ask that the hearsay testimony  
21 be stricken and not considered.

22 MR. DAVIES: The board members  
23 will take that into consideration. Mr. Gemma,  
24 would you keep a record of your master pipefitters

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1 or whoever is working on the job as a record of  
2 how many hours and when; is that normal?

3 MR. GEMMA: Yes.

4 MR. DAVIES: Thank you.

5 MR. GEMMA: Payroll records.

6 MR. DAVIES: On a daily activity,

7 right?

8 MR. GEMMA: They don't fill out  
9 daily reports, but they fill the weekly reports.

10 MR. DAVIES: Does it show whether  
11 they were on the job that day, that's my point?

12 MR. GEMMA: Yes.

13 MR. DAVIES: Thank you. Gentlemen  
14 of the board, have you decided on whether there  
15 was a violation on No. 3166? Before the board  
16 should listen to what's pending, would you like to  
17 address the board on closing statements?

18 MR. KRAEMER: Sure. I'd  
19 appreciate that. As I said earlier, the burden of  
20 proof is not on Gem. The burden of proof is to  
21 show that there was a violation.

22 The only direct testimony that has been  
23 established is that there was one man who was  
24 standing on a ladder and one man who was soldering

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1 pipes. There's no testimony.

2 There are four violations alleged here.

3 There is no probative testimony concerning

4 anything other than those two individuals. And  
5 even there, there's only testimony that one of  
6 them was soldering, that the board has not, the  
7 department has not met its burden of proof to  
8 establish there were violations of the law and we  
9 would ask that the charges be dismissed.

10 MR. DAVIES: Board members, have  
11 you come up with the violation on 3166, that a  
12 violation occurred?

13 MR. CARREIRO: Mr. Chairman.

14 MR. DAVIES: Mr. Carreiro.

15 MR. CARREIRO: Based on the  
16 testimony, verbal, based on the written violation,  
17 I make the motion with regards to Violation 3166  
18 that Gem Plumbing & Heating, 1 Wellington Avenue,  
19 Lincoln, Rhode Island, did violate 28-27-28 in  
20 four instances as spelled out in the violation.

21 MR. DAVIES: Do we have a second  
22 on that motion?

23 MR. WEBSTER: Second.

24 MR. DAVIES: All those in favor?

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1 Aye. Against?

2 MR. BRENNAN: Opposed.

3 MR. DAVIES: Mr. Brennan, so

4 noted.

5 MR. CARREIRO: Further,  
6 Mr. Chairman, with regards to Violation 3166, that  
7 the board recommends to the director to uphold the  
8 fines, Rhode Island General Law 28-27-24, in four  
9 instances at 950, that's 3800.

10 MR. DAVIES: Second?

11 MR. WEBSTER: Second.

12 MR. DAVIES: All in favor?

13 Against?

14 MR. BRENNAN: Opposed.

15 MR. DAVIES: One opposed.

16 Mr. Gemma, you'll hear from one the Department of  
17 Labor on whether the Director of the Department of  
18 Labor will stand by our vote.

19 Second case, Gem Plumbing, Violation  
20 No. 3167.

21 MR. WHITTAKER: Date: 5/9/2007;  
22 Violation No. 3167. Name of violator: Gem  
23 Plumbing & Heating, 1 Wellington Avenue, Lincoln,  
24 Rhode Island 02865. Location of violation, 100  
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1 Fountain Street, Providence, Rhode Island.

2 Violation: On 3/23/07, Chief Mechanical  
3 Inspector Clifford Whiting, City of Providence,  
4 observed two men working on the sprinkler system  
5 at the above-referenced address.

6 Mr. Whiting has informed the Rhode  
7 Island Department of Labor, Chief Investigator  
8 Mr. Charles Wright that there was no mechanical  
9 permit issued for performing this type of work.

10 This is one violation of Rhode Island  
11 General Law 28-27-20, state and municipal  
12 inspection and permits to perform -- installation  
13 permits. Signed, Charles W. Wright, Investigator.

14 MR. WRIGHT: Board members, this  
15 again was forwarded to me by Mr. Whiting, City of  
16 Providence Chief Mechanical Inspector.

17 The two people that were on the job  
18 weren't properly licensed. One was a journeyman,  
19 one was an apprentice, he didn't have his card  
20 with him, but he was properly registered. The  
21 violation was the lack of a state and municipal  
22 inspection installation permit under Rhode Island  
23 General Law 28-27-20.

24 MR. DAVIES: Any questions of

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1 Mr. Wright's statement?

2 MR. CARREIRO: This facility, 100

3 Fountain Street, what is that?

4 MR. WRIGHT: Have to ask

5 Mr. Whiting.

6 MR. WHITING: New deli, Murphy's

7 Deli.

8 MR. DAVIES: Any other questions  
9 of Mr. Wright? Or now we can go into Mr. Whiting.

10 MR. WEBSTER: Was that new  
11 installation or was that existing?

12 MR. WHITING: No, it was new  
13 installation.

14 MR. WEBSTER: New installation,  
15 what is the progress?

16 MR. WHITING: I take that back. I  
17 guess it was an adjustment of the installation.  
18 In other words, they had built the whole building  
19 but that restaurant area was left vacant until  
20 they sold it or rented it.

21 MR. WEBSTER: Did they ever pull a  
22 permit?

23 MR. WHITING: Yes, they did. But  
24 I believe it was two days late.

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1 MR. WEBSTER: How much of the job  
2 was completed?

3 MR. WHITING: They were just  
4 fine-tuning. They were just about done.

5 MR. WEBSTER: Two days after, you  
6 got a violation to pull here?

7 MR. WHITING: The permit was

8 pulled after. I'm not sure whether it was a day  
9 or two, but it was very close.

10 MR. DAVIES: Any other board  
11 members have any questions of Mr. Whiting?  
12 Mr. Kraemer.

13 MR. KRAEMER: Thank you.

14 Mr. Whiting, do you have the permit  
15 application with you?

16 MR. WHITING: No.

17 MR. KRAEMER: Do you have the  
18 permit with you?

19 MR. WHITING: No. Well, I've got  
20 the -- that they pulled eventually? No. When I  
21 went there, they didn't have a permit.

22 MR. KRAEMER: You testified that  
23 there was a permit issued for that after?

24 MR. WHITING: After I went on the  
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1 job.

2 MR. KRAEMER: Do you have that  
3 permit with you today?

4 MR. WHITING: No, I don't.

5 MR. KRAEMER: Do you know when Gem  
6 went down and filed the application for the  
7 permit?

8 MR. WHITING: To the best of my

9 recollection, it was either a day or two days. It  
10 was shortly after I stopped and asked them if they  
11 had a permit. They said they would call the shop  
12 and find out, and they come in either the next day  
13 or the following day.

14 MR. KRAEMER: Did you have a  
15 conversation on the 23rd with somebody from Gem?

16 MR. WHITING: I don't know.

17 MR. KRAEMER: Do you recall  
18 telling somebody from Gem that if you pull the  
19 permit today that it would be ugly or words to  
20 that effect?

21 MR. WHITING: No.

22 MR. KRAEMER: So you didn't say  
23 that or you have no recollection of saying that?

24 MR. WHITING: I have no

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1 recollection of saying that.

2 MR. KRAEMER: Is it possible you  
3 said that?

4  
5 MR. WHITING: No. I have no  
6 recollection. The only thing might have been said  
7 is there could be one pulled because I don't have  
8 the files with me when I'm on-site -- I went for  
9 different inspections. I probably said I'm going

10 to go back and check and see if there is a permit  
11 on file.

12 MR. KRAEMER: I have no more  
13 questions for Mr. Whiting.

14 MR. DAVIES: Board members?  
15 Mr. Byrne.

16 MR. BYRNE: Mr. Whiting, is there  
17 any time when work can be done on a sprinkler  
18 system without a permit?

19 MR. WHITING: No.

20 MR. BYRNE: None at all?

21 MR. WHITING: Yes, if they were  
22 changing one head.

23 MR. BYRNE: Any emergency  
24 situation?

0027

1 MR. WHITING: Any time there's an  
2 emergency situation, they're allowed to work on it  
3 as long as they contact our office. There is no  
4 way we tell them not to work if there's an  
5 emergency.

6 MR. BYRNE: But this wouldn't be  
7 considered an emergency?

8 MR. WHITING: No. The restaurant  
9 wasn't even open.

10 MR. DAVIES: Any other board

11 members have any questions of Mr. Whiting or of  
12 Mr. Gemma?

13 MR. STEWART: Do you have a copy  
14 of the permit there?

15 MR. GEMMA: Yes.

16 MR. STEWART: What day was that  
17 permit issued?

18 MR. GEMMA: It was issued on the  
19 Friday, the day Mr. Whiting was on the job, that  
20 was the day it was filed on.

21 MR. STEWART: Was there work done  
22 prior to the issuing of the permit?

23 MR. GEMMA: That I'm not sure of.  
24 I believe it was Tuesday the day he signed the  
0028

1 application, but we pulled the permit on Friday  
2 which is the day he was there.

