

DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES
STATE OF WASHINGTON

In re:

I.E.C. OF WASHINGTON
APPRENTICESHIP AND
TRAINING COMMITTEE,

Council No. 2013-2.

NO. 2017-001-APP

DIRECTOR'S ORDER

RCW 49.04.065(2); RCW 34.05

APPRENTICESHIP PROGRAM

Joel Sacks, Director of the Washington State Department of Labor and Industries, has considered the Washington State Apprenticeship and Training Council (Council) order served on July 16, 2016, the petition for administrative review of that order submitted by Independent Electrical Contractors of Washington Apprenticeship and Training Committee (I.E.C.), and the briefing of the parties (I.E.C., the Department of Labor and Industries (Department), and Intervenor IBEW Local Union 112-NECA Electrical Apprenticeship Committee) and issues the following:

FINDINGS OF FACT

By a preponderance of the evidence, the Director finds the following:

1. I.E.C. is a sponsor of a Washington state apprenticeship and training program. Its Standards of Apprenticeship (Standards) were approved by the Council on July 16, 1993. The Standards were approved, as amended, on July 17, 2009. The Standards authorize I.E.C. to run a statewide apprenticeship program for the occupations of construction electrician, low energy/sound and community electrician, and residential electrician.

2. Section III of the Standards obligates I.E.C. to “take positive action to provide equal opportunity in apprenticeship” and to operate its apprenticeship program as required by WAC 296-05 and Part 30 of the Code of Federal Regulations. Section III.A sets forth the program’s “Selection Procedures,” and Section III.B sets forth its “Equal Employment Opportunity Plan.”
3. In August 2012, the Department received a complaint from Dennis Williamson regarding a female apprentice, Johnee Guizzotti, who had recently transferred out of I.E.C.’s apprenticeship program to Local 112 NECA Electrical JATC. In December 2012, the Department received a complaint from Kellie Cruz about I.E.C. Ms. Cruz’s complaint alleged that I.E.C. never dispatched her to a job, never referred her to a training agent for employment, never provided her with related/supplemental instruction, and that this conduct was based on the fact that she was a female apprentice.
4. In February 2013, the Department commenced a formal investigation of the two complaints. It notified the complainants that it was in receipt of their complaints and notified I.E.C. of the pending investigation into the complaints. The Department asked I.E.C. to respond. I.E.C. submitted a written response in March 2013.
5. After completing its formal investigation, the Department issued a findings and determination letter on December 26, 2013. The Department determined that I.E.C. was out of compliance with its Standards and WAC 296-05, and requested I.E.C. to submit a corrective action plan within 60 days. No corrective action plan was received by the 60-day deadline. Rather, I.E.C. appealed the December 2013 findings and determination letter to the Council.
6. In April 2014, the Council voted to hold a hearing on I.E.C.’s appeal and consider action up to withdrawal of I.E.C.’s program registration. Before the hearing, I.E.C. filed a motion asking the Council to approve a corrective action plan or, in the alternative, to remand to the Department for further processing. The Council denied I.E.C.’s motion because it did not have enough information to make a decision and because I.E.C.’s proposed corrective action plan was insufficient to address the issues set forth in the Department’s December 2013 findings and determination letter.
7. The matter then moved to a hearing on the merits before the Council. The hearing was held in August 2014. After the hearing, in October 2014, the Council voted to withdraw I.E.C.’s program registration.

