

**DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES
STATE OF WASHINGTON**

In re:

Construction Industry Training Council –
Mechanical Insulator

NO. 2023-011-APP

DIRECTOR’S ORDER

Joel Sacks, Director of the Washington State Department of Labor and Industries, having considered the final order of the Washington State Apprenticeship and Training Council (Council) decided on July 15, 2022, the appeal submitted by Construction Industry Training Council (CITC), briefing submitted by the parties, and the record created by the Council, issues this Director’s Order.

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

I. FINDINGS OF FACT

1. On July 15, 2022, the Council disapproved the proposed Mechanical Insulator standards submitted by CITC.
2. CITC timely appealed.
3. The Director adopts Findings of Fact No. 1-8, 11-13 (with the exception of footnote 4) and hereby incorporates them by reference.
4. CITC submitted qualification forms listing the work experience of its proposed committee members. The form is titled “Apprenticeship Committee Representative Qualification Information Experience and Education History.” There is a section titled “Work Experience” that asks the person filling the form to provide their “Position,”

“Employer/Organization,” “From: (Month and Year), and TO: (Month & Year).” It also calls for education history and other technical certifications or licenses held. The forms of the proposed committee members included information in these sections.

5. The related/supplemental instruction plan (RSI) hours provide far fewer hours of craft-specific training than existing apprenticeship programs in this industry.

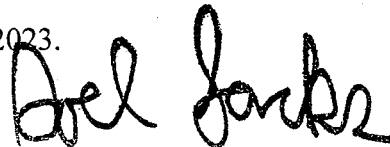
II. CONCLUSIONS OF LAW

1. The Director has jurisdiction over the subject matter and the parties to this action, under RCW 49.04, RCW 34.05, and WAC 296-05.
2. The Director adopts Conclusions of Law No. 1-5, 11-12, and hereby adopts them by reference.
3. The Council ruled it could not consider the qualification forms because allegedly they contained hearsay. But they were admitted into evidence without objection upon submission of objector Heat and Frost Insulators Workers JATC. Evidence admitted without objection can be used for any purpose. *Matthias v. Lehn & Fink Prods. Corp.*, 70 Wn.2d 541, 550, 424 P.2d 284 (1967).
4. Although the Director doesn't decide the issue, it would often be the case that a Sponsor would believe that if the proposed committee members filled out the forms, then this information would show the qualifications of the committee members. The Council believed the forms contained ambiguities, and testimony on the issue of ambiguities would have been desirable. The ultimate decision as to whether the committee members were qualified need not be reached given the disposition of this case on other grounds.

III. DECISION AND ORDER

The request for new standards is DISAPPROVED.

DATED at Tumwater this 15 day of August 2023.



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 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 emailing it to directorappeal@lni.wa.gov or by mailing 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. **Filing means actual receipt of the document at the Director's Office.** RCW 34.05.010(6).

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 the Director 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 49.04.065(3) 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 RCW 34.05, Part V, Judicial Review and Civil Enforcement.

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 sent via email and U.S. Mail, postage pre-paid, on the 15 day of August 2023 to the following:

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DATED this 15 day of August 2023, 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 proposed standards of Construction Industry Training Council (CITC) for the occupation of Mechanical Insulator. Timely objections to the proposed standards were filed by Heat and Frost Insulators Workers JATC and Oregon/Southwest Washington Heat & Frost Insulators & Allied Workers JATC (Objectors).

The Council voted to adjudicate the matter internally. A hearing was held before presiding officer Ed Kommers on January 4-6, 2022. CITC was represented by Brian Padgett from Employer Solutions Law. Heat and Frost Insulators Workers JATC was represented by Kristina Detwiler from Robblee Detwiler PLLP. Oregon/Southwest Washington Heat & Frost Insulators & Allied Workers JATC was represented by Daniel Hutzenbiler from McKanna Bishop Joffe LLP. 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 Halene Sigmund and Adriana Gamboa. The Objectors
2 presented the testimony of Todd Mitchell and Brian Kinsman.¹

3 The Council admitted CITC Exhibits 1, 2, and 3. It admitted Objector Exhibits A, B,
4 C, D, E, F, G, H, I, J, S, T, and U.²