3 MR. STEWART: You don't know if  
4 anybody worked on that job prior to that Friday?

5 MR. GEMMA: I don't know that.

6 This job was not a new installation. It was a  
7 couple of thousand dollar job. It was readjusting  
8 heads. That's all it was. It was not a new  
9 installation. The building had previous fire  
10 protection.

11 MR. DAVIES: Any other questions

12 of Mr. Gemma and/or Mr. Whiting?

13 MR. KRAEMER: Mr. Whiting, do you  
14 have the permit?

15 MR. WHITING: Yes, I do.

16 MR. KRAEMER: Can I see it?

17 MR. WHITING: Sure.

18 (MR. KRAEMER PERUSES DOCUMENT)

19 MR. KRAEMER: Can we have this  
20 marked as an exhibit?

21 (EXHIBIT 1 MARKED)

22 MR. KRAEMER: Let me give this  
23 back to Mr. Whiting. The date of the violation is  
24 marked as 3/23/07; what date was the application  
0029

1 for permit filed?

2 MR. WHITING: The date on the  
3 permit says 3/23. The date I signed it is 3/27.  
4 I sign the permits the day I received them, and my  
5 secretary hands it to -- the biggest lead time is  
6 overnight. What I am trying to get at is I can't  
7 control the date at the top, but by me signing  
8 that.

9 MR. KRAEMER: That does show that  
10 the date of, that the issue is whether there was a  
11 permit filed on the 23rd, the application for the  
12 permit was filed on the 23rd, Friday?

13 MR. WHITING: No, it does not. I

14 approved it on the 27th.

15 MR. KRAEMER: No, I got that.

16 What's the application date?

17 MR. WHITING: The date on this  
18 permit says 3/23, but that doesn't mean it was  
19 taken 3/23. That's the day it was filled out.

20 The day the permit is filled out, it's  
21 put on my desk. And I review it and sign it that  
22 day and hand it back to the secretary.

23 MR. KRAEMER: So under ordinary  
24 circumstances, that application which was -- the  
0030

1 application date is marked 3/23, that would have  
2 been put on your desk for signature on 3/23?

3 MR. WHITING: Yes, it would be.

4 MR. KRAEMER: And you didn't sign  
5 it until the 27th?

6 MR. WHITING: That doesn't happen.

7 MR. KRAEMER: Well, it did happen  
8 in this case.

9 MR. WHITING: No.

10 MR. KRAEMER: The application date  
11 is 3/23 and it was signed on 3/27.

12 MR. WHITING: I don't check  
13 application dates. What I check is to make sure

14 the license corresponds with the work and make  
15 sure the price is within the ballpark.

16 And also on this permit there is a  
17 processing fee and that's \$150 for working without  
18 a permit which was paid for by Gem Plumbing. So  
19 this permit shows that they acknowledge they were  
20 working without a permit.

21 MR. KRAEMER: Do you know why this  
22 wasn't approved on the 23rd?

23 MR. WHITING: Because it wasn't on  
24 my desk.

0031

1 MR. KRAEMER: Where were you on  
2 the 23rd, weren't you at 100 Fountain Street on  
3 the 23rd?

4 MR. WHITING: That's correct.

5 MR. KRAEMER: Move this as an  
6 exhibit for the board.

7 MR. STEWART: Who puts the dates  
8 on when you fill out the application?

9 MR. WHITING: The applicant.

10 MR. STEWART: If I come in to take  
11 out a permit and I wrote a date prior to that,  
12 would anybody say anything about it?

13 MR. WHITING: I wouldn't notice.

14 MR. STEWART: Would it matter,

15 would it be?

16 MR. WHITING: My specific job when  
17 I get the permit is to check to make sure that the  
18 license matches the work being done and that the  
19 price is in the ballpark.

20 MR. WEBSTER: In any event, you  
21 stated the job was near completion anyway at the  
22 time the permit was taken out?

23 MR. WHITING: This is correct.

24 MR. BYRNE: Question, the question

0032

1 I have is what activates the permit; the filing of  
2 the permit or the approval of the permit?

3 MR. WHITING: The approval.

4 MR. BYRNE: Approvals are done as  
5 soon as they are received.

6 MR. WHITING: They're done almost  
7 exclusively -- my secretary usually brings in the  
8 permits at four o'clock. And I review them and  
9 sign them and put them right back on her desk.  
10 The thing is, there has never been more than  
11 over night, because then I'll do it first thing in  
12 the morning. But that doesn't happen because I  
13 like to get them processed.

14 MR. KRAEMER: So if I'm a  
15 contractor and I file an application for a permit,

16 my expectation is that assuming it is proper, that  
17 you'll sign it that day?

18 MR. WHITING: It gets signed that  
19 day, every time.

20 MR. KRAEMER: So if Gem filed this  
21 application on the 23rd which is the date, Gem had  
22 a reasonable expectation that it would be approved  
23 on the 23rd?

24 MR. WHITING: Correct.

0033

1 MR. KRAEMER: Thank you.

2 MR. CARREIRO: Is there a  
3 numerical order for the permit numbers; 27,28,29?

4 MR. WHITING: You mean which  
5 number?

6 MR. CARREIRO: Permit number.

7 MR. WHITING: Yes. That's in  
8 numerical order.

9 MR. CARREIRO: And the one after  
10 that would have been 1328?

11 MR. WHITING: Correct.

12 MR. CARREIRO: Okay. The way --  
13 would Gem want to review permits 1326 and 1328 and  
14 see what dates they had on there; is that what  
15 you're asking?

16 MR. KRAEMER: I'm not asking

17 anything. I'm asking whether or not Gem had a  
18 reasonable expectation if they filed application  
19 on the 23rd whether the application would be  
20 approved, and the witness said yes.

21 MR. CARREIRO: Okay. But are you  
22 asking before we take action, would this be  
23 reasonable to you that if we go back to Permit  
24 1326 and see the application date and the approval  
0034

1 date, and the 1329 application date and approval  
2 date?

3 MR. KRAEMER: If the witness has  
4 those applications here, let's take a look at  
5 them.

6 MR. CARREIRO: It's public record.  
7 I mean before we take action, would you like  
8 further information?

9 MR. KRAEMER: I came to the  
10 hearing prepared to litigate this case.

11 MR. CARREIRO: Right.

12 MR. KRAEMER: The evidence is what  
13 the evidence is.

14 MR. CARREIRO: Okay. The evidence  
15 is what the evidence is, and we can take action,  
16 but would it be in your best interest if we delay  
17 this until we get the information for Application

18 1325?

19 MR. KRAEMER: If the board --

20 MR. CARREIRO: No. I'm asking you

21 a question, would this be fair to you?

22 MR. KRAEMER: I would have no

23 objection if the board postponed and rescheduled,

24 adjourn the hearing and reschedule to be completed

0035

1 at a later day after those documents were

2 produced.

3 MR. WEBSTER: The only

4 disagreement I have with that is, like I said, the

5 job was near completion at the time of the

6 violation.

7 MR. WHITING: They paid a

8 processing fee. A processing fee is when you work

9 without a permit. So in other words, the

10 secretary told them it was an additional \$150 for

11 working without a permit. They signed the check.

12 MR. CARREIRO: But on the same

13 token, they did pay a late fee, right? So that

14 would be irrelevant to those numbers that I'm

15 requesting.

16 MR. KRAEMER: The claim is on the

17 23rd, that they were working on the 23rd, because

18 that's the date Mr. Whiting observed the work

19 being performed; that they were working on the  
20 23rd without a permit.

21           And the evidence is that the permit  
22 application was filed, and under ordinary  
23 circumstances, it would have been approved on the  
24 23rd.

0036

1           The witness testified that he comes in  
2 at four o'clock and looks at and signs the permits  
3 that his secretary gives him. So I suspect that  
4 there was plenty of work that gets started in the  
5 morning, and the application is signed by  
6 Mr. Whiting that afternoon.

7           This would be no different than any of  
8 those other cases. There's no evidence of record  
9 that there was any work done prior to the permit.

10           MR. STEWART: You use the word  
11 "prior" to having the permit in your hand.

12           MR. WHITING: The only way they  
13 could be charged a processing fee is when I go  
14 back to the office at four o'clock and I give my  
15 secretary a note and say the job at 100 Fountain  
16 Street gets charged a \$150 processing fee, because  
17 they were working without a permit.

18           So that permit could not be taken out in  
19 the morning because I didn't go to the job. In

20 other words, that was charged a \$150 and it was  
21 paid. Meaning, they were working without a  
22 permit. So if that was filed in the morning, they  
23 would not have paid \$150 before I got to the job.

24 MR. JANUARIO: Do you have the  
0037

1 dates when this job was started and completed;  
2 could you tell us that?

3 MR. GEMMA: I don't know.

4 MR. BRENNAN: What is your  
5 secretary's name?

6 MR. WHITING: Shirley.

7 MR. GEMMA: If I can just say  
8 something. Everything above the line on the  
9 permit, as everyone knows, the stuff before that  
10 black line and stuff is all filled in by the  
11 department themselves.

12 On here it says 3/23. The permit was  
13 given to his secretary. It is reasonable to  
14 assume it was done. However, on 3/27, Mr. Whiting  
15 said that he signed this. He did not accept it  
16 and we had to go in there with another check for  
17 \$150.