8. I.E.C. petitioned the Director for administrative review of the Council's decision. In September 2015, the Director remanded the case to the Council to consider whether voluntary corrective action was an option and instructed the Council to state under what basis it reached that conclusion.
9. The Council took briefing from the parties on the remanded issue. I.E.C. took the position that it was in compliance with the equal employment opportunities requirements and did not request or provide a voluntary corrective action plan. I.E.C. did not request to provide evidence that showed that it was in compliance with apprenticeship laws from the time period after the Council hearings in 2014 until the time of the Council's remand consideration in January 2016. The Council then considered the parties briefing at its January 2016 meeting. The Council deadlocked by a vote of 3-3 on whether voluntary corrective action was an option in lieu of withdrawing I.E.C.'s registration. The tiebreaker committee met in March 2016. By a 2-1 vote, the committee voted to reaffirm the Council's order withdrawing I.E.C.'s registration and to amend the order to include additional findings and conclusions about why a corrective action plan was not an option. The Council ratified this determination at its April 2016 quarterly meeting, and it served its order on July 16, 2016.
10. I.E.C. then timely petitioned for administrative review to the Director. The parties submitted briefs and the record closed upon the last filing.
11. I.E.C. has a history of non-compliance regarding its female apprentices. I.E.C. was previously found to be out of compliance for female apprenticeship participation for 2009 and 2010. Any improvement reported later in the Council subcommittee proceedings was based in part on I.E.C.'s manipulation of data, and did not represent real improvement.
12. I.E.C.'s practice of maintaining female apprentices in "suspended" status, indefinitely, inflated the numbers of females that are actually in enrollment analysis. I.E.C. maintained a significant number of women in "suspended" status for periods of one to three years with no effort to address or resolve the ongoing suspensions of these apprentices. For example, Rebecca Johnson sent an e-mail to the training director stating that she was withdrawing from the apprenticeship program and that she wished to be removed from all lists, rosters, and classes. Although I.E.C.'s committee canceled her at a subsequent meeting, her status was changed only to "suspended" and, three years later, her status remained the same. Similarly, in an e-mail, Shelby Hight, a female apprentice, told I.E.C. that the apprenticeship program was not for her. Even though I.E.C.'s committee canceled her at a subsequent meeting, she was placed only in "suspended" status. These are two examples of female apprentices that, in reality, were not enrolled apprentices for I.E.C. and most had not even accumulated even one hour of on-the-job training. No male apprentices were listed in "suspended" status during the same timeframe. I.E.C. manipulated data to falsely represent that it was providing equal employment opportunities to female apprentices.

13. I.E.C. did not provide sufficient oversight over its training agents to ensure that equal employment opportunities were provided to female apprentices and it did not take sufficient steps to ensure that female apprentices receive equal employment opportunities.
 - 13.1. I.E.C.'s training director, Jolie Estes, admitted that I.E.C. did not question why training agents reject an apprentice for work. She further testified regarding her lack of knowledge as to why an apprentice is rejected by a training agent: "I am not there. I don't make those decisions. And they don't discuss them with me." Tr. 538.
 - 13.2. The training agent admitted that a contractor's criteria for rejecting an apprentice are not necessarily based on I.E.C.'s Standards.
 - 13.3. In I.E.C.'s own records, there are numerous instances of multiple referrals of female apprentices to employers with no success in placing these apprentices with employers with whom they could accumulate on-the-job training hours that are necessary to graduate to journeyperson.
 - 13.4. The training director testified that she did not necessarily follow up when a female apprentice was rejected by a training agent. This is despite the track record of training agents that do not hire female apprentices. For example, the training director refused to investigate a complaint lodged by a female apprentice, Rebbecca Johnson, who stated that she had been discriminated against in a pre-hire interview by a training agent. I.E.C. claims it did not investigate because of Ms. Johnson's inactions. But the training director admitted that there was nothing documenting that Ms. Johnson had refused to be involved in an investigation. The training director lacks credibility in her explanation as to why she did not follow up with the training agent.
 - 13.5. I.E.C. had nearly no involvement in facilitating female apprentices in obtaining employment with training agents. Furthermore, I.E.C.'s lack of oversight permits training agents to not hire female apprentices for discriminatory reasons.
14. According to its own records, I.E.C.'s active male apprentices gained significant on-the-job training hours in contrast to their female apprentice counterparts who did not receive such employment. I.E.C. provided spreadsheets comparing the hours for the female and male apprentices. The spreadsheets listed the hours of the apprentices by their start dates. Comparing the average of hours for the male apprentices with the hours for the female apprentices shows that I.E.C. did not provide equal employment opportunities for female apprentices. Disregarding apprentices who posted no hours, the following hours are shown:

