

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES  
STATE OF WASHINGTON

IN RE CONSTRUCTION INDUSTRY  
TRAINING COUNCIL – MECHANICAL  
INSULATOR

No. 2022-005-APP

DIRECTOR'S ORDER

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Findings of Fact, Conclusion of Law, and Decision and Order (Initial Order) served on June 30, 2021, having considered the petition for administrative review filed by Construction Industry Training Council, briefing submitted to the Director's Office, and having reviewed the record created at hearing and the records and files herein, issues this Director's Order.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

**I. FINDINGS OF FACT**

1. The Washington State Apprenticeship and Training Council (Council) served its Initial Order on June 30, 2021.
2. The Appellant timely filed a petition for administrative review with the Director.
3. The Director adopts and incorporates all the Initial Order's findings of facts.

## II. CONCLUSIONS OF LAW

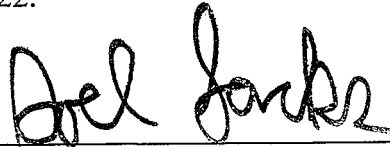
1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.

2. I have considered the findings and conclusions of the Initial Order, which correctly analyze the legal issues in this appeal and adopt and incorporate all the Initial Order's conclusions of law and "decision and order" section.

## III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Council's decision is AFFIRMED and the request for new standards is DISAPPROVED.

DATED at Tumwater this 1<sup>st</sup> day of February 2022.



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JOEL SACKS  
Director

## SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

## APPEAL RIGHTS

**Reconsideration.** Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing, or by emailing to [DirectorAppeal@LNI.WA.GOV](mailto:DirectorAppeal@LNI.WA.GOV), or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

**NOTE: A petition for reconsideration is not required before seeking judicial review.** If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

**Judicial Review.** Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

## DECLARATION OF MAILING

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 1<sup>st</sup> day of February 2022, via U.S. Mail, postage prepaid, and email to the following:

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DATED this 1<sup>st</sup> day of February 2022, at Tumwater, Washington.

  
LISA DECK

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BEFORE THE APPRENTICESHIP AND TRAINING COUNCIL  
OF THE STATE OF WASHINGTON

IN RE: CONSTRUCTION INDUSTRY  
TRAINING COUNCIL – MECHANICAL  
INSULATOR

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND DECISION AND ORDER

**I. HEARING SUMMARY**

This matter came before the Washington State Apprenticeship and Training Council to consider the Construction Industry Training Council’s (CITC) proposed standards for the occupation of Mechanical Insulator. Timely objections to the proposed standards were filed by Heat and Frost Insulators Workers JATC, Spokane Heat & Frost Insulators and Allied Workers Apprenticeship Committee, and the International Association of Heat and Frost Insulators (Objectors). Oregon/Southwest Washington Heat & Frost Insulators & Allied Workers JATC (OR SW-WA) also filed a timely objection.

The Council voted to adjudicate the matter internally. A hearing was held before presiding officer April Sims on February 9-11 and March 12, 2021. CITC was represented by Brian Padgett from Employer Solutions Law. OR SW-WA was represented by Daniel Hutzenbiler from McKanna Bishop Joffe LLP. The Objectors were represented by Kristina Detwiler and Madison Brown from Robblee Detwiler PLLP. The Department of Labor and Industries (Department) was represented by the Office of the Attorney General, per Eric Lawless, Assistant Attorney General.

1 CITC presented testimony of Pat Knight, Halene Sigmund, and Jack Chapel. The  
2 Objectors presented the testimony of Todd Mitchell, Larry Nettkoven, Mario Lopez, and  
3 Andrew Richman. OR SW-WA presented the testimony of Dave Gamble. CITC presented  
4 rebuttal witnesses Adriana Gamboa and Francisco Galeana.

5 The Council admitted Exhibits A, B, C, D, F, H, I, J, K, L, M, N, P, and Q.

6 The Council, having reviewed the transcript of the proceedings, and having considered  
7 the exhibits and briefing submitted by the parties, hereby enters the following Findings of Fact,  
8 Conclusions of Law and Decision, which is the final order of the Council.