18 MR. DAVIES: Any other board  
19 members have any questions of Mr. Gemma?

20 MR. CARREIRO: Could I ask the

21 state inspector to run us through the whole  
22 process on the fees, the process of performing  
23 work?

24 MR. WRIGHT: Well, to answer your  
0038

1 question, Rhode Island General Law State Building  
2 Codes requires that a permit be issued before the  
3 start of any work.

4 That is a statement that is written in  
5 the building code state law, so before you start  
6 the job, you're supposed to have a permit in-hand,  
7 an approved permit in-hand. That is right in the  
8 state building code.

9 MR. DAVIES: Any other questions?  
10 Do I have a vote on Violation 3167 -- I'd like to  
11 ask the attorney if he would like to make a  
12 statement?

13 MR. KRAEMER: Actually, if you  
14 take a look, which all the members of the board  
15 should do, the processing fee was \$88.

16 MR. WHITING: No.

17 MR. KRAEMER: Can I finish? The  
18 permit fee originally, when it was filled out, was  
19 \$88. There is then added to it a processing fee  
20 of \$150.

21 And it appears, it makes sense if you

22 look at this that this was brought in on the 23rd,  
23 and originally, in fact, the fee received is  
24 listed at 88 on the top. The 150 is an add-on to  
0039

1 that.

2 It appears that the permit was filed on  
3 the 23rd. And as Mr. Gemma said, the top is  
4 filled out by the department when you go in, and  
5 it was filled out with an \$88 fee.

6 The inspector apparently must have come  
7 back at the end of the day before he approved it,  
8 and said no, it's going to be a \$150 processing  
9 fee on top of that because the work is already  
10 started.

11 It's certainly possible that the permit  
12 granting date was delayed until the 27th because  
13 there was an additional \$150 that had to be paid.  
14 But at the time that the permit was brought in on  
15 the 23rd, \$88 was received. An additional \$150  
16 had not been received.

17 So the question really is, as I  
18 understand that the final approval was later, but  
19 it appears from the evidence that Gem paid \$88 and  
20 filed a permit on the 23rd and had every reason to  
21 believe they were in compliance at that point.

22 The delay in granting the permit was

23 because the \$150 had to be paid, but on the date  
24 alleged in the violation, the application had been  
0040

1 completed and the initial fee paid.

2 MR. CARREIRO: The date of the  
3 application, the date of the issue, can work be  
4 performed without a permit, not the application of  
5 the permit, the issue of the permit, city or  
6 state?

7 MR. WHITING: No, it can't. The  
8 permit is not approved until I sign it. No matter  
9 what date it was given, it is not an approved  
10 permit until I sign it.

11 MR. KRAEMER: Is it your testimony  
12 that it is not routine for contractors to file a  
13 permit, pay the fee, and start to work; that is  
14 not common?

15 MR. WHITING: I can't tell you  
16 what they do. I can tell you that the permit is  
17 not legal until I sign it.

18 MR. KRAEMER: You didn't answer my  
19 question.

20 MR. WHITING: I answered your  
21 question.

22 MR. KRAEMER: Mr. Whiting, you've  
23 been in this business a long time.

24 MR. WHITING: Yes, I have.

0041

1 MR. KRAEMER: And in reality,  
2 isn't it fairly common for contractors to file the  
3 application, pay the fee, and begin work that day  
4 in anticipation of the application permit being  
5 received that day?

6 MR. WHITING: In reality, I have  
7 no idea. I don't check on them. I sign the  
8 permit, and when I'm called for an inspection, I  
9 do it.

10 MR. GEMMA: Can I say something?

11 MR. DAVIES: Yes, Mr. Gemma.

12 MR. GEMMA: I think this is a  
13 frustration of a lot of contractors. It really  
14 would be nice to get something on the table,  
15 because every town you go to has all different  
16 laws. There's some towns you go to, you file for  
17 a permit --

18 MR. DAVIES: That is not here on  
19 this particular case.

20 MR. GEMMA: But, as contractors,  
21 what are we supposed to do? Are we supposed to  
22 figure out what town it is and abide by each one?

23 MR. DAVIES: We're going on this  
24 particular case. But to answer your question in a

0042

1 roundabout way, I work for several communities and  
2 you do not start the job until it is signed by the  
3 issuer.

4 MR. STEWART: Charlie, isn't it  
5 state law that you have to have the permit before  
6 you start, not a town law?

7 MR. WRIGHT: No. This would be a  
8 municipal permit, not a state permit.

9 MR. STEWART: But under the 28-27,  
10 doesn't it state that you have to have a permit?

11 MR. WRIGHT: If the question that  
12 you're asking me is, does a state or municipal  
13 permit have to be issued in order to start, before  
14 work can start; is that the question?

15 MR. STEWART: That's it.

16 MR. WRIGHT: Yes, a permit has to  
17 be issued by state law, before work can be  
18 started.

19 MR. STEWART: Right.

20 MR. WRIGHT: That is supposed to  
21 be issued by municipal or state. You can't start  
22 work beforehand.

23 MR. DAVIES: All right.

24 Gentlemen, do you have any more questions of Mr.

0043

1 Gemma, his attorney or Mr. Whiting? If not,  
2 please see if we a violation. Have you finished,  
3 Mr. Kraemer, on your last statement?

4 MR. KRAEMER: Yes. Thank you,  
5 Mr. Davies.

6 MR. DAVIES: On Case No. 3167, was  
7 there a violation? Let's vote.

8 MR. WEBSTER: Mr. Chairman, based  
9 on the evidence presented, I move that we find  
10 that a violation did occur and that Gem Plumbing &  
11 Heating did fail to obtain a permit prior to  
12 starting the work at 100 Fountain Street  
13 Providence as per Rhode Island General Law  
14 28-27-20.

15 MR. DAVIES: Do I have a second?

16 MR. CARREIRO: Second.

17 MR. DAVIES: All those in favor?  
18 Opposed? So voted. Again, Mr. Gemma, you will  
19 receive a letter from the director.

20 MR. WEBSTER: You need a motion  
21 for the fine.

22 MR. CARREIRO: Yes.

23 MR. WEBSTER: Based upon the  
24 finding that the violation occurred, I move that

0044

1 the board uphold the fine in the amount of \$950 as

2 per Rhode Island General Law 28-27-24.

3 MR. DAVIES: Do I have a second?

4 MR. CARREIRO: Second.

5 MR. DAVIES: All those in favor?

6 You, again, will receive a letter from the  
7 director.

8 MR. WRIGHT: The next case, board  
9 members, the next one is 3168. Mrs. Lindsay  
10 called me this morning, she's in the hospital and  
11 she requested a continuance to next month. She  
12 hasn't asked for a continuance before, this is her  
13 first time.

14 MR. DAVIES: Gentlemen, the next  
15 case is 3192. Mr. Whittaker.

16 MR. WHITTAKER: Date: 5/23/2007,  
17 Violation No. 3192. Name of violator: Gem  
18 Plumbing & Heating m1 Wellington Ave., Lincoln,  
19 Rhode Island. Location: 59 Hillside Avenue  
20 Providence.

21 Violation: Complaint was received at  
22 the Rhode Island Department of Labor & Training to  
23 Mechanical, Mr. Charles Wright, on April 30th,  
24 2007 from the City of Providence Mechanical  
0045

1 Inspector Clifford Whiting.

2 Mr. Whiting went to the above-referenced

3 address and found two Gem trucks in front of the  
4 house on hillside Avenue. There were two  
5 employees of Gem Plumbing & Heating who indicated  
6 to Mr. Whiting that they were installing an air  
7 conditioner air handler in the attic.

8 Mr. Whiting requested Rhode Island  
9 refrigeration licenses of Matthew Fisher of 2  
10 Myrtle Place, Taunton, Massachusetts, who had an  
11 apprentice license, No. 19107, pipefitter two  
12 registration. And Vincent Howard of 80 Brook  
13 Haven Drive, No. 8, Attleboro Massachusetts, who  
14 had an apprentice license number, 19102,  
15 pipefitter registration. These two men have only  
16 been in the apprentice program for a month and  
17 they both had their own truck, working  
18 unsupervised on work not covered by there  
19 registration. This is two violations of Rhode  
20 Island General Law 28-27-5.1, practices for which  
21 a journeyman or apprentice license is required.

22 Mr. Whiting asked the owner to show him  
23 the diffusers the two employees installed and said  
24 the two men started the job at 9:00 a.m.

0046

1 Mr. Whiting called the office to see if there was  
2 a permit. Mr. Whiting was told an application  
3 was filed, was filled out that morning for a

4 permit, but it wasn't approved or processed.

5           When Mr. Whiting got back to the office,  
6 he checked the application. The application was  
7 taken out by a Mr. Arnold Romano, an employee of  
8 Gem Plumbing & Heating who only has a pipefitter  
9 master two license, and is not qualified to take  
10 out a permit for a refrigeration installation.

