

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

In re:

Northwest Laborers Apprenticeship
Committee No. 71

No. 2024-004-APP

**FINAL DIRECTOR'S ORDER ON
RECONSIDERATION**

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the final decision of the Washington State Apprenticeship and Training Council (“Council”) dated January 18, 2024, that amended the program standards of the Northwest Laborers Apprenticeship Committee, No. 71 (“Laborers”), having considered the petitions for administrative review filed by Washington Cement Masons Apprenticeship Committee No. 61 (“Cement Masons”) and the “Electrical Programs” (collectively International Brotherhood of Electrical Workers Local 76, Washington State Association of Electrical Workers, Southwest Washington Electrical Joint Apprenticeship Training Council, Inland Empire Electrical Training Trust, Puget Sound Electrical Joint Apprenticeship Training Council, and International Brotherhood of Electrical Workers Local 112-NECA Electrical JATC), having considered the responses of the Laborers and the Department of Labor and Industries Apprenticeship Section (“L&I”), having reviewed the Electrical Programs’ Petition for Reconsideration and associated

briefing, having reviewed the record, the Director issues this Final Director's Order on Reconsideration.

The Director enters the following Findings of Fact, Conclusions of Law, and Final Order on Reconsideration.

FINDINGS OF FACT

1. Sponsor Northwest Labor Employers Training Trust (also "Laborers") created proposed amendments to their program standards. One reason was "to incorporate new technologies and techniques in the construction trade that were not available or commonplace when its existing apprenticeship program standards were approved in 2014." Laborers' Response to Appeal 1-2 (April 29, 2024).
2. On June 7, 2023, the Laborers submitted the revised apprenticeship standards to L&I's apprenticeship section. This section performed a technical review and determined the Laborers' revised standards met the criteria established by RCW 49.04 and WAC 296-05. L&I placed the matter on the agenda for the Council's July 20, 2023 quarterly meeting. The agenda for the July 2023 meeting notified interested parties that the Council would consider the issue of approval of the Laborers' revised standards.
3. Competitors may object to proposed amendments, and if so, the competitor must object 20 calendar days before the next regular quarterly Council meeting to obtain mandatory review. Objections were due by June 30, 2023. WAC 296-05-011(2)(a).
4. The Council's next quarterly meeting was scheduled for July 20, 2023, but was postponed until August 7, 2023. The postponement did not change the initial 20-day deadline of June 30, 2023, for filing objections. WAC 296-05-008(1)(e)(iii), -011(2)(a).
5. The Greater Western Washington Pipe Trades ("Pipefitters") timely objected.
6. At the August 2023 meeting, the Council continued proceedings about the amendments to the October 2023 meeting to allow the Pipefitters and Laborers time to confer.
7. The Cement Masons and Electrical Programs ("Competitors") raised objections to the proposal. L&I received the objections after the time for objections had passed and sent notices to the Competitors that the objections were not timely under WAC 296-05-011(2) and advised them that L&I would not forward the objections for an adjudicative hearing. Although L&I gave notice to the competitors that there would not be an adjudicative proceeding, it did not notify the Competitors as to their appeal rights per RCW 34.05.416.

8. The Competitors did not timely object to the Laborers' proposed amendments to the standards filed in June 2023. The Competitors have not denied that they did not object within 20 days of public notification of the proposed amendments to the standards.
9. With no timely objection and per L&I's notice, the Council did not hold an adjudicative proceeding to create an evidentiary record about the substantive questions raised by the Competitors.
10. At the October meeting, because the Laborers and Pipefitters had not resolved the matter, the Council appointed Councilmember Ed Kommers to mediate the Pipefitters' objection about the proposed amendments and to consider the perspective of other competitors who had not timely objected. Settlement is a favored policy. *See* RCW 34.05.060 (“[I]nformal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged.”); *City of Seattle v. Blume*, 134 Wn.2d 243, 258, 947 P.2d 223 (1997) (interpreting rule to advance “the express public policy of this state which strongly encourages settlement”).
11. The Laborers then revised their proposed amendments. The Pipefitters resolved their issue about the standards when the Laborers revised them, satisfying the Pipefitters' concerns, and the Pipefitters withdrew their objection.
12. On January 16, 2024, the Electrical Program's counsel wrote a letter raising safety concerns about conduits and racking. Lemondidis Decl. Ex. A at 3. The letter was addressed to L&I staff, not the Council. It appears the letter was provided to Councilmember Kommers based on a statement at the January 2024 meeting, Tr. 174 (Jan. 18, 2024), but it was not made part of the record transmitted by the Council, so it is unclear whether all Council members reviewed it or just Councilmember Kommers in his role as mediator.
13. On January 17, 2024, the Electrical Programs' counsel emailed Councilmember Kommers about conduits not racking.
14. At the January 18, 2024 Council meeting, Councilmember Kommers pointed out that a provision about electrical conduits was problematic and asked the Laborers' representative if he would withdraw that provision. The representative agreed to do so.
15. Also at the January 2024 meeting, the Competitors raised objections, about which the Council allowed their representatives time to provide “minor commentary.” Council Tr. 177 (Jan. 18, 2024). Because the Council was not in a “litigative” posture, it did not consider these comments as part of an “adjudicative procedure.” *Id.* at 177-78.