9  
10 **II. FINDINGS OF FACT**

- 11 1. CITC trains workers in various construction trade occupations. It runs ten statewide  
12 apprenticeship programs. It has five training facilities supported by 26 full-time  
13 administrative employees.
- 14 2. In March 2020, CITC submitted proposed apprenticeship standards for the  
15 occupation of mechanical insulator. The proposed standards cover the geographic  
16 area of Washington and Idaho.
- 17 3. CITC based its proposed mechanical insulator apprenticeship program on existing  
18 apprenticeship programs for the mechanical insulator occupation. The term of  
19 apprenticeship for the proposed program is 10,000 hours of on the job training.  
20 CITC's standards require it to provide apprentices with job instruction and work  
21 experience "necessary to become a qualified journey-level worker versed in the  
22 theory and practice of the [mechanical insulator] occupation." The work processes  
23 include 2,700 hours in commercial heating/air-conditioning; 2,850 hours in  
24 industrial and process plant piping, vessels, equipment, etc.; 1,400 hours in  
25 refrigeration and low temperature; 2,240 hours for ship and marine work; 800 hours  
26 for prefabrication; 10 hours for work safety awareness, personal protective  
equipment, and tool safety in high hazard areas. These work processes are nearly  
identical to the work processes listed in existing apprenticeship programs for the  
mechanical insulator occupation.
4. The proposed related/supplemental instruction plan consists of 160 hours per year  
(800 hours total). CITC developed its related/supplemental instruction plan for its  
proposed mechanical insulator program based on its review of other programs  
already training in this occupation. CITC's related/supplemental instruction plan is  
substantially similar to that of existing programs. CITC's standards require it to  
coordinate its related/supplemental instruction with on-the-job work experience and  
to ensure that its content and delivery method remain reasonably consistent with the  
latest occupational practices, improvements, and technical advances.

- 1 5. The journey-level worker rate for CITC's proposed mechanical insulator program is  
2 the average journey-level worker rate for employers participating in the program.  
3 Under its standards, CITC surveys participating employers to determine the average  
4 rate for journey-level workers performing non-prevailing wage work. The Council  
5 has previously approved the use of wage surveys for determining journey-level  
6 wage rates.
- 7 6. CITC uses the average journey-level wage rate to determine the rate participating  
8 employers must pay apprentices. The apprentice wage rate is based on a wage  
9 progression, with more experienced apprentices receiving a higher percentage of  
10 the journey-level wage rate. Employers may choose to pay apprentices a higher rate  
11 but cannot pay a lower rate than that established by the wage progression. On  
12 prevailing wage jobs and in high hazard facilities, CITC's apprentices will be paid  
13 the required higher rate for those job types. No CITC apprentice may be paid less  
14 than the minimum wage.
- 15 7. CITC's standards require that it manage its training agents. Under the proposed  
16 standards, CITC must determine whether an employer can adequately furnish  
17 proper on the job training to apprentices in accordance with its standards. All CITC  
18 training agents must complete an approved training agent agreement and comply  
19 with state and federal apprenticeship requirements. In the past 28 years, CITC has  
20 never had difficulty signing up a sufficient pool of training agents to train its  
21 apprentices in the work process of its program occupations.
- 22 8. CITC's apprenticeship committee for its mechanical insulator program consists of  
23 two employer representatives and two employee representatives (with one  
24 employee alternative). The proposed standards list Samuel Delgado and Anthony  
Hernandez as the employer members, and Kirk Anderson and Marcos Mejia-Lopez  
as employee members (with Francisco Galeana as an alternate). After CITC filed its  
proposed standards, Mr. Mejia-Lopez was laid off by his employer, and he joined  
the Heat and Frost Insulators Workers JATC mechanical insulator program as an  
apprentice. Mr. Galeana took Mr. Mejia-Lopez's place on the committee.
9. Neither Mr. Mejia-Lopez nor Mr. Galeana was familiar with CITC's apprenticeship  
standards at time of their appointment (or at hearing). Mr. Mejia-Lopez testified  
that he had no idea he had agreed to be on CITC's apprenticeship committee,  
stating that he thought his actions related to becoming part of a union. There is no  
indication Mr. Mejia-Lopez ever read or reviewed CITC's proposed standards. Mr.  
Galeana likewise lacked familiarity with CITC's apprenticeship standards, showing  
little understanding of the apprenticeship model. On cross examination, Mr.  
Galeana was unable to distinguish between a training program and an  
apprenticeship program, testifying that he had not had time read the apprenticeship  
laws and regulations.<sup>1</sup>
10. CITC plans to take apprenticeship committee members "through an orientation of  
the rules and regulations that govern apprenticeship as well as the standards." Tr.