11           Therefore, there was no valid permit on  
12 the job. This is one violation of Rhode Island  
13 General Law 28-27-20, state and municipal  
14 inspections and installation permits. Signed,  
15 Charles W. Wright, Investigator.

16           MR. WRIGHT: Board members, this  
17 complaint, again, was forwarded to me by  
18 Mr. Whiting, Chief Mechanical Inspector for the  
19 City of Providence. I did verify that the two  
20 persons that he listed there and their apprentice  
21 numbers, that they were at the time frame that is  
22 indicated on the violation and that they were both  
23 apprentices.

24           I did verify that through our system and

0047

1 he also included in there the fact that Mr. Romano  
2 had a pipefitter master two license which I  
3 verified for him also, that he was not a  
4 refrigeration master, to take out the permit. I

5 verified all those for Mr. Whiting at the time of  
6 his complaint.

7 MR. DAVIES: Gentlemen of the  
8 board, do you have any questions of Mr. Wright or  
9 Mr. Whiting?

10 MR. CARREIRO: So there was three  
11 violations?

12 MR. WRIGHT: Three violations.

13 MR. BRENNAN: Mr. Whiting, did  
14 they eventually return with the right man to take  
15 out the permit?

16 MR. WHITING: Yes, they did, on  
17 the 22nd of May.

18 MR. BRENNAN: Mr. Gemma, is this  
19 an oversight or did they just send the wrong guy  
20 to pull the permit?

21 MR. GEMMA: This is a good  
22 question because it's only up until recently that  
23 we had to have two people pull the same permit.

24 The licensed refrigeration person who is a

0048

1 pipefitter. My understanding was that the  
2 pipefitters are allowed and it also allows -- I'm  
3 not talking journeyman apprentice, I'm just  
4 talking about the category of pipefitting --  
5 allowed to put the air handler in and allowed to

6 put sheet metal in.

7 Correct me if I'm wrong somebody. I

8 guess the question comes up in refrigeration.

9 Those of us who have been in business a long time,

10 I would venture to say, that there's very few

11 mechanical permits pulled where you have to have

12 two people sign that mechanical permit. That's

13 all I have to say.

14 MR. DAVIES: Board members, any

15 questions of Mr. Whiting or Mr. Gemma?

16 MR. STEWART: Is that the policy,

17 Mr. Whiting?

18 MR. WHITING: It's a state law.

19 Two people don't sign the permit. You can only

20 take out a permit for what you're qualified for

21 with your license. If you have a master

22 refrigeration, a master pipefitter, then you can

23 sign it.

24 If you're doing both jobs, then you need

0049

1 two individual -- I mean, if you only have a

2 pipefitters license, you can only take out a

3 permit for a pipefitter. It's not that two people

4 sign an application, but you can only take out an

5 application for which you're qualified for.

6 MR. GEMMA: Can I ask him one more

7 question?

8 MR. DAVIES: Go ahead.

9 MR. GEMMA: Has it been the policy

10 for years that two people go down on a residential  
11 home, have the refrigeration person sign and sheet  
12 metal person sign or the pipefitter sign?

13 MR. WHITING: As long as I've been  
14 a mechanical inspector, you have to have the  
15 proper license. And the sheet metal man doesn't  
16 have to come down. If you want me to get into it,  
17 I will. If you have the proper license and you  
18 know what the licenses are good for, in other  
19 words, if you have a pipefitter master one, you're  
20 allowed to do pipefitting.

21 If you have a master one, you're allowed  
22 to do up to ten times and I believe it's 250,000  
23 BTU's before you need the sheet meatal license.  
24 And if you have a refrigeration license, you can  
0050

1 do the same thing. You can set the unit and you  
2 are allowed to do the ductwork.

3 If you're a master refrigeration, you  
4 don't need two people. But if the person doesn't  
5 have the right license, then you have to get  
6 another person with the right license. You can't  
7 just cart blanc do work that you're not supposed

8 to do, you're not qualified for, you have no  
9 license.

10 MR. GEMMA: Because of the long  
11 records, if we were to go down and look at the  
12 residential permits that were pulled, we'd see one  
13 pipefitter that pulled something and they did  
14 refrigeration also.

15 MR. WHITING: You'll never find  
16 one since I've been on the job.

17 MR. GEMMA: It has not been common  
18 practice, and it usually is not common practice in  
19 certain areas and towns also. Like I said,  
20 unfortunately there is no common, you know, one  
21 set of rules, each town is different.

22 MR. WHITING: It's the law.

23 MR. DAVIES: Mr. Gemma, was that  
24 strictly an air conditioning unit?

0051

1 MR. GEMMA: No, heating and air  
2 conditioning.

3 MR. WHITING: That's not what the  
4 permit said. They took out a permit 22 days after  
5 the fact and I have a copy of the card. Install  
6 AC air handler in attic with outside condenser.  
7 That is all they took it out for. It had nothing  
8 to do with heat.

9 MR. KRAEMER: I've got some  
10 questions for Mr. Whiting.

11 Do you have the e-mail that you sent on  
12 this?

13 MR. WHITING: Yes, I do.

14 MR. KRAEMER: Do you also have the  
15 permit that you referred to?

16 MR. WHITING: I don't have the  
17 permit, but I have the filing card that references  
18 the permit with all the information.

19 MR. KRAEMER: You don't actually  
20 have the permit?

21 MR. WHITING: I have the card. I  
22 just answered the question.

23 MR. KRAEMER: May I see that  
24 e-mail?

0052

1 (MR. KRAEMER PERUSES DOCUMENT)

2 MR. KRAEMER: May I ask

3 Mr. Whiting some questions?

4 MR. DAVIES: Sure.

5 MR. KRAEMER: First question, how  
6 did you -- this is a residential property?

7 MR. WHITING: Yes, it is.

8 MR. KRAEMER: How did you come to  
9 be at the residence?

10 MR. WHITING: Because I was riding  
11 down Hillside Avenue where I seen two trucks and  
12 two employees standing in the driveway, so I  
13 stopped and asked them what they were doing.

14 MR. KRAEMER: Is that your normal  
15 practice when you see trucks?

16 MR. WHITING: Yes. I don't stop  
17 and go inside a residence, but if I see the actual  
18 people, I will stop and ask them.

19 MR. KRAEMER: And the two Gem  
20 employees were in the driveway?

21 MR. WHITING: Yes, they were.

22 MR. KRAEMER: So on the actual  
23 violation that was read earlier where it said that  
24 a complaint was received, that's incorrect?

0053

1 MR. WHITING: I didn't -- that's  
2 not mine.

3 MR. KRAEMER: So there was no  
4 complaint received. This was initiated by you  
5 when you saw the truck and two men?

6 MR. WHITING: I don't know what  
7 you're referring to. I did drive by and see them.

8 MR. DAVIES: That came as a  
9 complaint to the Department of Labor.

10 MR. WEBSTER: From Mr. Whiting.

11 MR. KRAEMER: So the two Gem  
12 employees that were in the driveway, did you  
13 actually see them perform work at that location?

14 MR. WHITING: No, I did not.

15 MR. KRAEMER: And the permit  
16 exists, you just don't have it with you?

17 MR. WHITING: I have a copy of the  
18 permit that was taken out 22 days after I made the  
19 inspection.

20 MR. KRAEMER: But the permit that  
21 is the subject of the violation -- sorry, the  
22 permit that's the subject of the violation, you  
23 say the complaint that was signed by Mr. Romano,  
24 was that taken out at the time or was that taken

0054

1 out afterwards?

2 MR. WHITING: Excuse me?

3 MR. KRAEMER: Was that the one  
4 that was taken out afterwards or is it the one  
5 that was taken out at the time?

6 MR. WHITING: That was taken out,  
7 to the best of my knowledge, I was out on the road  
8 and I usually leave the office at 9:30. So when I  
9 stopped and talked to, I called the office and my  
10 secretary said an application was filled out while  
11 I was gone by Mr. Romano.

12           So when I went back, I looked at the  
13 license and he doesn't have the right license to  
14 take out the permit. That was on the 30th.  
15 Somebody from Gem come down to take a look at the  
16 paper. Comes down on the 22nd of May and took out  
17 the right permit. I don't have the name on this.

18           That particular day when I talked to the  
19 two gentlemen working for Gem, one was accusing me  
20 of depriving him of his livelihood. And Mr. Gemma  
21 said the next day he apologized and he would get  
22 to the bottom of this.

23           MR. KRAEMER: I have no further  
24 questions.

0055

1           MR. DAVIES: Any board members  
2 have any questions of Mr. Gemma or Mr. Whiting?  
3 Gentlemen, do we have --

4           MR. KRAEMER: Actually, I would  
5 like to make a comment, if I may.

6           MR. DAVIES: Go ahead.

7           MR. KRAEMER: At the risk of  
8 sounding like a lawyer, there is no evidence  
9 that -- the evidence that the board has in front  
10 of you, there is no evidence that either of the  
11 individuals named in the complaint did any work  
12 because the only witness who testified only saw

13 them in the driveway.

14           There are ways to prove that work was  
15 done, but it wasn't done in this case. With  
16 regard to the permit, there is an allegation that  
17 the permit was taken out by the wrong person. The  
18 permit is not even here. The best evidence of  
19 what the permit says is the permit itself.