16. The Council approved the revised proposal for the amended standards at the January 2024 Council meeting.
17. Because all Council decisions are for federal and state purposes, WAC 296-05-001(1)(a)-(b), a party can appeal a Council decision to the Director. RCW 49.04.065.
18. The Competitors appealed to the Director.
19. On July 9, 2024, the Director issued the Director's order.
20. On July 19, 2024, the Electrical Programs moved for reconsideration.

CONCLUSIONS OF LAW

Background

21. The Director has the authority to consider this matter under RCW 49.04.065(1).¹
22. Apprenticeship builds a skilled workforce, and apprenticeship expansion is a favored policy of the state of Washington. Promoting the safety, wellbeing, and best interests of apprentices are important goals in Washington. The Legislature passed RCW 49.04 in 1941 to provide apprenticeship programs. Laws of 1941, ch. 231, § 1. In 2022, the Legislature adopted measures to boost apprenticeship opportunities. Laws of 2022, ch. 156, § 1. Apprenticeship programs are designed to give graduating apprentices the ability to “earn a living wage, or gain access to a progressive career ladder, or earn other nonwage benefits.” WAC 296-05-011(1)(a)(v); RCW 49.04.050(3). “The legislature intends to encourage and foster new apprenticeship opportunities through programs sponsored by public and private entities.” Laws of 2022, ch. 156, § 1. And the Legislature sought to reduce delays in approving apprenticeship programs: “It is the intent of the legislature that apprenticeship programs seeking state registration receive prompt consideration with minimum delay.” *Id.*
23. In establishing apprenticeship programs, the Legislature created the Council. RCW 49.04.010(1). The Council is an expert body, comprised of representatives from employer and employee organizations. *Id.* The Council develops standards for apprenticeship agreements, confers with the Director about necessary rules and regulations to carry out legislative intent, and performs other duties as required. *Id.* These other duties include

¹ A party has 30 days to appeal to the Director from a “written decision[s]” of the Council. RCW 49.04.065(1). The Competitors, having appealed, have stipulated to Director consideration without a written decision, and the Laborers and the Department Apprenticeship Program raised no objection about the Director's ability to act without a written decision.

conducting adjudicative proceedings about objections to proposed amendments to apprenticeship programs. WAC 296-05-008(6), -011(2)(c).

24. The Secretary of the United States Department of Labor delegates to the state authority to certify apprenticeship programs for federal purposes. 29 C.F.R. § 29.13. The Secretary delegates authority only if state apprenticeship law conforms with federal apprenticeship regulations. *Id.* Changes in federal regulations in December 2008 required that a state apprenticeship agency, and not a state apprenticeship council, have responsibility and accountability for apprenticeship within the State. Final Bill Report, SB 5584 (2011). Accordingly, the Legislature amended RCW 49.04 to give final authority about apprentices to the Director. *See* Laws of 2011, ch. 308, § 1, 6.
25. The Council can approve apprenticeship programs. RCW 49.04.010(2), .050, .065. A sponsor may seek to amend its program standards by sending a request to L&I's apprenticeship supervisor at least 45 days before the next quarterly meeting. WAC 296-05-008(3)(c). The Council then reviews proposed amendments to decide whether those standards comply with applicable statutes and regulations, and the Director and Council interpretations of those laws. The Council addresses actions, including approval or disapproval of amendments to apprenticeship programs, during regular meetings in January, April, July, and October. WAC 296-05-008(1), (3), -011(1).
26. Competitors may object to proposed amendments by sending notice to L&I's apprenticeship supervisor 20 days before the next scheduled Council meeting. WAC 296-05-011(2)(a). On receipt of a timely objection, the Council either conducts an adjudicative proceeding before itself or refers the matter to the Office of Administrative Hearings. WAC 296-05-011(2)(c).
27. The Council may reschedule a quarterly meeting under WAC 296-05-008(1)(e). But rescheduling does not affect the objection deadline. WAC 296-05-008(1)(e), -011(2)(a).
28. The Administrative Procedure Act (APA) applies to all Council and Director proceedings. RCW 34.05.030(5).
29. The Council acts as the presiding officer under the APA. *See* RCW 34.05.425. The Director acts as the reviewing officer.
30. The Director engages in de novo review of Council orders and is not bound by a Council decision. RCW 34.05.464(4); RCW 49.04.065. The Director has the "all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing." RCW 34.05.464(4). The Director has the authority to issue findings of fact. RCW 49.05.065(2). And the Director is charged with the ultimate "responsibility and accountability for apprenticeship within the state for federal purposes." RCW 49.04.010(1). As the reviewing officer, the Director reviews the Council

