

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

*In re:*

AXIOM CONSTRUCTION &  
CONSULTING, LLC

NO. 2023-001-APP

DIRECTOR'S ORDER

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order served on October 12, 2021, having considered the appeal filed by the Axiom Construction & Consulting with the Director's Office and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

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

The parties are Axiom Construction & Consulting; Western Washington Sheet Metal JATC and Construction Industry Training Council (collectively "the Objectors"); the Department of Labor & Industries Apprenticeship Program.

**I. FINDINGS OF FACT**

1. Axiom is an architectural sheet metal contractor that works throughout Washington. Architectural sheet metal is part of the sheet metal industry. On building exteriors, this work includes roofing, architectural cladding, and profile siding. On building interiors, it includes metal handrails, ornamental work, corner guards, stainless steel counters, louvers, and cornice work. Some sheet metal contractors in Washington perform only architectural sheet metal work.

2. In March 2019, Axiom filed a request for approval of proposed apprenticeship standards for the occupation of Architectural Sheet Metal Worker. Axiom also filed a related/supplemental instruction plan.
3. Axiom's proposed state apprenticeship program for Architectural Sheet Metal Worker consists of 9,000 hours of on-the-job training. The program's proposed work processes include 1,000 hours dedicated to general sheet metal work; 1,000 hours to operation of hand and power tools; 2,500 hours to architectural sheet metal work; 1,000 hours to installation of weather proofing products; 1,000 hours to installation of composites, extrusions, phenolics, fiber cement products & associated components; 500 hours to soldering and welding; 500 hours to rigging and signaling as pertaining to the trade; 750 hours of computer training; and 750 hours to safety and hazmat training. Axiom admits that its proposed architectural sheet metal program would overwhelmingly train apprentices on exterior architectural sheet metal.
4. The Council or Director has not previously recognized "Architectural Sheet Metal Worker" as a stand-alone apprenticeable occupation. Instead, the Council has recognized the occupation of "Sheet Metal Worker," which includes architectural sheet metal among its work processes. As reflected in approved state apprenticeship standards, the work processes for this occupation include general sheet metal work; operation of hand and power tools; architectural sheet metal work; specialty installation and specialty work; industrial sheet metal work; air conditioning and heating; soldering, welding, brazing, and plastic welding; rigging and signaling as pertaining to the trade; non-destructive testing and QaQc; air balance work; computer training; workplace safety; and indoor air quality.
5. All approved Sheet Metal Worker apprenticeship programs train extensively in architectural sheet metal work. Like apprentices in Axiom's proposed program, apprentices in these programs receive training in building sciences, thermal bridging, and weather resistant barriers. Graduates are able to perform architectural sheet metal work in the industry at a journey level.
6. Sheet metal workers also perform other work besides architectural sheet metal work. Apprenticeship programs for this occupation train in industrial sheet metal and HVAC work. In their first two years, apprentices are rotated through several different contractors to give them experience in industrial shops, HVAC shops, and architectural sheet metal shops. This rotation permits them to see all the facets of the sheet metal worker trade. A worker with experience in only architectural sheet metal (and not HVAC and industrial sheet metal) would not qualify as a journey-level sheet metal worker. A graduate of the proposed exterior Architectural Sheet Metal program would have a far less marketable skillset than a journey-level Sheet Metal Worker.
7. Architectural Sheet Metal Worker is not an apprenticeable occupation in Washington because it is a part of the greater occupation of Sheet Metal Worker. The Architectural Sheet Metal Worker occupation in Axiom's proposed standards will perform only a subset of the work of the Sheet Metal Worker occupation. On-the-job training for

apprentices in Axiom's proposed program would not include HVAC work or industrial sheet metal work applications. As envisioned by Axiom, graduates of its program will perform only architectural sheet metal work. The Sponsor's program will produce only partially skilled apprentices, which is not in the apprentices' best interests. If an individual were to complete the exterior Architectural Sheet Metal program as outlined by the Sponsor, they would only have a partial knowledge of the training required to perform journey level Sheet Metal work. The Architectural Sheet Metal Worker occupation is a "carve out" of the Sheet Metal Worker occupation.