20           So that the burden of proof in this case  
21 to establish a violation is to show that two  
22 individuals were working and there's no credible  
23 testimony that they were working and to show that  
24 there was a permit that was taken out incorrectly

0056

1 and the permit is not even here. The board can  
2 certainly take whatever votes it likes, but based  
3 upon the evidence, there is no violation.

4           MR. DAVIES: I believe that I read  
5 here that Mr. Whiting asked the owner to show him  
6 the diffusers that the two employees put in; is  
7 that correct?

8           MR. KRAEMER: The complaint is not  
9 the evidence, Mr. Davies. What the evidence is,  
10 is what is said on the record. You can put  
11 anything you want in a complaint.

12           And what the owner of the property said  
13 is hearsay. The owner of the property isn't here

14 to be cross-examined. So in terms of admissible  
15 evidence, even if Mr. Whiting were to testify as  
16 to what the owner said, that is not credible  
17 evidence at a hearing as a matter of the Rules of  
18 Evidence. Again, sounding like a lawyer, but this  
19 is a legal proceeding.

20 MR. DAVIES: Do any board members  
21 have any questions of Mr. Kraemer or Mr. Whiting?

22 MR. STEWART: Mr. Whiting, did you  
23 see any work that was performed inside there?

24 MR. WHITING: Yes, I did. The

0057

1 owner took me inside and showed me the diffusers  
2 that were in. He told me the two gentleman  
3 started it at nine that morning.

4 MR. KRAEMER: Move to strike the  
5 testimony as to what the gentleman told you.

6 MR. STEWART: Mr. Gemma, did you  
7 have anyone else on that job that day?

8 MR. GEMMA: I don't know. I  
9 can't -- I'm not here to testify. I really don't  
10 know. I'd have to check my records.

11 MR. DAVIES: Anyone else have any  
12 questions?

13 MR. CARREIRO: Just a question for  
14 the lawyer. Are you suggesting that the

15 Mechanical Board, the inspection departments, and  
16 the contractors don't work in unison to serve the  
17 public?

18 I.E., the purpose of the permit is to  
19 protect the general public that has no knowledge  
20 of systems, okay. It has been past practice in  
21 this state where the board members are all  
22 business people from the industry, okay, the  
23 inspectors for the state and the cities and towns  
24 come from within the industry.

0058

1 We don't have a physics teacher from  
2 high school as the plumbing inspector, they come  
3 from the industry, and obviously the contractors  
4 are from the industry. So we all work together to  
5 produce quality projects to serve the public. By  
6 suggesting testimony, you know, contrary to, it is  
7 going against what we're all about.

8 MR. KRAEMER: Well, I guess what I  
9 am suggesting -- I'm not suggesting, I'm stating  
10 that this is a legal proceeding. In any legal  
11 proceeding there are procedures that have to be  
12 followed as a matter of the Administrative  
13 Procedures Act, as a matter of Rules of Evidence,  
14 as a matter of due process.

15 This is a board that is entitled by law

16 to hear evidence and to issue fines of various  
17 levels and this board has the same obligation to  
18 follow the requirements of due process that the  
19 Superior Court would in a case before the Superior  
20 Court.

21 As I understand it, the Mechanical Board  
22 has no written procedures or written rules, but  
23 there are guidelines that counsel for the  
24 Department of Labor & Training has communicated to  
0059

1 the board, this board and other boards over the  
2 years.

3 But to answer, it is a legal proceeding  
4 and our laws in this country require certain  
5 procedures to be followed. That's what the due  
6 process requirement of the state constitution and  
7 United States Constitution is, otherwise you  
8 wouldn't go through formal proceedings. That's  
9 why we have a court reporter. That's why there  
10 are burdens of proof.

11 And for, and that's why in a situation  
12 where a witness has -- the only evidence is there  
13 is no direct evidence of men working. That the  
14 only situation in a situation where the fellows  
15 were in the driveway, where there is no evidence  
16 of what the permit says because the permit is not

17 here. That is insufficient as a matter of law.

18           What the purpose of the laws are is a  
19 different issue, the requirements that any  
20 observatory board has; as your counsel will tell  
21 you, have to be met. If the board doesn't want to  
22 follow that, then Superior Court will tell them to  
23 follow it.

24           MR. CARREIRO: I mean, there's a

0060

1 little common sense that has to play in here. Are  
2 you asking us to suggest, are you suggesting to us  
3 that Mr. Gemma sent two men to Hillside Avenue to  
4 stand in the driveway and pay them; is that what  
5 you're suggesting?

6           MR. KRAEMER: I'm suggesting --

7           MR. CARREIRO: That's what you're  
8 saying.

9           MR. KRAEMER: And then further,  
10 you're telling us that we have the same standards  
11 as the Superior Court.

12           MR. DAVIES: Mike.

13           MR. CARREIRO: Let me finish,  
14 please. The same standards as the Superior Court.  
15 The Superior Court, is limited to you, bar member;  
16 the judge, bar member. We're tradespeople, okay.  
17 So you can't play it both ways.

18           **MR. DAVIES:** Gentlemen, board  
19 members, I just want to make a suggestion, would  
20 you like to table this and bring in the homeowner  
21 and the two people that were working; would you  
22 like to do that, sir? Board members, what would  
23 you like to do?

24           **MR. BYRNE:** Mr. Chairman, I don't

0061

1 know if that is necessary because the violation  
2 seems to be two apprentices working alone.

3           And just the apprentices being there in  
4 the truck with the equipment of the trade would  
5 constitute them working alone, and that is a  
6 violation from what I can read from here.

7           **MR. STEWART:** I have a question,  
8 do you have a copy of that permit for that job?

9           **MR. KRAEMER:** First of all, the  
10 answer is no. If I did, I would bring it in and I  
11 would show it to you.

12           Secondly, I don't withhold evidence that  
13 I have. But the issue isn't whether Gem can come  
14 in and defend itself. The issue is where the  
15 burdens of proof are.

16           And the comment earlier about you're all  
17 tradespeople, you're charged with certain  
18 responsibilities by the State of Rhode Island.

19 That is why there is a lawyer for the board who  
20 sits there to advise you. And I think that there  
21 are requirements that any observatory board has.  
22 But the answer is no, if I had the permit, I would  
23 have provided it.

24 MR. DAVIES: Gentlemen, would you

0062

1 like to table this and bring these people in?

2 MR. STEWART: Yes.

3 MR. DAVIES: Do I have a motion?

4 MR. REGAN: I make a motion that

5 we table this hearing and ask the homeowner and  
6 bring in the two apprentices and get direct  
7 testimony from them.

8 MR. STEWART: I'll second that.

9 MR. DAVIES: All those in favor?

10 Opposed?

11 MR. BYRNE: Tie.

12 MR. DAVIES: Roll call vote. All

13 those in favor, please raise your hand. Opposed?  
14 Three, and three are opposed.

15 Okay. Next case, Violation 3195,

16 Mr. Whittaker.

17 MR. WHITTAKER: Date: 5/30/2007.

18 Violation No. 3195. Name of violator: Gem

19 Plumbing & Heating, 1 Wellington Avenue, Lincoln,

20 Rhode Island 02865. Location of violation, 69

21 Bowdion Street, Providence, Rhode Island.

22 Violation: On 5/22/2007, Chief

23 Mechanical Inspector for the City of Providence,

24 Cliff Whiting, went to the above-referenced

0063

1 address on an inspection.

2 There were three employees of Gem

3 Plumbing & Heating that indicated to Mr. Whiting

4 that they were installing B vent for the water

5 heaters and the related gas piping. Mr. Whiting

6 requested these three individuals produce their

7 required pipefitters license. Mr. Salvatore

8 Calozzo is a licensed journeyman plumber JP3007,

9 Mr. Laurent Fortin is a licensed master plumber,

10 MP2273 and an apprentice pipefitter two.

11 These three people are not properly

12 licensed in Rhode Island to do pipefitting work.

13 This is two violations of Rhode Island General Law

14 28-27, practice for which a license is required.

15 MR. DAVIES: All right.

16 MR. WRIGHT: Again, board members,

17 this was forwarded to me from Mr. Whiting, the

18 Chief Mechanical Inspector for the City of

19 Providence. I verified the persons that he did

20 identify to me as being licensed as indicated in

21 the violation. And an apprentice pipefitter also.

22 19038 was the apprentice pipefitter's number.

23 MR. DAVIES: Gentlemen, any

24 questions?

0064

1 MR. BYRNE: I have a question.

2 Salvatore Calozzo is a licensed plumber and

3 Laurent Fortin is a licensed master plumber?

4 MR. WRIGHT: Yes.

5 MR. BYRNE: Is the apprentice

6 unnamed, or is the apprentice pipefitter two also

7 Mr. Fortin?

8 MR. WRIGHT: I didn't have his

9 name. I'd have to ask my question through the

10 chair to Cliff on the apprentice part on your

11 e-mail to me. We couldn't get a name on the third

12 one.

13 MR. WHITING: My e-mail says

14 nothing about a third one.