record, WAC 296-05-008(7)(b), but does not take evidence, relying on the presiding officer (the Council) to develop the record. *Towle v. Dep't of Fish & Wildlife*, 94 Wn. App. 196, 205, 971 P.2d 591 (1999). Thus, if the Council erred in not granting administrative review to the Competitors, the relief would be to remand to the Council for further proceedings. RCW 34.05.464(7).

Discussion

31. There are five points to consider about the Competitors' claims.

1. Failure to Give Notice of Appeal Rights

32. L&I did not give a notice of appeal rights under RCW 34.05.416 when it declined to refer the Competitors' objections to the Council. The Competitors were not prejudiced as they did in fact appeal to the Director.

2. Statutory and Regulatory Authority About Timeliness

33. The APA provides criteria to establish when an agency must grant an adjudicative proceeding. Review is mandatory only if there is a timely application for an adjudicative proceeding. RCW 34.05.413(2). "When required by law or constitutional right, and upon the *timely* application of any person, an agency shall commence an adjudicative proceeding." *Id.* (emphasis added). So, when a law provides for an administrative appeal, such as to the Council, an agency is mandated to provide an adjudicative proceeding only if the appeal is timely. *See id.*

33. RCW 34.05.413(3) allows agencies to adopt rules to set "specified time limits" by which to file a request for an adjudicative proceeding.

34. The Legislature granted the Director, in consultation with the Council, the power to adopt rules to carry out the intents and purposes of RCW 49.04. RCW 49.04.010(2); RCW 34.05.413(3). Agency regulations have the force and effect of law. *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 848, 50 P.3d 256 (2002). Exercising rulemaking power, the Director adopted WAC 296-05-011(2)(a):

Objections: If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must:

(a) Provide timely and specific objections in writing to the apprenticeship supervisor 20 calendar days prior to the next regular quarterly WSATC meeting on a form provided by the department.

35. Thus, the APA, apprenticeship statutes, and apprenticeship rules allow a competitor to challenge proposed amendments to program standards on timely application, and on such timely application, the Council must provide an adjudicative proceeding to allow the competitor to put on evidence supporting their claims against the proposed changes. *See* RCW 34.05.413(2), .449(2); RCW 49.04.010(1), .065(1); WAC 296-05-011(2)(a), (c).
36. But without compliance with the 20-day rule, an objector does not timely challenge a proposed amendment and is not entitled to an adjudicative proceeding.

34. Council Authority

37. The Council is tasked with the duty to evaluate and approve program standards and amendments considering relevant considerations about the “the welfare of apprentices.” WAC 296-05-001(1). The Council has permissive authority to consider any relevant factor about the approval of program standards and their amendments with or without an objection. RCW 34.05.413; RCW 49.04.010, .050, .065; WAC 296-05-001, -008, -011.
38. The Cement Masons concede that “[WAC 296-05-011] precluded the Objectors from receiving a full evidentiary hearing due to the failure to timely file objections,” admitting that this result “is consistent with the statute.” Cement Masons, Reply Br. 1. But they contend that this does not preclude them from obtaining Director review. No authority supports that having failed to comply with a mandatory time limit, they have a right to review on substantive issues. The Council properly exercised its discretion to decline to provide an adjudicative proceeding given their late objections.
39. The Council did not adopt the Laborer’s proposal in whole; there were revisions to the proposal. But this is not a case in which the Council adopted new program standards in the amended standards that were prejudicial to the Competitors, nor did the Competitors ever raise a challenge to the revised provisions in other respects. The Competitors complained only of provisions that were in the original proposed standards to which they failed to lodge a timely objection. Competitors have no ability to raise the concerns of other apprenticeship committees if any exist. *See Walker v. Munro*, 124 Wn.2d 402, 419, 879 P.2d 920 (1994) (a litigant cannot raise another’s legal rights). The Director makes no decision on the import of a potentially prejudicial new standard proposed after the time to object lapses.

