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2 **II. FINDINGS OF FACT**

3 2.1 Appellant Peter Danioth was a permanent employee for Respondent Department of Labor  
4 and Industries. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the  
5 rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the  
6 Personnel Appeals Board on September 12, 2003.

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8 2.2 Appellant began his employment as an Electrical Construction Inspector with L&I in June  
9 1996. As an inspector, Appellant made visits to job sites and inspected electrical installations to  
10 ensure that there was no threat to the safety of the public or to property. Dene Koons, Electrical  
11 Construction Supervisor, was Appellant's first-line supervisor. There is no dispute that Appellant  
12 was a well-trained and highly qualified electrical inspector.

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14 2.3 Appellant has received the following formal discipline:

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- 16 • December 11, 1998 - a 15-day suspension for neglect of duty, gross misconduct and willful violation of agency policy after he acted as an electrical consultant to a friend.
  - 17 • April 3, 2001 - a three-month salary reduction after his driver's license was revoked.
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19 2.4 Appellant has received the following informal discipline:

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- 21 • November 15, 2000 - a letter of reprimand from Mr. Koons after Appellant made a threatening statement to another employee.
  - 22 • December 6, 2000 - a written counseling memo from Mr. Koons for Appellant's inappropriate use of state resources.
  - 23 • February 1, 2001 - a written counseling memo from Mr. Koons after Appellant violated the department's policy regarding smoking in state vehicles.
  - 24 • February 22, 2001 - a letter of reprimand from Mr. Koons after Appellant used state resources for personal reasons and violated a prior directive to only use state resources for business purposes.
  - 25 • November 7, 2002 - a written counseling memo from Mr. Koons for failing to follow his instructions regarding reporting his absences due to illness.
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2.5 By letter dated August 14, 2003, Reuel Paradis, Regional Administrator, notified Appellant of his dismissal effective at the beginning of his work shift on August 29, 2003. Mr. Paradis charged Appellant with neglect of duty, gross misconduct, and willful violation of agency policy. Mr. Paradis outlined six instances in which he alleged that Appellant acted in an unprofessional manner toward customers during inspections, including yelling and using profanity, acting in an arrogant and aggressive manner and threatening to shut down jobs. Mr. Paradis also alleged that Appellant failed to treat co-worker Lorena Alvarez with respect and dignity.

2.6 Appellant denies that he engaged in any inappropriate behavior toward customers or toward Ms. Alvarez. The incident with Ms. Alvarez occurred in June 2003, when Appellant called the office and Ms. Alvarez answered. Appellant requested information regarding a permit. However, Ms. Alvarez was a new employee and was unable to comply with Appellant's request. During the course of their conversation, Appellant told Ms. Alvarez that she did not know who she was talking to and that he (Appellant) was a state of Washington Electrical Inspector. Later, Appellant apologized to Ms. Alvarez. Ms. Alvarez, however, had not been offended by Appellant's remarks. Respondent has failed to prove that Appellant's actions in this incident rise to the level of misconduct.

2.7 Regarding the remaining allegations, the Board heard testimony from numerous witnesses who credibly described a pattern of unprofessional, aggressive, offensive, and antagonistic behavior on Appellant's part. In addition, there was credible testimony that Appellant used profanity in the presence of others, as well as in the presence of customers. We find no reason to disbelieve their testimony, and we enter the following findings.

1 **Incident at the Tri-Cities Coliseum**

2 2.8 Appellant conducted an inspection at the Tri-Cities Coliseum on March 1, 2002. During  
3 that inspection, Appellant worked with Rob Robison, an employee of Backstage Electric.  
4 Backstage Electric was a company that had been contracted by the Coliseum to setup the lighting  
5 for an upcoming show. During the inspection, Appellant asked why the lights were off and Mr.  
6 Robinson explained that technicians were working on focusing lights for the show, and he offered  
7 to provide Appellant with a flashlight to use during his inspection. Appellant stated that if he  
8 wanted to use a flashlight, he would provide his own “fucking flashlight,” and he stated, “I want the  
9 fucking lights on now.” After the lights were turned on, a lighting technician asked Appellant why  
10 the lights were on, and Appellant responded that he was a state inspector and would do what he  
11 wanted. As he left, Appellant threatened to shut down the power to the next show. Mr. Robinson  
12 credibly testified that Appellant’s demeanor during that interaction was rude, aggressive,  
13 unprofessional and demanding.

14  
15 **Incident at Hastings Inc.**

16 2.9 On April 14, 2003, Appellant conducted an electrical inspection at Hastings Inc., a  
17 video/bookstore. Terry Graff, Owner of Trinity Construction, was at the site and observed  
18 Appellant acting in an unprofessional manner, including yelling, “I’m going to shut down this damn  
19 job.” Appellant’s voice could be heard throughout the store, where customers were present. The  
20 department received several written complaints from individuals who were present when the  
21 incident occurred. The complaints described Appellant as “shaking his fist and yelling,” “totally  
22 unprofessional,” “rude” and as using “abusive language.”

23  
24 **Incident at America the Beautiful Dreamer**

25 2.10 Chris Foster was an electrician for Pro Sign, Inc. and was performing electrical work at  
26 America the Beautiful Dreamer in March/April 2003. Appellant posted a “red tag” on the store’s

1 front door because there was no permit posted as required. An employee for Pro Sign called and  
2 left Appellant a message stating that the company had a valid permit, that he was taking down the  
3 red tag, and asked Appellant to call him back. Mr. Foster later met with Appellant to return the red  
4 tag; however, the file Mr. Foster was carrying did not have the tag. When Mr. Foster explained the  
5 situation, Appellant responded that if he (Mr. Foster) wanted to return the tag to him, he would have  
6 to find him and that it “now becomes a cat and mouse game.” Appellant gave Mr. Foster his pager  
7 number and told him to page him and that he (Appellant) would return the call when he felt like it.  
8 Appellant was uncooperative and he appeared frustrated and upset. During their conversation,  
9 Appellant also commented that another employee of the company (Jason R.) “must be selling drugs  
10 because he has too many toys.”