15 MR. WRIGHT: I have it typed up as

16 two. The guy that's the master plumber, he had

17 apprentice pipefitter.

18 MR. WHITING: Correct.

19 MR. WRIGHT: I had a typo, it said

20 two people. That's why there are two violations.

21 MR. DAVIES: Board members have

22 any other questions of Mr. Whiting? Okay.

23 Mr. Whiting.

24 MR. WHITING: Yes.

0065

1 MR. DAVIES: Would you like to

2 make a statement on this?

3 MR. WHITING: No.

4 MR. JANUARIO: Mr. Whiting, why

5 were you there?

6 MR. WHITING: I was called to the

7 job by Gem, actually by my secretary. Gem called

8 my office and asked if I could get there as soon

9 as possible because there was a gas shut off and

10 the people didn't have heat.

11 So, I believe it was around 1:30. I

12 immediately went over to the site as is the case

13 when there is a gas shutoff, we try to get them

14 turned back on right away, they are first

15 priority.

16 MR. DAVIES: Any other questions

17 of Mr. Whiting? Mr. Gemma.

18 MR. KRAEMER: Could we see the

19 e-mail before we ask Mr. Whiting questions? I

20 would just like to clarify if the gas company shut

21 this down or was there a gas smell or whatever.

22 MR. GEMMA: Before we pulled any

23 permit, the hot water tanks were in violation.

24 The question is when you're reinstalling or

0066

1 installing new, replacing hot water heaters or

2 whatever, is a licensed master plumber acceptable

3 to install that residential hot water tank and

4 bring that up to code, that is the question.

5 I had a licensed master plumber and a

6 licensed journeyman plumber on the scene,

7 replacing or repairing the hot water tank which

8 was in violation.

9 MR. DAVIES: Gentlemen of the

10 board, any questions of Mr. Gemma, Mr. Whiting, or

11 Charlie Wright?

12 MR. WEBSTER: How much pipe was

13 involved?

14 MR. WHITING: They re-piped the

15 whole job from the meter to the three new hot

16 water heaters, they ran three new lines.

17 MR. GEMMA: Can I clarify that?

18 When my guy got to the job, the guy that oversees

19 the people there and stuff, Mr. Whiting asked if

20 it was cast iron fittings on the gas. Before we

21 do any work, we're supposed to pull a permit.

22 Low and behold, we get on the job and

23 start to look, it's a little bit more work.

24 Certainly we stopped when he requested that the  
0067

1 cast iron fittings, correct me if I'm wrong, that  
2 the cast iron fittings get replaced.

3 So we probably did have to go back to  
4 the meter and start with that. We don't know what  
5 the violation is until we get into the job. How  
6 can we pull permits and then go to the job and  
7 figure it out? What do we do, go back and adjust  
8 the permit?

9 We called Cliff, as he states, to get  
10 him out to the job to make sure that these people  
11 had heat, and had certain conveniences that  
12 they're obliged to have.

13 MR. WRIGHT: To clarify for the  
14 board, maybe there was a slight miscommunication  
15 problem. Clarify for the board, those two  
16 persons, licensed plumbers, gas piping is  
17 pipefitters work. That's what the violation is.  
18 And also the guy had the apprentice pipefitting  
19 one, he's a master plumber and had an apprentice  
20 card for pipefitting. He was working without  
21 supervision.

22 MR. WHITING: When I first went to  
23 the job, there was piping from the meter to the  
24 water heaters. The B vent was installed, the

0068

1 piping was installed. I didn't inspect the job  
2 because there wasn't licensed people on the job.

3 When their pipefitters come on the job,  
4 I went back and reinspected. That's when I seen  
5 the ceiling tiles open and there was cast iron  
6 fittings and plastic pie plates in the chimney,  
7 then I said that has to be corrected before I can  
8 approve it to turn the gas on. There was two  
9 separate instances.

10 MR. WEBSTER: Were there  
11 pipefitters on the job at that point?

12 MR. WHITING: Yes, when they  
13 called me the second time.

14 MR. DAVIES: Board members have  
15 any questions of Mr. Whiting or Mr. Gemma?

16 MR. GEMMA: Originally this was  
17 called in by the gas company as a gas leak or as a  
18 hazard, right, and shut down. Was it a B vent  
19 problem, was it a flue problem or was it a  
20 pipefitting problem or was it a plumbing problem?

21 MR. WHITING: It was the flue  
22 pipe. Then Gem -- well, actually, they decided  
23 for whatever reason, they decided to replace all  
24 the piping and all the water heaters. But the

0069

1 original complaint from the gas company, the flue  
2 pipe would have been sufficient.

3 You just asked the question, I gave you  
4 the answer. The gas company didn't ask for three  
5 new water heaters and they didn't ask for gas  
6 piping, they asked for flue pipe, and it was  
7 correct.

8 MR. STEWART: Did the plumbers  
9 install the B vent?

10 MR. WHITING: They told me they  
11 did. What I told them was you're not authorized  
12 to work on the flue pipe or the gas pipe, but you  
13 can continue to work on any plumbing line since  
14 you are more than qualified to do that.

15 MR. GEMMA: So the question is, is  
16 that the only thing a licensed plumber is capable  
17 of doing, a residential hot water heater is the  
18 hot water up and cold water in; is that what  
19 you're telling me?

20 MR. WHITING: I can only tell you  
21 what my law or the law of mechanical is. Gas  
22 piping falls under a pipefitters license, flue  
23 piping falls under a pipefitters license. If you  
24 want to ask for a plumber you would have to talk

0070

1 to the plumbing inspector.

2 MR. GEMMA: Every residential hot  
3 water tank that goes in needs a pipefitter and a  
4 plumber?

5 MR. WHITING: You have to talk to  
6 the state. I'm telling you what's required by law  
7 for a mechanical permit.

8 MR. GEMMA: Let's go back to what  
9 Mike said about common sense. I mean, truly, a  
10 pipefitting permit and a plumbing permit on a  
11 residential hot water heater. In this case they  
12 did a replacement and I believe the reason why  
13 they relocated it was because, I think, that the  
14 hot water tanks were put in the closet.

15 MR. WHITING: No.

16 MR. GEMMA: Well, they were in  
17 there.

18 MR. WHITING: If you want to know  
19 the reason, I can tell you what they told me.  
20 They sold them three new ones.

21 MR. GEMMA: You know, I'd like to  
22 table this and get my people in here to clear my  
23 name because now I'm getting thrown under the bus  
24 here by what is being said here and I think that

0071

1 it is really inappropriate.

2 MR. DAVIES: Do the board members

3 wish to table this?

4 MR. BYRNE: Again, Mr. Chairman, I  
5 don't understand why we would table this if the  
6 violation is for the installation of gas piping  
7 with unlicensed people. That seems to be what the  
8 violation is. I understand Mr. Gemma's concern,  
9 but that's not on the violation.

10 MR. KRAEMER: Well, first of all,  
11 as far as adjourning and the reconvening so the  
12 proper witness could come in, when that was done  
13 for the benefit of the prosecution, if you will,  
14 that was the decision of the board.

15 It seems to me that in a situation where  
16 we are now saying look, there are some serious  
17 allegations being made against Gem, that to allow  
18 those to go unrebutted because we don't have the  
19 proper witness here is unfair to us.

20 If it's fair one way, it's fair the  
21 other way. So our request is that this also be  
22 adjourned and rescheduled so that the testimony  
23 can be complete.

24 MR. BYRNE: Again, maybe I'm a

0072

1 little confused on the allegations against Gem,  
2 does it pertain to the plumber installing gas  
3 piping, or is it something else?

4 MR. KRAEMER: I heard a whole  
5 series of allegations against Gem.

6 MR. BYRNE: Against the plumbers  
7 that installed the gas piping? That's what I  
8 don't understand. I thought that was pretty  
9 clear.

10 MR. GEMMA: Is it common practice  
11 on a residential hot water tank that you pull a  
12 plumbing and a pipefitting license? If it is, let  
13 me know, but to the best of my knowledge  
14 throughout the state, it's not.

15 MR. DAVIES: Gentlemen, again, at  
16 the request of Mr. Kraemer, would you like to  
17 table this and have them bring the people in? And  
18 I'm going under his request; do I have a motion?

19 MR. BRENNAN: I make a motion that  
20 we table this until we get the witnesses in.

21 MR. DAVIES: Do I have a second?

22 MR. STEWART: Second.

23 MR. DAVIES: All those in favor,  
24 please raise your hand. Opposed? Motion on the  
0073

1 violation?

2 MR. BYRNE: Mr. Chairman, I'd like  
3 to make a motion on Violation 3195 that a  
4 violation did occur.

5 MR. WRIGHT: Off the record.

6 MR. LOMBARDI: No, this on the  
7 record. The respondent asked for a continuance.  
8 I think the board is only right to give him a  
9 continuance due to the fact that his witnesses are  
10 missing, and I recommend that you do so.

11 MR. DAVIES: Okay. Gentlemen, we  
12 will table this along with the other cases. So  
13 3195 is tabled unless we have a motion for another  
14 vote.