- 14.1. For the female apprentice who started in 2007, she worked 5115.50 total hours. The three male apprentices averaged 5098.0 hours. (The male apprentices' hours do not include the hours the male apprentices worked in the years the female apprentice did not accumulate any hours.) The woman worked .3 percent more than the men.
- 14.2. For the female apprentice who started in 2009, worked 5582 hours and the two males averaged 7303 hours. The men worked 31 percent more than the woman.
- 14.3. For the four female apprentices who started in 2011, they averaged 1940 hours and the 51 male apprentices averaged 2854 hours. The men worked 47 percent more than the women.
- 14.4. For the two female apprentices who started in 2012, they averaged 1257 hours and the 70 male apprentices averaged 1931 hours. The men worked 54 percent more than the women.
- 14.5. For the three female apprentices who started in between January 1, 2014, and June 2, 2014, they averaged 583 hours and the 27 male apprentices who started between January 1, 2014, and June 2, 2014, averaged 532 hours. The women worked 10 percent more than the men.
- 14.6. As of the time the Council took evidence in August 2014, I.E.C. had not made a good faith effort to provide equal employment opportunities for female apprentices. Despite improvement in 2014 for six months for three apprentices, the overall numbers, consistent with other evidence, show that I.E.C. has a systemic problem in providing equal employment opportunities for female apprentices. There were a significant number of female apprentices who worked no hours. I.E.C. has failed to persuade the Director that the reason for its deficiencies was solely related to reasons personal to the apprentices. For example, Ms. Guizzotti did not receive any work through a referral by I.E.C. in her five months with I.E.C., despite a willingness to work. (But after transferring her apprentice registration, she did receive work.)
15. The Director has considered both the qualitative and quantitative evidence and concurs with the Council to find that any improvements claimed after 2012 until August 2014 are insufficient to cure I.E.C.'s deficiencies.
16. Voluntary corrective action is not an option. I.E.C. did not volunteer to take future corrective action. On remand before the Council, it did not explain how it would correct its uncured deficiencies in providing equal employment opportunities to female apprentices. Instead, it argued that it was in compliance with apprenticeship laws.
17. Credibility determination: The Council concluded in its order that voluntary corrective action is not an option. Necessarily to make this determination, the Council considered the credibility of the witnesses and did not find I.E.C. credible in its representations that it had

already corrected any deficiencies it had with respect to female apprentices. The Director has given due regard to this credibility determination and agrees with the Council's credibility assessment in this and other matters.

CONCLUSIONS OF LAW

Based on the facts above, the Director concludes the following:

1. The Director has jurisdiction over the subject matter and the parties to this action.
2. I.E.C. argues that certain federal rules apply; but it cites rules that do not govern this case. This action does not involve 29 C.F.R. Part 29 (29 C.F.R. § 29.8(b)), but instead 29 C.F.R. Part 30, and its deregistration procedures do not apply. 29 C.F.R § 30.2(c), § 30.15.
3. Because the Department was unable to secure voluntary corrective action by I.E.C. to its December 2013 findings and determination letter within the designated 60-day timeframe, this matter was properly referred to the Council for consideration. WAC 296-05-013. The Council properly commenced proceedings to adjudicate I.E.C.'s appeal of the Department's December 2013 findings and determination letter and consider action up to withdrawal of program registration in the event that it found I.E.C. out of compliance with its Standards and applicable law and rules. WAC 296-05-013(1).
4. I.E.C. incorrectly argues that the Council did not have authority to initiate proceedings to determine whether to withdraw program registration when the apprentice supervisor of the Department did not initially request this relief (the supervisor now requests program withdrawal). RCW 49.04 charges the Council with taking necessary action to bring noncomplying programs into compliance with apprenticeship rules. WAC 296-05-013. RCW 49.04.010 gives the Council the authority to "approve apprenticeship programs" and with this power comes the power to withdraw registration under WAC 296-05-449.
5. When an apprenticeship program is not in compliance with apprenticeship law or standards and voluntary corrective action is not an option, the program's registration may be withdrawn. WAC 296-05-449; RCW 34.05.464.
6. Programs must comply with their approved standards of apprenticeship and all apprenticeship laws (RCW 49.04) and rules (WAC 296-05, 29 C.F.R. Part 29, and 29 C.F.R. Part 30).
7. State and federal law mandates equal employment opportunities in apprenticeship programs. For instance, WAC 296-05-407(1) and (2) require a sponsor to "promote equal opportunity in its apprenticeship program ... [and] recruit, select, employ and train apprentices without discrimination on race, sex, color, religion, national origin, age, disability or as otherwise specified by law" and "uniformly apply all rules related to

apprentices . . . [including but not limited to] periodic advancement and assignment of work.” A program must also adopt and implement an equal employment opportunity plan and selection procedure, as required by RCW 49.04 and WAC 296-05. WAC 296-05-407. WAC 296-05-433 addresses enrollment deficiency status by which programs can determine whether they have an adequate number of female and minority apprentices enrolled. Section III of I.E.C.’s Standards sets forth its equal employment opportunity plan. *See also* 29 C.F.R. Part 30.