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

9 II. FINDINGS OF FACT

- 10 1. CITC trains workers in various construction trade occupations. It runs ten
11 statewide apprenticeship programs. It has five training facilities supported by 26
12 full-time administrative employees.
- 13 2. In May 2021, CITC submitted proposed apprenticeship standards for the
14 occupation of mechanical insulator. The proposed standards cover the geographic
15 area of Washington and Idaho.
- 16 3. CITC based its proposed mechanical insulator apprenticeship program on existing
17 apprenticeship programs for the mechanical insulator occupation. The term of
18 apprenticeship for the proposed program is 10,000 hours of on the job training.
19 CITC's standards require it to provide apprentices with job instruction and work
20 experience "necessary to become a qualified journey-level worker versed in the
21 theory and practice of the [mechanical insulator] occupation." The work processes
include 2,700 hours in commercial heating/air-conditioning; 2,850 hours in
industrial and process plant piping, vessels, equipment, etc.; 1,400 hours in
refrigeration and low temperature; 2,240 hours for ship and marine work; 800
hours 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 Council is not convinced that the course content of CITC's proposed
related/supplemental instruction plan will result in its apprentices achieving skills

22 ¹ All Objector witnesses were called by Heat and Frost Insulators Workers JATC.
23 Oregon/Southwest Washington Heat & Frost Insulators & Allied Workers JATC did not call
its own witnesses at hearing.

24 ² CITC Exhibits 2 & 3 are redacted transcripts of the testimony of Halene Sigmund
25 and Jack Chapel in a previous hearing. Objector Exhibits H, I, and U are redacted transcripts
26 of the testimony of Todd Mitchell, Larry Nettekoven, and Dave Gamble. In this previous
hearing, the Council also considered a request by CITC for approval of a mechanical
insulator apprenticeship program. The Council disapproved the proposed apprenticeship
standards on June 30, 2021.

1 that are reasonably consistent with those of apprentices in existing mechanical
2 insulator programs.³ CITC's proposed related/supplemental instruction plan
3 consists of 160 hours per year (800 hours total). But while this hourly total is
4 identical to existing programs, CITC's program includes only 360 hours of craft-
5 specific instruction and training. By contrast, Heat and Frost Insulators Workers
6 JATC provides 600 hours for craft-specific training. CITC's proposed course
7 content is not designed to achieve reasonably consistent skills as existing
8 apprenticeship standards for the mechanical insulator occupation.

- 9
- 10 5. CITC's proposed standards rely on Washington Employment Security Department
11 (ESD) data to set a journey-level wage rate. The journey-level rate is ESD's
12 published wage rate at the 75th percentile for a mechanical insulator.
- 13 6. CITC uses this journey-level wage rate to determine the rate participating
14 employers must pay apprentices. The apprentice wage rate is based on a wage
15 progression, with more experienced apprentices receiving a higher percentage of
16 the journey-level wage rate. Employers may choose to pay apprentices a higher
17 rate but cannot pay a lower rate than that established by the wage progression. On
18 prevailing wage jobs and in high hazard facilities, CITC's apprentices will be paid
19 the required rate for those job types. No CITC apprentice may be paid less than
20 the minimum wage.
- 21 7. CITC's standards require that it manage its training agents. Under the proposed
22 standards, CITC must determine whether an employer can adequately furnish
23 proper on-the-job training to apprentices in accordance with its standards. All
24 CITC training agents must complete an approved training agent agreement and
25 comply with state and federal apprenticeship requirements. In the past 28 years,
26 CITC has never had difficulty signing up a sufficient pool of training agents to
train its apprentices in the work process of its program occupations.
8. CITC's apprenticeship committee for its mechanical insulator program consists of
three employer representatives (with two alternates) and three employee
representatives (with one alternate). The proposed standards list Samuel Delgado,
Kirk Anderson, and Anthony Hernandez as the employer members, and Albert
Bojorquez, Ryan Fulgenzi, and Phillip Sanders as employee members. Corey
O'Neill and Matt Johnson are the alternate employer representatives. Juan Soto is
the alternate employee representative.
9. CITC submitted qualification forms listing the work experience of its proposed
committee members. *See* Ex. D. These forms contain numerous ambiguities about
precisely when and what work particular committee members performed.
Standing alone, this documentary evidence fails to demonstrate that 50 percent of
the proposed committee members hold journey-level status within the mechanical
insulator occupation.
10. No committee member or alternate testified at hearing.