8. Axiom registered federally for Architectural Sheet Metal Worker under SOC 47-2211.00. This is the occupational code for the Sheet Metal classification.
9. The Department performed a technical review of Axiom's proposed apprenticeship standards. The Department determined that the standards did not meet the criteria established by RCW 49.04 and WAC 296-05.
10. The Council received objections to Axiom's proposed standards. The Council conducted proceedings, and it disapproved the proposed standards. Axiom petitioned for administrative review to the Director.

## II. CONCLUSION

1. The Director has jurisdiction over the subject matter and the parties under RCW 49.04, RCW 34.05, and WAC 296-05.
2. A sponsor may request approval of an apprenticeship program, and it carries the burden of proof to establish that the program complies with applicable laws.
3. The Council registers apprenticeship programs. RCW 49.04.010(2). An apprenticeship program may be registered only if it is found to be "in the best interests of the apprentice," and second, programs must "conform with standards established under this chapter." RCW 49.04.030(3).
4. The Director reviews de novo the Council's decisions and issues a final order either approving or disapproving an apprenticeship program. RCW 49.04.065; RCW 34.05.464.
5. 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.
6. Apprenticeship program standards may be approved only for "apprenticeable occupations," a threshold question when reviewing proposed standards. An apprenticeable occupation is a specified occupation which must:

- a. Involve skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;
- b. Be clearly identified and commonly recognized throughout an industry;
- c. Involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least two thousand hours of on-the-job learning to attain;
- d. Require a minimum of one hundred forty-four hours of related instruction per program year to supplement on-the-job work experience;
- e. Involve sufficient skill to establish career sustaining employment;
- f. Not be part of an occupation previously recognized by the registering agency as apprenticeable.

WAC 296-05-003.

7. The purpose the apprenticeship rules is to promote apprenticeship, establish labor standards, and to protect the welfare of apprentices. WAC 296-05-001(1). Labor standards are established and the welfare of apprentices are protected by training individuals to industry-wide standards so that a graduate has marketable skills and can work for any employer in the field.
8. Only apprenticeship programs that comply with RCW 49.04 and WAC 296-05 may be registered. RCW 49.04.050. To be considered apprenticeable, the proposed occupation cannot be “part of an occupation previously recognized by the registering agency as apprenticeable.” WAC 296-05-003. This requirement prevents the dilution of a recognized occupation through the gradual fragmentation of an occupation into smaller subparts. In other words, subpart (f) above is intended to prevent apprenticeship programs from training in occupations that are “carve outs” of occupations previously recognized by the Council as apprenticeable. The purpose being to ensure that graduates of these programs can find continuous employment throughout the full sector of the occupation.
9. Although Axiom seeks to minimize the overlap of its program with the Sheet Metal Program, its proposed Architectural Sheet Metal Program covers architectural sheet metal work, a subset of Sheet Metal Program. It is a carve out, contrary to its assertions.
10. The proposed “Architectural Sheet Metal Worker” occupation is not an apprenticeable occupation as defined in WAC 296-05-003. As Axiom admits, it will train in only a subset of the work performed by the Sheet Metal Worker occupation. Graduates of existing apprenticeship programs perform work in industrial sheer metal shops, HVAC shops, and architectural sheet metal shops. And they receive on-the-job training and classroom instruction that prepares them for the unique aspects of these varying work settings. By contrast, Axiom’s proposed Architectural Sheet Metal Worker occupation

will perform only architectural sheet metal work, receiving training in only those aspects of sheet metal work necessary to perform this limited aspect of the trade. WAC 296-05-003 prohibits such segmentation of an occupation previously recognized by the Council—Sheet Metal—as apprenticeable.

