

DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES
STATE OF WASHINGTON

In re:

VERTICAL OPTIONS
APPRENTICESHIP PROGRAM

NO. 2017-004-APP

DIRECTOR'S ORDER

Joel Sacks, Director of the Washington State Department of Labor and Industries, has considered the appeal of the International Union of Elevator Constructors Local 19 (Union) and the briefing of the parties (the Union, the Department of Labor and Industries (Department), and Vertical Options Apprenticeship Program) and issues the following:

FINDINGS OF FACT

The Director finds the following:

1. The Washington State Apprenticeship and Training Council (Council) considered Vertical Options' request for approval of an elevator constructor mechanic apprenticeship program.
2. At the April 2015 quarterly Council meeting, Vertical Options agreed to make the following changes to its program and standards, "Provide a broader range of lab training, including but not limited to: an electrical circuitry lab, a large freight elevator lab, and a chair lift lab."
3. In July 2015, the Council provisionally approved the program, contingent on:
 - Vertical Options providing an interim report, regarding broadening of its lab training at the Council's October 2015 quarterly meeting; and
 - Vertical Options providing evidence to the Council at its April 2016 quarterly meeting

that it has complied with the Council's requirement of a broader range of lab training as specified in this order.

4. Vertical Options presented its interim report at the October 2015 meeting as required by the Council's order. The next step, per the Council's order, would have been for Vertical Options to present evidence of compliance at the April 2016 meeting, but the Council ruled on the permanent registration later, at the July 2016 meeting.
5. The agenda for the July 2016 meeting notified interested parties that the Council would consider the issue of permanent registration for Vertical Options. It also notified competitors that they must submit any objections 20 days before the meeting.
6. The Union did not object to the permanent registration 20 days before the meeting.
7. In an unwritten and unanimous decision, the Council decided to grant permanent registration at the July 2016 meeting.
8. In November 2016, the Union appealed the decision, arguing the Council did not comply with the July 2015 order.

CONCLUSIONS OF LAW

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

1. A competitor may object to registration of a program. WAC 296-05-008(1). This objection is due 20 days before the Council meeting. The Union did not timely object.
2. The Union argues that it need not file an objection because it claims it was the Council's obligation to ensure compliance with the Council's order. It cites no authority for the proposition that a party does not have to object to an alleged error of a tribunal in order to have subsequent consideration of the alleged error. Such a proposition is not only contrary to the requirements of WAC 296-05-008 but is contrary to well-accepted principles of exhaustion of remedies. *E.g.*, RCW 34.05.534 (to obtain judicial review party must exhaust administrative remedies). If the Union had objected, the Council would have taken evidence to determine compliance or referred the matter to Office of Administrative Hearings. WAC 296-05-008(3). It would have then issued a written decision with reviewable findings. RCW 34.05.461(2). Additionally, the Department could have "attempt[ed] to facilitate a resolution to any objections." WAC 296-05-008(4). Allowing consideration of the Union's appeal now would frustrate these procedures.
3. The Union cannot side-step the administrative procedures necessary to perfect an appeal. Because the Union did not exhaust its remedies, it has no standing and cannot appeal. So its appeal will not be considered.
4. Because this case is resolved on exhaustion and standing grounds, this decision does


not reach whether a party may appeal an unwritten Council order. Other than the procedural matters described above, the Director has not considered evidence about the merits of Vertical Options' compliance with the Council order because a record was not created at the Council. Although the Director may consider evidence that establishes the Director's authority to consider this appeal and such facts are included in the findings of fact here, the Director may not consider evidence about the merits not submitted to the Council. RCW 34.05.464(5). The lack of record provides an additional reason why dismissal is warranted.

DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Union's appeal is DISMISSED.

It is so ORDERED.

DATED this 15 day of March 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 15 day of March 2017 to the following:

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