<sup>1</sup> Contrary to the Objectors' argument, the evidence does not show that Mr. Galeana was a part of management (and thus ineligible to serve as an employee representative). While titled a superintendent, Mr. Galeana had no power to hire and fire other workers. Based on the evidence presented, his position is best characterized as a working foreperson.

1 2/9/2021 at 143-144. As of the date of hearing, no committee meeting had yet  
2 occurred. *Id.*

- 3 11. The Department performed a technical review of CITC's proposed apprenticeship  
4 standards. The Department determined that the standards met criteria established by  
5 RCW 49.04 and WAC 296-05.<sup>2</sup>
- 6 12. The State Board for Community and Technical Colleges reviewed and approved  
7 CITC's proposed related/supplemental instruction plan.
- 8 13. CITC's proposal for new standards was placed on the Council's agenda for its April  
9 2020 meeting. The Council received numerous objections. Following cancellation  
10 of the April 2020 meeting (due to the COVID-19 pandemic), the Council  
11 considered the matter at its July 2020 meeting, voting to adjudicate the matter  
12 internally.

### 13 III. CONCLUSIONS OF LAW

- 14 1. The Council has jurisdiction over the subject matter and the parties to this action,  
15 pursuant to RCW 49.04, RCW 34.05, and WAC 296-05.
- 16 2. The Council is authorized to approve apprenticeship programs. RCW 49.04.010.  
17 When new apprenticeship program standards are proposed, the Council considers  
18 whether to approve the standards. WAC 296-05-011. Apprenticeship standards  
19 contain "specific provisions for operation and administration of the apprenticeship  
20 program and all terms and conditions for the qualifications, recruitment, selection,  
21 employment, and training of apprentices." WAC 296-05-003 ("Standards"). To be  
22 eligible for registration, apprenticeship program standards must conform to WAC  
23 296-05. RCW 49.04.050.
- 24 3. A request for Council approval of a new apprenticeship program is an application  
25 for a license under the Administrative Procedure Act. *Seattle Building and Constr.*  
26 *Trades Council v. CITC*, 129 Wn.2d 787, 804 (1996). A license applicant bears the  
burden of proving compliance with all statutory and regulatory requirements for a  
license. *Black Ball Freight Service, Inc. v. Wash. Utilities and Transp. Comm'n*, 74  
Wn.2d 871, 875 (1968).
4. Upon proper submittal, the Council approves apprenticeship program standards  
when: (1) the apprenticeship and training committee is organized consistent with  
WAC 296-05-009, and (2) the proposed standards are consistent with WAC 296-  
05-015. WAC 296-05-011(1)(a).
5. Under WAC 296-05-009(1), an apprenticeship committee is responsible for the  
day-to-day operations of the apprenticeship program, ensuring that it operates  
consistently with approved apprenticeship standards. The committee must have at  
least four and no more than twelve members, with an equal number of management

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<sup>2</sup> The Department's determination during its technical review is included solely for background purposes. Whether apprenticeship standards meet the requirements of RCW 49.04 and WAC 296-05 are legal questions that are solely the province of the Council. When adjudicating these issues, the Council does not defer to the Department's technical review.



1 and worker representatives. WAC 296-05-009(2). At least fifty percent of the  
2 members must hold journey-level status in the occupation to be taught. WAC 296-  
3 05-009(3)(a). All members must be “qualified by education and experience in the  
4 areas the committee represents” and be “familiar with the applicable apprenticeship  
5 standards.” WAC 296-05-009(3)(b), (c). The Court of Appeals has rejected  
6 arguments that apprenticeship committee members may gain these qualifications  
7 after their appointment. *W. Wash. Operating Eng'rs Apprenticeship Comm. v.*  
8 *Wash. State Apprenticeship & Training Council*, 144 Wn. App. 145, 164 (2008).  
9 Instead, the rules require “appointees who have demonstrated experience and  
10 knowledge of apprenticeship programs when appointed.” *Id.*<sup>3</sup>

11 6. CITC’s proposed apprenticeship and training committee is not organized consistent  
12 with WAC 296-05-009. The employee representatives, Mr. Mejia-Lopez and Mr.  
13 Galeana, were not familiar with CITC’s apprenticeship standards at the time of their  
14 appointment. While CITC indicated a plan to educate its committee about the  
15 standards at a future date, the apprenticeship rules require such familiarity at the  
16 time of appointment. Because CITC failed to demonstrate its committee members  
17 were qualified as defined in WAC 296-05-009(3), the Council cannot approve the  
18 proposed mechanical insulator apprenticeship program. *See* WAC 296-05-  
19 011(1)(a).<sup>4</sup>

20 7. CITC’s proposed apprenticeship standards do not meet the requirements of RCW  
21 49.04 and WAC 296-05.

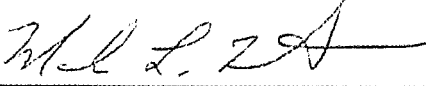
#### 22 IV. DECISION AND ORDER

23 Based on the foregoing findings of fact and conclusions of law:

24 The request for new standards is DISAPPROVED.

25 It is so ORDERED,

26 DATED this 36<sup>th</sup> day of June 2021.

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30 MARK RIKER, Chair  
31 on Behalf of the Washington State  
32 Apprenticeship and Training Council

33 <sup>3</sup> The Court’s opinion involved a previous version of the apprenticeship rules with slightly different  
34 qualification requirements for committee members. *See* former WAC 296-05-313(4) (2000) (requiring committee  
35 members to be “knowledgeable in the process of apprenticeship[.]”). But the Court’s reasoning about *when*  
36 committee members must obtain their qualification applies with equal force to the current version of the rules.

37 <sup>4</sup> The Council does not reach the question of whether CITC’s proposed standards are consistent with  
38 WAC 296-05-015. But it notes that the majority of the Objectors’ arguments relate to compliance issues that fall  
39 beyond the scope of the Council’s review when new standards are proposed. The Council has previously rejected  
40 as speculative arguments relating to a sponsor’s lack of training agents prior to program approval. And the  
41 Council has made clear it lacks authority to dictate the wages employers pay their journey-level workers.

1 APPEAL RIGHTS

2 This Order was served on you the day it was transmitted electronically. RCW 34.05.010(19).

3 **Appeal.** Any party may appeal this Order to the Director of the Department of Labor and  
4 Industries by filing a notice of appeal, together with any argument in support thereof, with the  
5 Director within thirty (30) days of service of this Order. If this Order is not appealed within thirty  
(30) days, it is final and binding, and not subject to further appeal. *See* RCW 49.04.065.

6 A notice of appeal should be filed by mailing it to Joel Sacks, Director of the Department of  
7 Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, or by delivery and receipt at  
8 the Department of Labor and Industries, 7273 Linderson Way SW, Tumwater, WA 98501, with  
9 a copy to all other parties of record and their representatives. Filing means actual receipt of the  
document at the Director's office. RCW 34.05.010(6). A copy shall also be sent to William F.  
Henry, Assistant Attorney General, Counsel for WSATC, 800 Fifth Ave., Ste. 2000, Seattle, WA  
98104.

10  
11 Upon receipt of a notice of appeal, the Director or her designee shall review the record created  
12 by the Washington State Apprenticeship and Training Council and shall issue a written  
13 determination including his or her findings. A judicial appeal from the Director's determination  
may be taken in accordance with RCW 34.05.

14 Orders that are not appealed within the time period specified in this section and RCW 34.05 are  
15 final and binding, and not subject to further appeal. *See* RCW 49.04.065.  
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1 This Notice was served on you the day it was transmitted electronically. RCW 34.05.010(19).

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3 **Certificate of Service**

4 I, Kristen Harris, certify under penalty of perjury under the laws of the State of  
5 Washington that I caused to be transmitted electronically the foregoing document, by E-Mail  
6 (except as otherwise indicated) to the following:

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*Council Secretary*

WSATC Members (by e-mail)

DATED this 30th day of June, 2021 at Seattle, King County, Washington.



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