³ In its June 30, 2021 Order, the Council found CITC's related/supplemental training
reasonably consistent with that of existing programs. But the Council did not have the benefit
of the testimony of Brian Kinsman, who detailed the differences between CITC's proposed
program and that of Heat and Frost Insulators Workers JATC.

11. The Department performed a technical review of CITC's proposed apprenticeship standards. The Department determined that the standards met criteria established by RCW 49.04 and WAC 296-05.⁴
12. The State Board for Community and Technical Colleges reviewed and approved CITC's proposed related/supplemental instruction plan.
13. CITC's proposal for new standards was placed on the Council's agenda for its July 2021 meeting. The Council received objections and voted to adjudicate the matter internally.

III. CONCLUSIONS OF LAW

1. The Council has jurisdiction over the subject matter and the parties to this action, pursuant to RCW 49.04, RCW 34.05, and WAC 296-05.
2. The Council is authorized to approve apprenticeship programs. RCW 49.04.010. When new apprenticeship program standards are proposed, the Council considers whether to approve the standards. WAC 296-05-011. Apprenticeship standards contain "specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices." WAC 296-05-003 ("Standards"). To be eligible for registration, apprenticeship program standards must conform to WAC 296-05. RCW 49.04.050.
3. A request for Council approval of a new apprenticeship program is an application for a license under the Administrative Procedure Act. *Seattle Building and Constr. 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 and worker representatives. WAC 296-05-009(2). At least fifty percent of the members must hold journey-level status in the occupation to be taught. WAC 296-05-009(3)(a). All members must be "qualified by education and experience in the areas the committee represents" and be "familiar with the

⁴ 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 applicable apprenticeship standards.” WAC 296-05-009(3)(b), (c). The Court of
2 Appeals has rejected arguments that apprenticeship committee members may gain
3 these qualifications after their appointment. *W. Wash. Operating Eng’rs*
4 *Apprenticeship Comm. v. Wash. State Apprenticeship & Training Council*, 144
5 Wn. App. 145, 164 (2008). Instead, the rules require “appointees who have
6 demonstrated experience and knowledge of apprenticeship programs when
7 appointed.” *Id.*⁵

8 6. CITC failed to prove its committee met these requirements by competent
9 evidence. Under the Administrative Procedure Act, hearsay evidence is admissible
10 if, “in the judgment of the presiding officer it is the kind of evidence on which
11 reasonably prudent persons are accustomed to rely in the conduct of their affairs.”
12 RCW 34.05.452(1). The Council’s findings may be based on evidence that would,
13 like hearsay, be inadmissible in a civil trial. RCW 34.05.461(4). But the Council
14 cannot base a finding exclusively on such inadmissible evidence “unless doing so
15 would not unduly abridge the parties’ opportunities to confront witnesses and
16 rebut evidence.” RCW 34.05.461(4).

17 7. Here, CITC’s only evidence of its committee members’ qualifications consisted of
18 hearsay that would be inadmissible in a civil trial. *See* ER 802. CITC attempted to
19 introduce this evidence through its Vice President of Apprenticeship, Adriana
20 Gamboa, who testified about what committee members had told her about their
21 work histories. And it produced documentation that CITC gave to the Department
22 about its committee members when submitting its proposed standards. The
23 Objectors repeatedly objected to this evidence on hearsay grounds, putting CITC
24 on notice of this evidentiary issue. Nevertheless, no CITC committee member
25 testified at hearing.

