

BEFORE THE STATE ELECTRICAL BOARD
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-07-0023-ELE REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 324-2007
ACTION AGAINST THE LICENSE OF)	
LAURENCE GILLISPIE d/b/a EAGLE)	
CREST ELECTRIC, Licensed Master)	
Electrician, License No. M1444.)	
)	

**PROPOSED FINDINGS OF FACT;
CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division of the Montana Department of Labor and Industry (BSD) seeks to impose sanctions against the license of Laurence Gillispie d/b/a Eagle Crest Electric alleging numerous violations that stem from an employee's engaging in electrical work while unlicensed. Specifically, BSD alleges that Gillispie violated Montana Code Annotated § 37-1-316(2) (which prohibits a licensee from permitting or aiding and abetting an unlicensed person to perform work that requires a license), Montana Code Annotated § 37-1-316(16) (assisting in the unlicensed practice of the electrical profession), Montana Code Annotated § 37-1-316(18) (which prohibits conduct that does not meet generally accepted standards of practice), Montana Code Annotated § 37-1-316(8) (which prohibits a licensee from failing to comply with a term, condition, or limitation of a license imposed by final order of the State Electrical Board) and Administrative Rule of Montana 24.141.403(5) (which prohibits a licensee from permitting a person in his or her employ to perform electrical work without being properly licensed).

Hearing Examiner Gregory L. Hanchett held a hearing in this matter on October 31, 2006. Lorraine Schneider, agency legal counsel, represented the Department of Labor and Industry Business Standards Division (BSD). Raymond Tipp, Attorney at Law, represented Gillispie. George Edwards, Dick Marlow, Tom Petrowsky, Gillispie, and Charlie Blazeovich all testified under oath. Respondent's Exhibits A and BSD's Exhibits 3 and 4 were admitted into evidence. Based on the

evidence adduced at the hearing in this matter, the hearing examiner finds that BSD has failed to sustain its burden of proof and recommends that the complaint be dismissed. This finding is based on the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. At all times pertinent to this inquiry, Gillispie has held a masters electrician license as well as the license for Eagle Crest Electric.

2. During April, 2006, Eagle Electric was the permitted electrical subcontractor on a project located at 1333 Toole Avenue in Missoula, Montana. At this site, Eagle was conducting both high voltage (in excess of 90 volts) electrical work, which required a workman to have an electrical license, and low voltage work, which does not require an electrical license.

3. During this time period, Eagle Electric employed Dean Myers at the Toole Avenue job site. The State Electrical Board had issued Myers a temporary electrician's license which was valid when he started working at the Toole job site.

4. On April 10, 2006, Myers took the journeyman's electrician license but failed the test. Effective April 10, 2006, because Myers had failed the test, his temporary license was no longer valid.

5. Between April 10, 2006 and April 26, 2006, Gillespie was out of state visiting his parents in California. He spoke with Myers after learning that Myers had failed the test. He told Myers to contact George Edwards to see what Myers should do in order to work while waiting to retake the test. Gillespie also told Myers that under no circumstances was he to do any work until such time as his licensing situation was straightened out. Myers agreed to do no such work.

6. On April 25, 2006, State of Montana Electrical Inspectors Dick Marlow and Tom Petrowsky conducted a field license inspection at the Toole Avenue site. They observed Myers on a ladder connecting a lighting fixture to line voltage, work that required an electrician's license.

7. Petrowsky asked Myers if he had a temporary license in his possession. Myers told him that he had paid the required state fee to have his temporary license reinstated but that he had not yet received the license from the State Electrical Board. When asked to produce proof that he had paid the fee, Myers searched for a receipt for the money order he had obtained to pay the fee but was unable to find it.

8. Myers also told the inspectors that he had been asked to install the lighting fixture. Significantly, Myers did not say that he had been told to do the work by

Gillispie. Later, Myers told Charlie Blazeovich, another of Gillispie's employees, that the general contractor's foreman had ordered Myers to put in the light fixture. There is no evidence in this case that Gillispie knew or was in a position to know that Myers was engaging in unlicensed electrical work.

9. Because Myers could not produce a license or proof that he had paid for a license, the state electrical inspectors issued Myers a citation.

10. Upon returning to Missoula, Gillispie learned of the citation that had been issued to Myers. Myers then admitted that, contrary to his earlier assertions to the state electrical inspectors, he had not obtained a second temporary license in order to keep working at the job site. Gillispie immediately (April 26, 2006) took Myers to the Business Standards Division to obtain a second temporary license. On that same day, the BSD issued Myers a second temporary license.

III. CONCLUSIONS OF LAW

A. The Department Has Failed to Demonstrate Any Violation

1. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law related to licensure or certification;

* * *

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

2. Administrative Rule of Montana 24.141.403(5) prohibits the licensee from allowing any person in his employ to perform work unless that person is properly licensed or working with a valid temporary permit.

3. BSD bears the burden of proof in this matter to show by a preponderance of the evidence that the licensee committed an act of unprofessional

conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 289 Mt. 407, 961 P.2d 126 (1998).

4. The Department has failed to demonstrate by a preponderance of the evidence that the licensee knowingly, tacitly or even negligently permitted Myers to engage in the unlicensed electrical work. The complaint in this matter very explicitly states that the licensee “allowed” Dean Myers to engage in electrical contracting without a license. Unfortunately, there is no substantial evidence that Gillispie “allowed” the licensee to engage in electrical work while unlicensed. Perhaps if Myers had testified at hearing (Myers apparently ignored his subpoena from the Department but the Department took no steps to enforce the subpoena or to seek a postponement while the subpoena was enforced), substantial evidence of the violation might have come forth. However, there was no testimony from Myers and the evidence about Myers’ conversation with Petrowsky and Marlow on April 25, 2006, does not show that Gillispie “allowed” Myers to engage in unlicensed electrical work. It is BSD that has the burden to show the violation in this matter and the evidence adduced at the hearing simply did not meet this burden.

5. At most, the evidence in this case shows that Gillispie took reasonable steps to ensure that Myers did not engage in unlicensed work. Gillispie, who was out of state, instructed Myers not to do any work until his license situation got straightened out. It is difficult to imagine that the professional conduct statutes and regulations that pertain to this case could be interpreted to require more of a licensee than what Gillispie did in this case.

B. The Failure to Demonstrate a Violation Requires Dismissal

6. If a licensee is found not to have violated a provision of Mont. Code Ann. Title 37, Chapter 1, Part 3, then the Department shall prepare and serve the board's findings of fact and an order of dismissal of the charges. Mont. Code Ann. § 37-1-311.

7. Because the Department has failed to demonstrate that the licensee engaged in conduct that violated Title 37, Chapter 1, Part 3, MCA, dismissal of the charges is appropriate.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Board enter its order dismissing the allegations contained in the complaint filed against the

licensee as the Department has failed to prove any violation contained in the complaint.

DATED this 30th day of November, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner