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7 **DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES**
8 **OF THE STATE OF WASHINGTON**

9 In re:

10 UA LOCAL 32; and THE WASHINGTON
11 STATE ASSOCIATION OF THE UA,

12 Appellants.

13 OAH Docket No. 11-2020-LI-01557

No. 2023-006-PW

DIRECTOR'S ORDER

14 Joel Sacks, Director of the Washington State Department of Labor & Industries, having
15 considered the Initial Order, the petition for review filed by UA Local 32 and the Washington
16 State Association of the UA (UA) with the Director's Office, the briefing submitted to the
17 Director's Office by the parties, including the intervenors' briefs, and the record developed at the
18 Office of Administrative Hearings, issues this Director's Order.

19 The parties are the Department, UA, and intervenors Washington & Northern Idaho
20 District Council of Laborers and LIUNA Northwest Region (Laborers).

21 The Director makes these Findings of Fact, Conclusions of Law, and Final Decision and
22 Order:

23 **I. FINDINGS OF FACT**

- 24 1. The Director adopts and incorporates the Initial Order's findings of facts 4.1 through
25 4.62.
- 26 2. The Office of Administrative Hearings issued and served the Initial Order on February 1,
27 2022, following the petition for arbitration, hearings, and taking briefing from the parties.
The administrative law judge affirmed Department's August 26, 2020 redetermination,

1 which adopted the Department’s August 22, 2019 determination. The administrative law
2 judge looked to the Pipefitters’ scope of work (WAC 296-127-01364) and rejected UA’s
3 arguments because subsection (1) of WAC 296-127-01364 did not apply to the work
4 because the work was “entirely outdoors” and because section (2) only potentially
5 described certain types of work performed.

- 6 3. On March 3, 2022, UA timely filed a petition for review with the Director.
- 7 4. The Director adopts and incorporates the Initial Order’s “Hearing” summary.

8 II. CONCLUSIONS OF LAW

- 9 1. There is jurisdiction to hear and decide this matter under Chapter 39.12 Revised Code of
10 Washington (“RCW”), Chapter 34.05 RCW, and Chapter 296-127 Washington
11 Administrative Code (“WAC”).
- 12 2. The purpose of Washington State’s prevailing wage law is to preserve and protect local
13 wages on public works contracts. *Everett Concrete Products, Inc. v. Dept. of Lab. and
14 Indus.*, 109 Wn. 2d 819, 823-24, 748 P.2d 1112 (1988); *Southeastern Wash. Bldg. and
15 Const. Trades Council v. Dept. of Lab. and Indus.*, 91 Wn. 2d 41, 45, 586 P.2d 486
16 (1978).
- 17 3. Statutory construction rules apply to administrative rules just as they do to statutes. *Dep’t
18 of Licensing v. Cannon*, 147 Wn.2d 41, 56, 50 P.3d 627 (2002) (quoting *City of Kent v.
19 Beigh*, 145 Wn.2d 33, 45, 32 P.3d 258 (2001)). Under plain language analysis, the court
20 determines a rule’s meaning from its terms “to give effect to its underlying policy and
21 intent.” *Id.* at 56. The fundamental objective in interpreting a statute is to give effect to
22 the drafter’s intent. *State v. Larson*, 184 Wn.2d 843, 848, 365 P.3d 740 (2015). If the
23 statute’s meaning is plain on its face, then the court gives effect to that plain meaning as
24 an expression of legislative intent. *Associated Press v. Wash. State Legislature*, 194
25 Wn.2d 915, 920, 454 P.3d 93 (2019). If there is more than one reasonable interpretation
26 of the statute, the statute is ambiguous and the court uses canons of construction. See
27 *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 12, 43 P.3d 4 (2002).
4. The source of scope of work descriptions are apprenticeship standards, collective
bargaining agreements, dictionaries of occupational titles, labor and contractor experts,
and recognized industry practice. WAC 296-127-013(2).
5. WAC 296-127-01364 provides:

For the purpose of the Washington state public works law, chapter 39.12 RCW,
plumbers, pipefitters and steamfitters assemble, install, and maintain piping
systems, fixtures and equipment for the transportation of water, steam, gas, air,
sewage, oil, fuels, liquids, gases, or similar substances.

The work includes, but is not limited to:

- 1 (1) Piping systems installed in structures (e.g., buildings, industrial plants, etc.).
2 (a) The handling and moving of any plumbing, pipefitting and steamfitting
3 materials, supplies, and equipment on the job site.
4 (b) Cutting, threading, and bending pipe.
5 (c) Joining pipes by use of screws, bolts, fittings, solder, welding and caulking, or
6 any other method of making joints in the pipefitting industry.
7 (d) Assembling, installing, and repairing valves, pipe fittings, and pumps.
8 (e) Testing the piping system.
9 (f) Installing and repairing plumbing fixtures, such as sinks, bathtubs, water
10 heaters, and water softeners.
11 (g) Cutting holes in floors and walls for pipes:
12 • With point and hammer.
13 • Core-drilled.
14 (h) Responsible for all cleanup required in connection with plumbers, pipefitters
15 and steamfitters work.

- 16 (2) Distribution lines (e.g., water mains, sewer mains, oil and gas lines, etc.).
17 (a) The handling and moving of any plumbing, pipefitting and steamfitting
18 materials, supplies, and equipment on the job site.
19 (b) Steel pipe: Welding of pipe joints and joining pipes with screws, bolts,
20 fittings, solder, caulking, or any other method for making joints in the industry.
21 (c) Ductile iron pipe: Joining pipes by using any method for making joints in the
22 industry, when the pipe will be under pressure.
23 Assembling, installing, and repairing valves and pumps.
24 (d) Testing the piping system.
25 (e) Responsible for all cleanup required in connection with plumbers, pipefitters
26 and steamfitters work.

27 6. WAC 296-127-01344 provides in pertinent part:

For the intents and purposes of the Washington state public works law, chapter
39.12 RCW, laborers perform a variety of tasks such as:

- Position, join, align, wrap and seal pipe sections.

7. The scopes of work for Utilities Construction (WAC 296-127-01389) and Laborers in
Utilities Construction (WAC 296-127-01340) also apply to certain pipework, but none of
the parties contend that these scopes apply to the work at issue, and the language of those
rules do not reference the type of work at issue in the Cedar Hills project. Although the
rules do not apply to the work at issue here, they do show that the Department has
recognized multiple scopes of work involve pipework outside the Pipefitters' scope of
work.

8. UA contends that the Pipefitters' scope of work applies to piping systems at Cedar Hills
because the introductory paragraph of the scope of work includes a "broad description of

1 work, relating to assembly, installation and maintenance of ‘piping systems, fixtures and
2 equipment’ for a broad range of substances” and that “among those substances are ‘water,
3 steam . . . gas . . . fuel . . . gases or other similar substances.’” UA Opening Br. 10
4 (quoting WAC 296-127-01364). UA suggests that because the two types of work in
5 sections (1) and (2) are only examples, the introductory paragraph’s language —“piping
6 systems . . . used for the transportation of water . . . [and] gas”—covers all such
7 pipework. UA also contends that the portions of the rule that explicitly apply to “piping
8 systems installed in structures” (section 1) and “distribution lines” (section 2) should also
9 apply. UA Opening Br. 10-12.

7 9. While the language of the Pipefitters’ scope of work could arguably apply to the work at
8 issue here, UA’s interpretation that all work relating to the assembly, installation, and
9 maintenance of piping systems falls within this scope of work is not reasonable. Such an
10 interpretation is inconsistent with the language of other scope of work regulations
11 involving piping work. Piping work is included within the Laborers’ scope for
12 “positioning, joining, and aligning of pipes” (WAC 296-127-01344), Utilities
13 Construction (WAC 296-127-01389), and Laborers in Utility Construction (WAC 296-
14 127-01340). UA’s interpretation would render these scope of work regulations
15 meaningless.

13 10. The leachate and gas line work at Cedar Hills involved simple HDPE fusion. Contrary to
14 UA’s contention, the piping was not installed within a “structure,” and neither the
15 leachate piping nor the landfill gas piping were “distribution lines” within the meaning of
16 WAC 296-127-01364.¹ Rather, the work involved positioning, aligning, and joining large
17 lengths of HDPE pipe—work encompassed with the language of the Laborers’ scope of
18 work. While the workers also trimmed pipe as part of the joining process, there was some
19 pipe that needed to be cut or prefabricated to match specific lengths, and some of the pipe
20 was bent as part of a prefabricated process off-site, none of these activities is inconsistent
21 with the Laborers’ scope of work.

18 11. Because the plain language of the scope of work regulations does not resolve which
19 regulation applies, the regulations are ambiguous, and it is appropriate to look beyond
20 their plain language to assess their meaning. The purpose of the prevailing wage laws is
21 to protect employees from substandard wages and “preserve local wage standards.”
22 *Everett Concrete Products, Inc. v. Dep’t of Lab. & Indus.*, 109 Wn.2d 819, 823-24, 748
23 P.2d 1112 (1988). At the time the Department adopted the scope of work regulations, it
24 was required to look to approved apprenticeship standards, collective bargaining
25 agreements, dictionaries of occupational titles, construction industry experts, and
26 recognized industry practice. WAC 296-127-013. The parties agree that, for ambiguous
27 scope of work descriptions, it is proper to look to historical industry practice at the time
of adoption when determining the meaning of those scopes.

26 ¹ The Department’s redetermination applied pipefitter rates to a small amount of pipefitter work associated
27 with the valve and pump installations at the pump structures at the top of cell and any joining of threaded pipe. *See*
Initial Order Finding of Facts 4.41, 4.42, 4.43. No party contested these portions of the modified August 22, 2019
determination or the August 26, 2020 redetermination adopting it.

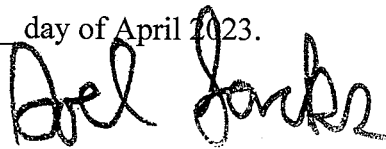
1 12. Here, the record demonstrates that both pipefitters and laborers train at least some of their
2 apprentices in the work at issue here and that both laborers and pipefitters have done such
3 at a public landfill. However, the record reflects that historically, in Washington, laborers
4 have overwhelmingly performed the work at issue since the time the rule was adopted in
5 2000.

6 13. Given this historical industry practice, the Director concludes that the proper rate for the
7 work at issue is the laborer rate. Therefore, the determination made by the Department as
8 particularly expressed collectively in: the Cedar Hills Regional Landfill Determination
9 letter dated January 29, 2019, signed by Jim P. Christensen; the letter dated August 22,
10 2019, and signed by Jim P. Christensen, responding to the UA's request for modification
11 of the January 20, 2019, determination; and the letter dated August 26, 2020, signed by
12 Assistant Director Chris Bowe, denying on reconsideration to reverse or modify Mr.
13 Christensen's determination – should all be affirmed.²

10 III. ORDER

- 11 1. Consistent with the above Findings of Fact and Conclusions of Law, the Initial Order
12 dated February 1, 2022, is AFFIRMED AS MODIFIED.
- 13 2. The determination by the Department of Labor and Industries expressed in Jim
14 Christensen's determination letter dated August 22, 2019, and Chris Bowe's
15 redetermination letter dated August 26, 2020, relating to Cedar Hills Regional Landfill
16 Leachate and Landfill Gas Piping and Collection Systems, are AFFIRMED.

17 DATED at Tumwater, Washington this 11 day of April 2023.



18 JOEL SACKS
19 Director

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26 ² UA contends that the Department took an inconsistent position in this case compared to the appeal in
27 Westwater Construction Company (OAH Docket No. 10-2019-LI-0202) about the application of industry practice.
After reviewing the briefing, it is clear that work at issue is very different in the two matters and that the
Department's position is not inconsistent.

1 **SERVICE**

2 This Order was served on you the day it was deposited in the United States mail. RCW
3 34.05.010(19).

4 **APPEAL RIGHTS**

5 **Reconsideration.** Any party may petition for reconsideration. RCW 34.05.470. Any
6 petition for reconsideration must be filed within 10 days of service of this Order and must state the
7 specific grounds on which relief is requested. No matter will be reconsidered unless it clearly
8 appears from the petition for reconsideration that (a) there is material clerical error in the order or
9 (b) there is specific material error of fact or law. A petition for reconsideration, together with any
10 argument in support, should be filed by emailing it to directorappeal@lni.wa.gov or by mailing or
11 delivering it directly to Joel Sacks, Director of the Department of Labor and Industries,
12 P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and
13 their representatives. Filing means actual receipt of the document at the Director's Office. RCW
14 34.05.010(6).

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

21 **Judicial Review.** Any petition for judicial review must be filed with the appropriate court
22 and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides,
23 "Orders that are not appealed within the time period specified in this section and Chapter 34.05
24 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may
25 be instituted by filing a petition in superior court according to the procedures specified in chapter
26 34.05 RCW, Part V, Judicial Review and Civil Enforcement.
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DECLARATION OF MAILING

I, Lisa Deck, declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 11 day of April 2023, to the following via regular mail, postage prepaid and email.

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DATED this 11 day of April 2023, at Tumwater, Washington.



LISA DECK