11. Axiom argues that the Council has approved industry-specific apprenticeship programs for other occupations. It must prove that the programs were approved after WAC 296-05-003 adopted the definition of “apprenticeable occupations” in 2002. More significantly, there is no evidence that the issue of apprenticeability was raised in those matters, and the Council’s approval of separate, unrelated apprenticeship programs is irrelevant to whether the Architectural Sheet Metal Worker occupation is an apprenticeable occupation. It is hardly arbitrary and capricious to adhere to WAC 296-05-003 here. And the Director has final authority over the approval of standards, and there is no evidence that the Director has issued a decision about subset occupations. RCW 49.04.065; RCW 34.05.464. The Director is not bound by alleged errors committed by the Council. The Director in de novo review is bound to apply the regulations before it, as was the Council. “[P]ublic agencies must follow their own rules and regulations.” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 44, 202 P.3d 334 (2009); *Ritter v. Bd. of Comm’rs*, 96 Wn.2d 503, 507, 637 P.2d 940 (1981). An agency cannot waive requirements of the law. *AK-WA, Inc. v. Dear*, 66 Wash. App. 484, 490, 832 P.2d 877, 881 (1992) (rejecting argument that agency accepted payment of less prevailing wages: “There is no indication that either the Department or the DOT can waive the requirement of paying the prevailing rate of wages, or can acquiesce to payments below the prevailing rate of wages.”). The Director and Council are bound to apply WAC 296-05-003 to the facts here.
12. Contrary to Axiom’s arguments, the DOL’s approval of Axiom’s federal apprenticeship programs for Architectural Sheet Metal Worker does not render this occupation apprenticeable as a matter of law. The Washington apprenticeship rules recognize the importance of the federal rules: “The intent of these rules is to carry out the purposes of chapter 49.04 RCW, the National Apprenticeship Act 29 U.S.C. 50, and 29 C.F.R. Parts 29 and 30 to promote apprenticeship, labor standards and to protect the welfare of apprentices.” WAC 296-05-001. As part of these purposes, the Department is a registered State Apprenticeship Agency (SAA) under 29 C.F.R. 29.2. An SAA is “an agency of a State government that has responsibility and accountability for apprenticeship within the State.” 29 C.F.R. 29.2. “An apprenticeship program seeking registration through an SAA . . . must also meet the requirements of that state’s apprenticeship laws, which . . . may be more stringent than the standards set forth in the federal regulations. *Indep. Training & Apprenticeship Program v. California Dep’t of Indus. Rels.*, 730 F.3d 1024, 1029 n.2 (9th Cir. 2013). Thus, Washington can have stricter laws about apprenticeable occupations.
13. Under federal law, the definition of apprenticeable occupation only includes subsections WAC 296-05-003(a)-(d) above. 20 CFR § 29.4. When the Council adopted and Director approved of the definition of apprenticeable occupation, they added subsections (e) and (f), creating a more stringent and thorough criteria for a proposed occupation to be


registered than federal law. In doing so, it ensured better career opportunities for apprentices.

14. Even so, Axiom argues that federal law preempts Washington's law about apprenticeable occupations. It asserts that, because federal regulations contain no requirement limiting apprenticeable occupations to those that are not "part of" a previously recognized occupation, the Council cannot give effect to this aspect of Washington's law. This argument lacks merit. Preemption may be express, the result of an actual conflict of laws, or implied where federal law thoroughly occupies a field. *Hue v. Farmboy Spray Co.*, 127 Wn.2d 67, 79 n.14, 896 P.2d 682 (1995). There is a strong presumption against preemption. *Id.* Axiom points to no express preemption, and federal law specifically contemplates state action in apprenticeship matters, precluding a finding of implied preemption. *Id.*; see 29 C.F.R. § 29.2. Similarly, there is no actual conflict of laws when it is possible to comply with both state and federal law. See *Inlandboatmen's Union of the Pac. v. Dep't of Tramp.*, 119 Wn.2d 697, 708, 836 P.2d 823 (1992). Because any occupation meeting the requirements of Washington law will likewise meet federal requirements, there is no federal preemption.
15. Despite relying on federal law heavily, Axiom asserts that its program should be approved because of Washington law. It argues it satisfied WAC 296-05-015 that "[p]roposed standards are reasonably consistent with existing standards when standards meet or exceed the minimum number of hours approved by the United States Department of Labor in the trade or occupation, if approval has been made." Because Axiom's proposed program will train in only a subset of the sheet metal worker trade, it is not reasonably consistent with existing programs.
16. The Council made no evidentiary errors, and the Director adopts the rulings de novo.
17. Axiom's proposed apprenticeship standards for Architectural Sheet Metal Worker do not meet the requirements of RCW 49.04 and WAC 296-05. There is no need to reach further arguments raised by the Objectors.

### III. DECISION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the request for approval of the proposed apprenticeship standards for the occupation of Architectural Sheet Metal Worker is DISAPPROVED.

DATED at Tumwater this 14 day of February 2023.



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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 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](mailto: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 14 day of February to the following:

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DATED this 14 day February 2023, at Tumwater, Washington.

  
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Lisa Deck