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Court of Appeals for Division 1 of the State of

Washington No 66168-01-1

Morrison John Woodford Pro Se

Appellant

Appellant Brief

Vs

State of Washington

Department of Labor and Industries

Respondent

John Morrison Pro Se

2100 196th St. SW.

Lynnwood WA 98036

206-624-8998

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COURT OF APPEALS
DIVISION 1
CLERK'S OFFICE

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1. Judge Cowsert in the Remand Order “conclusions of law” was incorrect in ruling”There is a rational basis for the fee requirement in RCW 19.28.131. The payment by certified check does not infringe on any licensed electrical contractors or certified administrators rights under the state or federal constitution”.
2. In #4 of the final order the court should have ordered payment of legal fees to John Morrison under RCW 4.84.350

Relief Sought

We request that all eight citations written to Woodford Electric and John Morrison be dismissed. We ask for \$200 filing fee denied by the trial judge plus court fees expended through the appellate process.

Statement of case

On December 2nd 2008 the department of Labor and Industries, electrical section issued 4 citations each to Woodford Electric and owner John W Morrison for failing to purchase an electrical permit for a single address in Edmonds, Washington. On December 31st 2008 the department sent a letter informing Woodford Electric and John W Morrison of a \$4000.00 fine and the appeal process under RCW 1928.131 with the requirement of a \$200 bond per citation to get a hearing of the facts.

John Morrison sent a letter within 20 days to the department requesting a hearing without the \$1600.00 bond explaining they had no funds and the requirement of such was a violation of their constitutional right to due process. The department sent a letter back denying an appeal hearing and demanding payment of the \$4000.00 in fines. John Morrison filed for review of agency action with Snohomish County Court.

A hearing was held September 3rd 2010 before the honorable Kenneth L. Cowsert in Snohomish County

Court. On October 20th 2010 Judge Cowser issued an order remanding agency action back to the Department of Labor and Industries reducing the required bond from \$1600.00 to \$200.00 for Woodford Electric and John Morrison and setting aside the appeal denial by the department.

Argument

The court erred in not finding that a requirement of a fee to get a hearing of the facts was a violation of the “Due process” clause of the state and federal constitution .The court also erred in reducing the bond from \$1600.00 to \$200.00 as there is no provision in RCW 1928.131 or the associated Wac 296-46b-995 (12) b to reduce the amount of bond. Under the present law it is \$1600.00 or if the law is invalidated by the court it is zero.

It is fundamentally unfair for the state of Washington to issue a non-reveiwed citation with a substantial fine to someone then require a fee to get a hearing on the validity and facts of the case. Fairness by

the government when forfeiting property is what due process is all about.

If this court rules for John Morrison finding the bond requirement unconstitutional the department and the legislature will have to rewrite portions of the electrical law.

The department of Labor and Industries, Electrical section for the past ten years has significantly increased the amount of fines and citations written. There will be significant pressure from the electrical industry, business and labor, for the legislature to rewrite fair legislation and rules. It is doubtful the citation and appeal process will look like anything like it does today.

I ask the court to dismiss the citations. After the new rules and laws are enacted the department would be free to re-file the citations under the new rules.

The trial court should have reimbursed John Morrison the \$200 filing fee. RCW 4.84.350 calls for awarding a prevailing party legal fees in a judicial review of agency action. The legislature enacted this law called

the “equal right to justice act” to give small business some recourse against bigger government agencies. Judge Cowcert denied this because he said the petitioner lost the case. The RCW states, “A qualified party shall be considered to have prevailed if the party obtained relief on a significant issue that achieves some benefit that the party sought.” The department went in with the position that the petitioner’s appeal was denied due to nonpayment of \$1600 bond and a \$4000 penalty was owed. Judge Cowcert ruled that the petitioners appeal should go forward with a reduced bond of \$200. Woodford Electric and John Morrison got relief on a significant issue and achieved great amount of benefit in the ruling.

Conclusion

The 14th amendment of United States constitution guarantees all citizens in all states the right to “due process” before being deprived of property. The question before this court is whether due process comes with a fee.

Dated this 4th day of February 2010

A handwritten signature in black ink, appearing to be "John Morrison", written over a horizontal line.

In the Court of Appeals Division 1 State of Washington

February 4, 2011

One Union Square
600 University St.
Seattle, WA 98101-7750

Case # 66168-0-1
John Woodford Morrison, Appellant Vs State of WA Dept. of L and I
Respondent

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington
that I caused the documents referenced below to be served as follows. U.S.
Mail

DOCUMENTS Appellant legal brief

Original to Court of Appeals Div 1
 One Union Square
 600 University St.
 Seattle, Wa.

Copy to Attorney General of Washington
 Labor and Industries Division
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Dated this 4th day of February 2011

John W Morrison
Woodford Electric
206-624-8998

Signed



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U.S. MAIL