15 MR. CARREIRO: Motion for  
16 reconsideration on the previous vote.

17 MR. STEWART: Second that.

18 MR. CARREIRO: Got to be seconded  
19 by somebody on the prevailing side.

20 MR. JANUARIO: I seconded it.

21 MR. DAVIES: All those in favor,  
22 raise your hands please. Opposed? So voted. We  
23 will table this.

24 MR. CARREIRO: Can the record

0074

1 reflect the action was taken based on our legal  
2 counsel, please.

3 (OFF THE RECORD)

4 MR. DAVIES: Gentlemen, next we  
5 have is Case No. 3236, James Giarrusso, Ocean

6 State Tech Services; is someone here? Please  
7 stand and be sworn in, please.

8 MR. LAWRENCE: James S. Lawrence  
9 on behalf of Flaherty & Lawrence.

10 LUCIEN ARMAND COTE, WALLACE HEALY  
11 (SWORN)

12 MR. DAVIES: Mr. Whittaker.

13 MR. WHITTAKER: Date: 7/12/2007.

14 Violation No. 3236. Name of violator: Mr. James  
15 J. Giarrusso, Ocean State Technical Services, LLC,  
16 55 Chapman Street, Providence, Rhode Island 02905.  
17 Location of violation: 90 Reservoir Avenue,  
18 Building C, Providence, Rhode Island.

19 Violation: On June 26th, 2007, a  
20 complaint was received by Rhode Island Department  
21 of Labor & Training Chief Mechanical Investigator  
22 Mr. Charles Wright from Mr. Wallace Healy,  
23 Mechanical Inspector for the City of Providence.

24 There were two employees of Ocean State  
0075

1 Technical Services, LLC working on gas piping at  
2 the above job location. A Mr. Wayne Cartier, who  
3 has a current welding license, and a Mr. Lucien  
4 Cote, 99 Herbert Avenue, Woonsocket, Rhode Island  
5 02898, does not have a pipefitters license or  
6 welding license to perform this type of work in

7 Rhode Island.

8 This is one violation of Rhode Island  
9 General Law 28-27-28, practice for which a license  
10 is required. One violation, \$500, per Rhode  
11 Island General Law 28-27-24. Signed, Charles W.  
12 Wright, Investigator.

13 MR. WRIGHT: Board members, on  
14 6/27/07, Mr. Healy sent me the violation that he  
15 had stopped to inspect 90 Reservoir Avenue. He  
16 said in his note to me that there were two men  
17 working on gas pipe who were working for Ocean  
18 State Technical Services. They had asked for a  
19 gas test.

20 One man that he checked had no state  
21 license and the other man had a welder's license  
22 which I have confirmed to be a true statement at  
23 that time. Lucian Cote had no state license and  
24 Wayne Cartier had a welder's license.

0076

1 MR. DAVIES: Gentlemen, any  
2 questions at all of Mr. Whittaker or Mr. Wright?

3 MR. CARREIRO: Was there a license  
4 taken out for this project?

5 MR. WRIGHT: A permit?

6 MR. CARREIRO: A permit.

7 MR. WRIGHT: Yes, there was. And

8 it was actually taken out, according to this, on  
9 February 23rd of '07.

10 MR. CARREIRO: By?

11 MR. WRIGHT: By Mr. Giarrusso.

12 MR. DAVIES: Mr. Healy, would you  
13 like to make any comments?

14 MR. HEALY: No, not at this point.

15 MR. DAVIES: Okay.

16 MR. WEBSTER: Who installed the  
17 piping?

18 MR. HEALY: What was the question?

19 MR. WEBSTER: Who installed the  
20 piping? Was it one gentleman who did the welding  
21 that had the welding license?

22 MR. HEALY: Well, when I went on  
23 the job, I was called in to witness the test on  
24 it. When I did get there, I saw two gentlemen

0077

1 there from the company. I asked them who they  
2 were. They identified themselves as working for  
3 the company.

4 I asked them, at that point I said,  
5 "Well, did you guys do the gas piping?" And they  
6 said, "Yes." I said, "Did you set up the test?"

7 They said, "Yes." So I said okay, witnessed the  
8 test on the pipe, and I asked them for their

9 licenses at that point and they didn't have them.

10 They had a welder's license and the other

11 gentleman didn't have a license.

12 MR. WEBSTER: Pipefitters licensee

13 wasn't required?

14 MR. HEALY: Well, you need a

15 pipefitters license to do either, but there was no

16 welding on the job.

17 MR. DAVIES: Okay. Mr. Giarrusso

18 or your attorney, would you like to address the

19 board?

20 MR. LAWRENCE: Yes, actually, I

21 would. Is the board, has the board concluded with

22 the inspector, the presentation of the inspector's

23 case?

24 MR. CARREIRO: No other questions

0078

1 for now.

2 MR. LAWRENCE: If I may, I'd like

3 to inquire of a witness, Mr. Cote, who was in the

4 employ of OST. He's been sworn, may I proceed,

5 Mr. Chairman?

6 MR. DAVIES: Proceed.

7 MR. LAWRENCE: Mr. Cote, were you

8 on the job site at 90 Reservoir Avenue, Building C

9 on the date stated in the complaint, June 26th of

10 2007?

11 MR. COTE: Yes, I was.

12 MR. LAWRENCE: And you're not a  
13 licensed pipefitter or a licensed welder; is that  
14 correct?

15 MR. COTE: That's correct.

16 MR. LAWRENCE: And do you know  
17 that a pipefitter assembles and installs and  
18 maintains pipe systems, pipe supports, and related  
19 hydraulic and pneumatic equipment?

20 MR. COTE: Yes.

21 MR. LAWRENCE: You know that is  
22 what a pipefitter does?

23 MR. COTE: Yes.

24 MR. LAWRENCE: You know that at

0079

1 the time?

2 MR. COTE: Yes.

3 MR. LAWRENCE: You know the welder  
4 uses hand welding and pipe cleaning equipment to  
5 weld together metal components?

6 MR. COTE: Yes, I know that.

7 MR. LAWRENCE: There was a  
8 licensed pipefitter on the job on June 26th of  
9 2007; is that correct?

10 MR. COTE: Yes, there was.

11 MR. LAWRENCE: James Darby?

12 MR. COTE: Yes.

13 MR. LAWRENCE: He holds a  
14 pipefitters license through this department; is  
15 that correct?

16 MR. COTE: As far as I know, yes.

17 MR. LAWRENCE: And there was also  
18 a licensed welder on the job site on that date as  
19 well, and that was?

20 MR. COTE: Wayne Cartier.

21 MR. LAWRENCE: Wayne Cartier. I'm  
22 not sure how he pronounces his name. We'll call  
23 him Wayne Cartier at the moment. Do you recall  
24 the inspector coming from the City of Providence,  
0080

1 Mr. Healy, on that day to the job site?

2 MR. COTE: Yes, I do.

3 MR. LAWRENCE: And it's your  
4 understanding that he was called to the job site  
5 by OST to come for a gas test?

6 MR. COTE: That's my  
7 understanding, yes.

8 MR. LAWRENCE: And do you recall  
9 what you were doing, what you personally were  
10 doing when Mr. Healy arrived on the job site?

11 MR. COTE: Sitting down drinking

12 water because it was hot. That's what I was  
13 doing, just sitting there.

14 MR. LAWRENCE: How about Mr. Wayne  
15 Cartier?

16 MR. COTE: Wayne also was just  
17 sitting there.

18 MR. LAWRENCE: You were not  
19 working on gas pipe?

20 MR. COTE: No, sir.

21 MR. LAWRENCE: Mr. Cartier was not  
22 working on the gas pipe; is that correct?

23 MR. COTE: No.

24 MR. LAWRENCE: Who had been

0081

1 working on the gas pipe that day?

2 MR. COTE: Jim Darby and Wayne  
3 Cartier. Wayne was welding support brackets to  
4 hold pipe up. It was Jim Darby who was doing the  
5 fitting.

6 MR. LAWRENCE: And at any time on  
7 that date, June 26, 2007, were you working on the  
8 gas piping, you personally?

9 MR. COTE: No, sir.

10 MR. LAWRENCE: And at any time on  
11 June 26, 2007, was Mr. Wayne Cartier doing any  
12 pipefitting work?

13 MR. COTE: Not as far as I know.

14 Him and Darby went off while I was cleaning up  
15 because it was the last day of the job. I was  
16 there just to get things out of the storage bin.

17 MR. LAWRENCE: Your job was to  
18 clean up?

19 MR. COTE: They were off doing  
20 their thing, I was doing my thing prior to the  
21 inspector getting there.

22 MR. LAWRENCE: Your job was to  
23 just clean up?

24 MR. COTE: Clean up the area

0082

1 because it was the last day of the job.

2 MR. LAWRENCE: And Mr. Darby had  
3 already set up the gas piping for the test prior  
4 to Mr. Healy arriving to inspect; is that correct?

5 MR. COTE: Yes.

6 MR. LAWRENCE: I have nothing  
7 further.

8 MR. DAVIES: Board members have  
9 any questions of the attorney or Mr. Cote?

10 MR. BRENNAN: I do. What size  
11 pipe was Mr. Darby working on, please; half inch,  
12 two-inch, three-inch?

13 A. I think it was, I'm not really too good with

14 that. I think maybe an inch.