8. I.E.C. is out of compliance with its Standards, RCW 49.04, WAC 296-05, and 29 C.F.R. Part 30. I.E.C. did not take sufficient efforts to enable female apprentices to obtain on-the-job hours. I.E.C.’s failures in providing appropriate oversight over its training agents and in taking steps to ensure that female apprentices receive comparable on-the-job training hours resulted in a lack of equal employment opportunities for the female apprentices. I.E.C. argues that its deficiencies are because it has a referral system not a job placement system and it is just following its Standards. I.E.C., however, cannot deny that its Standards require it to provide equal employment opportunities to all apprentices and that the Standards require it to comply with RCW 49.04, WAC 296-05, and 29 U.S.C. Part 30. I.E.C. has failed to persuade the Director that it cannot provide sufficient assistance to the female apprentices and oversight of its training agents to provide equal employment opportunities to female apprentices under its Standards. But in the event this were true and I.E.C.’s Standards regarding referrals and equal employment opportunity requirements conflict, the equal employment opportunity requirements control as to I.E.C.’s obligations. And I.E.C. has not satisfied those obligations.
9. I.E.C. managed its enrollment records in such a way as to stave off compliance violations under WAC 296-05 by placing female apprentices in “suspended” status for indefinite periods—as much as one to three years—when they were really out of the program. The result of I.E.C.’s actions was to artificially inflate participation numbers for its female apprentices. This data manipulation violates WAC 296-05-407(1) and (2), WAC 296-05-433, and I.E.C.’s own Standards. I.E.C.’s only proof of correction of this violation is its own representation that it fixed the problem; however, I.E.C., based on a review of the record, lacks credibility.
10. Voluntary corrective action is not an option in this case for two reasons. First, the 2014 numbers taken in isolation are suggestive of some improvement but I.E.C. still has uncorrected systemic deficiencies notwithstanding and is out of compliance. Because it is out of compliance, WAC 296-05-449 provides for program withdrawal unless I.E.C. volunteers to engage in corrective action and the Director decides it an option. RCW 34.05.464. I.E.C. did not volunteer to take corrective action. It continues to assert that “voluntary corrective action has already been taken and no further action is justified.” I.E.C.’s Brief on Remand, at 2. In the absence of I.E.C.’s request to take future voluntary action, the Director must conclude that it is not an option. Second, I.E.C.’s actions are more

severe than just a series of inadvertent mistakes and poor recordkeeping. It has not made sufficient changes to correct its deficiencies and given its lack of credibility and track record for data manipulation, any representation that it plans to provide future equal employment opportunities for female apprentices is not credible.

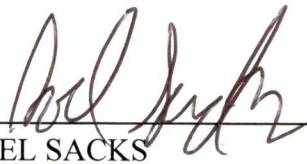
11. I.E.C. is free to reapply to seek program registration at any time (WAC 296-05-451). At that time, it may present evidence showing any steps it took to cure its violations from after the hearings in 2014 to the time when program registration was withdrawn and any stay was lifted. It may outline the steps it will take to cure the deficiencies as well.
12. In the event I.E.C. reapplies to seek program registration after this withdrawal of its program, the Council should consider, among other things, apprentice hours worked after the Council hearing in 2014 as well steps taken to assist apprentices in gaining such hours, to see whether program reregistration is warranted. I.E.C. did not move to admit such evidence on remand and waived such a request.

DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I.E.C.'s program registration is withdrawn.

It is so ORDERED.

DATED this 1 day of February 2017.



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 supporting argument, 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).

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 49.04.064. 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 Rodriguez, hereby declare under penalty of perjury under the laws of the state of Washington that the Director's order was mailed via U.S. Mail, postage pre-paid, on the 1 day of February 2017 to the following:

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