### 11 12 **Incidents at Target Store**

13 2.11 On April 10, 2003, at 10 p.m. Appellant arrived at a Target store to conduct inspections.  
14 Contractors later complained that Appellant displayed unprofessional and aggressive behavior and  
15 that he acted like the contractors were wasting his time. Appellant also indicated he was leaving  
16 because the work was not ready and things “were a mess.”

17  
18 2.12 On April 17, 2003, during another inspection at the Target store, Appellant refused to speak  
19 to the superintendent of the job, Bob Lantieri, and he held his arms up in front of his face when Mr.  
20 Lantieri approached him. Appellant also refused to wear a hard hat in an area where one was  
21 required.

### 22 23 **Modern Automotive Repair and Electric Inc.**

24 2.13 On May 29, 2003, Appellant stopped at Modern Automotive Repair and Electric, Inc.  
25 Appellant indicated to Brian Lane, owner, that he was with Labor and Industries and was “just  
26 driving by.” Appellant made comments about a hoist Mr. Lane had installed without a permit. Mr.

1 Lane described Appellant's demeanor during their interaction as "high strung." Appellant wore  
2 mirrored glasses the entire time he spoke with Mr. Lane, who felt uncomfortable during the  
3 interaction. Appellant had been previously directed by his supervisor not to wear sunglasses when  
4 dealing with customers and when conducting inspections.

5  
6 2.14 Reuel Paradis, Regional Administrator, was Appellant's appointing authority when the  
7 discipline was imposed. On July 3, 2003, Mr. Paradis met with Appellant to discuss the charges.  
8 Appellant denied having behaved inappropriately. Mr. Paradis, however, was not convinced and  
9 did not find that Appellant provided any mitigating circumstances or reasons to make him  
10 disbelieve the allegations. Mr. Paradis concluded that Appellant failed to provide adequate  
11 customer service when he engaged in intimidating behavior and used profanity in the course of his  
12 duties. Although Appellant claimed that his supervisor, Mr. Koons, intentionally solicited  
13 complaints against him in an attempt to get him fired, Mr. Paradis found no evidence to substantiate  
14 this claim.

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16 2.15 In determining the level of discipline, Mr. Paradis considered Appellant's length of service  
17 and his employment record, which included both formal and informal discipline. Mr. Paradis  
18 placed great weight on the department's core principle to treat others with courtesy and respect in  
19 the course of an employee's duties. Mr. Paradis found that Appellant failed to respond to the  
20 previous attempts to correct his behavior, and he concluded that anything less than termination  
21 would not have an impact. By letter dated August 14, 2003, Mr. Paradis notified Appellant of his  
22 dismissal, effective at the beginning of his work shift on August 29, 2003. Mr. Paradis charged  
23 Appellant with neglect of duty, gross misconduct and willful violation of agency policy.

1 **III. ARGUMENTS OF THE PARTIES**

2 3.1 Respondent alleges that Appellant engaged in misconduct when he yelled at customers  
3 while conducting inspections on behalf of the department. Respondent asserts that Appellant used  
4 profanity in front of customers and at customers and threatened to shut down jobs and close  
5 businesses. Respondent asserts that the department received numerous complaints from a variety of  
6 sources, that Appellant failed to accept responsibility for his actions and that dismissal was the  
7 appropriate sanction.

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9 3.2 Appellant denies that he yelled at customers or used profanity. Appellant also denies that he  
10 threatened to shut down any operation and that he did not have the authority to shut down an  
11 operation. Appellant claims that all the charges stem from Mr. Koons, who disliked him and  
12 wanted to get him fired.

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14 **IV. CONCLUSIONS OF LAW**

15 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
18 the charges upon which the action was initiated by proving by a preponderance of the credible  
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
20 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
21 Corrections, PAB No. D82-084 (1983).

22  
23 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
24 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
25 of Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
2 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
3 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
4 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

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6 4.5 Willful violation of published employing agency or institution or Personnel Resources  
7 Board rules or regulations is established by facts showing the existence and publication of the rules  
8 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
9 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

10  
11 4.6 Respondent met its burden of proof that Appellant neglected his duty and violated agency  
12 policy when he failed to treat customers in an appropriate, courteous and professional manner.  
13 Appellant had a duty to work cooperatively with customers and his demonstrated pattern of  
14 inappropriate and negative behavior and his use of profanity were contrary to agency policies and  
15 procedures. Respondent has met its burden of proving that Appellant engaged in gross misconduct  
16 when his repeated rude and offensive behavior toward customers negatively impacted the agency's  
17 ability to carry out its mission to provide a high standard of courteous customer service. Further,  
18 there was no evidence to testimony to support that Mr. Koons solicited the complaints from  
19 customers.

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21 4.7 Although it is not appropriate to initiate discipline based on prior formal and informal  
22 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
23 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
24 D93-163 (1995).



1 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to  
2 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
3 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
4 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
5 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
6 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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8 4.9 Appellant was a highly skilled inspector. However, the Department Labor and Industries, as  
9 a public agency, must ensure that its employees behave in an appropriate and professional manner  
10 in order to maintain high standards of customer service to the public. Under the circumstances  
11 presented here, Appellant's demonstrated pattern of inappropriate and discourteous behavior and  
12 his history of disciplinary and corrective action warrant the disciplinary sanction of dismissal.  
13 Therefore, the appeal should be denied.

14  
15 **V. ORDER**

16 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Peter Danioth is denied.

17  
18 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

19  
20 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Member

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