15 MR. BRENNAN: So in other words,  
16 you're trying to tell me that Mr. Darby moved  
17 however much, X amount of feet of pipe all by  
18 himself with no help?

19 MR. COTE: Him and Wayne were off  
20 somewhere. I was never present when they were  
21 actually fitting. That was the only morning I was  
22 there.

23 MR. DAVIES: Any other board  
24 members have any questions?

0083

1 MR. WEBSTER: So basically you're  
2 just a laborer?

3 MR. COTE: I was just there to do  
4 the laboring part.

5 MR. WEBSTER: Truck driver,  
6 laborer, what is your job description?

7 MR. COTE: I'm a laborer.

8 MR. BRENNAN: If a plumber can put  
9 a water tank in and a pipefitter can do the  
10 pipefitting; how do we have a welder doing  
11 pipefitting? Threaded pipefitting; how do we have  
12 that?

13 MR. WRIGHT: Who are you directing  
14 that question to?

15 MR. BRENNAN: Just a general  
16 question. I apologize.

17 MR. WRIGHT: I'll answer the  
18 question for you, Mr. Brennan.

19 MR. BRENNAN: Thank you, Mr. Wright.

20 MR. WRIGHT: I can see that you  
21 wanted to direct that to me.

22 MR. BRENNAN: Yes.

23 MR. WRIGHT: A welder can only do  
24 welding, he can't do any fitting. A straight

0084

1 welder's license is strictly a welder's license to  
2 do welding. We do not -- board members, always  
3 remember that we do not have helper categories or  
4 anything like that if it's related to our board,  
5 any pipefitting work, just to remind you of that.

6 MR. BRENNAN: So Mr. Wright, this  
7 violation, is this for Mr. Cote or for Mr. Cartier?

8 MR. WRIGHT: Actually, it's for  
9 both.

10 MR. BRENNAN: And it's only \$500  
11 per.

12 MR. WRIGHT: At the time it would  
13 be just Mr. Cote. Now that information is brought  
14 out that there was no welding on the job, we could  
15 have assumed, and I hate to use that word, that

16 Mr. Cote was doing the welding, the violation was  
17 for the person who didn't have a license. That is  
18 why it was a single one.

19 MR. BRENNAN: Thank you.

20 MR. DAVIES: Was there any welding  
21 there?

22 MR. COTE: No.

23 MR. JANUARIO: I have a question.

24 Did Mr. Healy mention that he did ask who did the  
0085

1 pipefitting and his answer was that you and  
2 Mr. Cartier admitted that you had run some  
3 pipefitting there?

4 MR. COTE: He's mistaken, I'm  
5 sorry to say.

6 MR. JANUARIO: Mr. Healy, did you  
7 ask this gentleman?

8 MR. HEALY: Not this gentleman.  
9 It was the other gentleman that was with him. I  
10 asked him who did the gas piping and the other  
11 gentleman said that "we did." At that point I  
12 said, "Who set the test up?" And he said, "I  
13 did." At that point I went over, witnessed the  
14 test.

15 Then I did ask for the licenses at that  
16 point, for the state licenses. And at that

17 particular time, there was two people on the job,  
18 there was not a third individual. There was no  
19 third individual that offered to show me a  
20 license, a journeyman's license or anything else.  
21 There were two people.

22 MR. JANUARIO: You were talking to  
23 Mr. Cartier?

24 MR. HEALEY: I believe that was  
0086

1 his name. The gentleman that had the welder's  
2 license with him, I'm pretty sure. And like I  
3 say, all of the fittings are laid out there and  
4 everything. It was a typical pipefitters site  
5 there.

6 MR. DAVIES: Any other board  
7 members have any questions for Mr. Healy or  
8 Mr. Cartier?

9 MR. COTE: It's Cote.

10 MR. DAVIES: Any board members  
11 have any questions? Did the other gentleman want  
12 to speak?

13 MR. LAWRENCE: I don't know that  
14 that is necessary, Mr. Chairman. I'd just like to  
15 make a closing statement for the board, if I may.

16 MR. DAVIES: You may. Go ahead.

17 MR. LAWRENCE: There is,

18 respectfully suggesting to this board, unlike  
19 prior complainants here, I don't choose to lecture  
20 the board on what their responsibilities are, I  
21 think you know that pretty well.

22 I'm simply going to suggest to the board  
23 that there is no indication before this board  
24 today at this hearing that Mr. Cote did any

0087

1 pipefitting. That is pretty clear.

2 There's also been no indication before  
3 the board that Mr. Cartier, who does hold a  
4 welding license, did pipefitting. There isn't  
5 anything to indicate that before the board because  
6 Mr. Healy didn't see him doing any of that.

7 However, there is n indication that he  
8 did do welding because there is hangers and  
9 brackets that, in fact, would require a welding  
10 license that Mr. Cartier had.

11 This was a project that went on, as you  
12 can tell from the date that the permit was pulled  
13 in February, I think it was the 23rd, it had gone  
14 on over a period of time which is why there was a  
15 requirement for a welder, at least OST felt that  
16 they needed to have a licensed welder there to do  
17 any of the work that would require hangers and  
18 brackets for the piping, any of the welding. So

19 they had a licensed welder there.

20           There is also testimony before this  
21 board that they had Mr. James Darby, who had been  
22 there earlier in the day just prior to Mr. Healy  
23 arriving, who was the licensed pipefitter on the  
24 job who had done the work. And I'm sure Mr.

0088

1 Wright can confirm that Mr. Darby does, in fact,  
2 hold a license.

3           MR. DAVIES: The only violation we  
4 have here is Mr. Lucien Cote for no license.

5           MR. LAWRENCE: That's correct. I  
6 was just about to point that out. Thank you,  
7 Mr. Chairman. So that is the issue that the board  
8 has in front of it and I would suggest that there  
9 isn't evidence to support that. So I respectfully  
10 ask that this violation be dismissed. Thank you,  
11 Mr. Chairman.

12           MR. BYRNE: Mr. Chairman, I just  
13 need a little clarification; who is this violation  
14 against?

15           MR. DAVIES: Mr. Cote.

16           MR. BYRNE: Not Mr. Giarrusso or  
17 Ocean State Technical?

18           MR. DAVIES: He's the employer.

19 But on the case, it was Mr. Cote working without a

20 license. Board members, do you find a violation  
21 on Case No. 3236? May I have a motion?

22 MR. WEBSTER: I have another  
23 question, too. Why is the owner of the company  
24 not involved? He's the one that employed the  
0089

1 unlicensed people. Why is there still a question  
2 of Mr. Cote? I need a clarification on that also.  
3 You're not the owner, obviously.

4 MR. LAWRENCE: I'm not the owner  
5 of the company, obviously. He was cited in  
6 January.

7 MR. WRIGHT: He works for  
8 Mr. Giarrusso. The violation goes to the company,  
9 Mr. Giarrusso being the license holder of record,  
10 Mr. Cote works for him.

11 MR. CARREIRO: We're not picking  
12 on the working man.

13 MR. JANUARIO: It seems like we're  
14 picking on the worker.

15 MR. WRIGHT: No, we're not because  
16 of the violation, it's because he had this  
17 gentleman there working.

18 MR. WEBSTER: So the violation is  
19 against Mr. Giarrusso. I misunderstood.

20 MR. DAVIES: Do we have a

21 violation on Case No. 3236?

22 MR. CARREIRO: Mr. Chairman, with  
23 regard to Violation 3236, based on the testimony  
24 and the evidence brought before this board this  
0090

1 morning, I make a motion that the violator, James  
2 J. Giarrusso, Ocean State Technical Services, did  
3 indeed violate 28-27-28, practice for which a  
4 license is required.

5 MR. DAVIES: Do I have a second?

6 MR. HARRIS: Second.

7 MR. DAVIES: All those in favor?

8 Opposed? So voted.

9 MR. CARREIRO: Mr. Chairman,  
10 further, that this board requests the director to  
11 uphold the fine of \$500 which is as per Rhode  
12 Island General Law 28-27-24.

13 MR. DAVIES: Do I have a second.

14 MR. HARRIS: Second.

15 MR. DAVIES: All those in favor?

16 Opposed? So voted. Mr. Giarrusso, you will also  
17 receive a letter.

18 MR. LAWRENCE: Thank you,  
19 Mr. Chairman.

20 MR. DAVIES: The hearings are  
21 closed at this point. Thank you.

22 (CLOSED AT 10:53 A.M.)

23 \* \* \* \* \*

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1 CERTIFICATE

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5 I, Claudia J. Read, Notary Public, do hereby  
6 certify that I reported in shorthand the foregoing  
7 proceedings, and that the foregoing transcript  
8 contains a true, accurate, and complete record of  
9 the proceedings at the above-entitled hearing.

10

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand this 9th day of September, 2007.

13

14

15

16

17 CLAUDIA J. READ, NOTARY PUBLIC/CERTIFIED COURT  
REPORTER

18 MY COMMISSION EXPIRES NOVEMBER 2, 2008.

19

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**24**