26 8. The out-of-court statements of CITC’s committee members, offered for the truth
of the matters asserted, are hearsay. *See* ER 801. Ms. Gamboa admitted that, with
the exception of what committee members told her, she had no personal
knowledge of their qualifications. CITC’s documentation of these qualifications,
prepared based on the committee members’ out-of-court assertions, likewise
consists of hearsay. CITC points to no exception that would make these
statements admissible as substantive evidence in a civil trial. Nor does the Council
perceive one. While the Council can properly admit and consider hearsay
evidence under RCW 34.05.452(1), it cannot base its findings exclusively on such
evidence. *See* RCW 34.05.461(4). And the Council cannot set aside this
requirement when doing so would plainly abridge the rights of the Objectors to
confront witnesses and rebut the evidence. *See id.*

9. Even assuming that a hearsay exception applied, the documentary evidence
offered by CITC was insufficient to demonstrate that 50 percent of its proposed
committee members hold journey-level status in the mechanical insulator

⁵ As the Council has previously noted, the Court’s opinion involved a different
version of the apprenticeship rules with slightly different qualification requirements for
committee members. *See* former WAC 296-05-313(4) (2000) (requiring committee members
to be “knowledgeable in the process of apprenticeship[.]”). But the Court’s reasoning about
when committee members must obtain their qualification applies with equal force to the
current version of the rules.

1 occupation. The proffered qualification forms contain numerous ambiguities about
2 the type of work that proposed committee members performed and the time
3 periods in which they performed it. Without more, the Council is unable to draw
4 any firm conclusions about the qualifications of these individuals.

5 10. Because CITC failed to demonstrate that its committee members were qualified as
6 defined in WAC 296-05-009(3), the Council cannot approve the proposed
7 mechanical insulator apprenticeship program. *See* WAC 296-05-011(1)(a).

8 11. CITC's proposed related/supplemental instruction is also deficient. Under WAC
9 296-05-015(25), a proposed program's course content and delivery method must
10 be designed to achieve reasonably consistent skills as existing apprenticeship
11 standards within the state for that industry occupation. While the Council may
12 approve related/supplemental instruction plans based on recommendations of the
13 State Board for Community and Technical Colleges, the Council retains authority
14 to independently assess such plans. In the Council's view, CITC's proposed
15 course content for its proposed mechanical insulator program does not meet WAC
16 296-05-015(25)'s requirements when it will provide far fewer hours of craft-
17 specific training than existing apprenticeship programs in this industry. For this
18 reason as well, the Council disapproves CITC's proposed standards.

19 12. CITC's proposed apprenticeship standards do not meet the requirements of RCW
20 49.04 and WAC 296-05.⁶

21 IV. DECISION AND ORDER

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

23 The request for new standards is DISAPPROVED.

24 It is so ORDERED,

25 DATED this 15th day of July, 2022.

26 

ED KOMMERS, Chair
on Behalf of the Washington State
Apprenticeship and Training Council

⁶ The Council does not reach the Objectors' other arguments. But it notes that they largely relate to compliance issues that fall beyond the scope of the Council's review when new standards are proposed. The Council has previously rejected as speculative arguments relating to a sponsor's lack of training agents prior to program approval. And the Council has made clear it lacks authority to dictate the wages employers pay their journey-level workers. Finally, under current Washington law, the Council will not reject proposed apprenticeship standards based on the asserted lack of "need" for the new program. Under former WAC 296-05-316(2)(c) (2005), the Council required that proposed standards demonstrate the "need for apprentices in the [covered] area." This is no longer a requirement in Washington.

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APPEAL RIGHTS

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

Appeal. Any party may appeal this Order to the Director of the Department of Labor and Industries by filing a notice of appeal, together with any argument in support thereof, with the 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.

A notice of appeal should be filed by mailing it to Joel Sacks, Director of the Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, or by delivery and receipt at the Department of Labor and Industries, 7273 Linderson Way SW, Tumwater, WA 98501, 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). A copy shall also be sent to William F. Henry, Assistant Attorney General, Counsel for WSATC, 800 Fifth Ave., Ste. 2000, Seattle, WA 98104.

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

Orders that are not appealed within the time period specified in this section and RCW 34.05 are final and binding, and not subject to further appeal. *See* RCW 49.04.065.

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

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WSATC Members (by e-mail)

1 DATED this 15th day of July, 2022 at Seattle, King County, Washington.
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