35. Director Authority

40. The Director engages in de novo review of the Council order and is not bound by a Council decision. RCW 34.05.464(4); RCW 49.04.065(2). But since the Director has the same power as the Council (except as to taking evidence), the Director can also rely on the fact that there

was not a timely objection as well as the expertise of the Council to not review the merits of the Competitors' objections. RCW 49.04.010, .065; RCW 34.05.464.

41. The Cement Masons point out that RCW 49.04.065(1) provides that “[a]ny decision of the apprenticeship council affecting registration and oversight of apprenticeship programs . . . may be appealed to the director.” Cement Masons, Opening Br. 3; *see* Cement Masons, Reply Br. 3. The phrase “[a]ny decision” allows for appeals about various subject matters, which is shown by the language “[a]ny decision . . . *affecting* registration and oversight of apprenticeship programs.” *See* RCW 49.04.065(1). The “affecting” terminology shows that “any” is referring to the subject matter about the appeal, not mandating consideration of an appeal when a party has not timely objected.
42. In the original Director’s order, it stated “before the Council, the Competitors’ argument made orally and in their untimely written objections only fleetingly refer to safety concerns about the changes.” To claim error, the Electrical Programs point to a January 16, 2024 letter written two days before the January 18, 2024 Council meeting. Electrical Program’s Pet. for Recons. 3, 6 (July 19, 2024). The import of the letter was that the racking was work that electricians should supervise apprentices if they do this work. The letter alleges that apprentices will be exposed to “significant voltages and currents,” and risks like burns, dismemberment, shock, and electrocution. Lemondidis Decl. Ex. A at 3.
43. The Laborers suggest that the Director can only review evidence in an adjudicative record to make a decision. NWLETT’S Resp. to IBEW’s Pet. for Recons. 4 (Aug. 1, 2024). No such requirement is found in RCW 49.04.065. The consequence of such a position would be to allow safety violations to be unaddressed if the Council declined to provide a hearing. Similarly, the Laborers suggest that “the Director was not permitted to consider evidence that untimely objectors informally submitted in an effort to influence the mediator.” NWLETT’S Resp. 5. In determining whether to exercise discretion to consider an untimely objection, the Director may consider appropriate information submitted before the Council as an offer of proof.
44. It is unclear whether the Council considered any safety issues to the apprentices related to racking or considered whether the proposed amended program standards adequately addressed their safety with respect to racking. If the Council indicates it already considered the racking safety issue, then the decision to approve the amended standards stands. If the Council has not yet exercised its discretion whether to grant an adjudicative proceeding because of safety concerns, it should exercise its discretion. If appropriate, it may take information from the Electrical Programs and the Laborers as offers of proof. Upon exercising its discretion, the Council may keep the racking provision, rescind it, modify it to protect the safety of the apprentices, or conduct an adjudicative proceeding to resolve any outstanding issues related to the safety of racking.

- 45. The Cement Masons did not provide specifics of how safety of the apprentices is implicated, and the Director does not exercise the Director's discretion to remand.
- 46. The Cement Masons had a focus on concerns over which union or trade covered what work. There is no reason why the jurisdictional issues, if relevant, could not have been made on time. Prevailing wage concerns were also raised, but prevailing wage scopes of works reflect what the labor processes are used, and they do not create the standards in the first place. WAC 296-127-013. These concerns could also be raised timely.

36. Other Considerations

- 47. The Cement Masons appear to argue that because the Council and Director judge the validity of proposed standards by considering "the best interests of the apprentices" that this mandate means that the Director must consider the merits of their appeal. Cement Masons, Opening Br. 8, 11; Cement Masons, Reply Br. 7-8. Considering the best interests of the apprentices is an important aspect of the apprenticeship laws, yet the Legislature also authorized the adoption of rules about apprenticeship procedures and timeliness. RCW 49.04.010(2), .030(3); RCW 34.05.413(3); WAC 296-05-001(1)-(2). For the Cement Masons to obtain mandatory or discretionary Director consideration of arguments about the best interests of apprentices, the Director can require a timely objection.
- 48. The Director acknowledges the importance of providing a safe work experience in apprenticeship programs, and all apprenticeship programs should consider safety at the forefront of their actions. Platforms for that include RCW 49.04.240 and WAC 296-05-219, which control reevaluations of safety elements in programs.
- 49. This decision does not stay the Laborers' implementation of the amended program standards as to the Competitors during the pendency of the case. This is a final appealable decision as to the Cement Masons. It is interlocutory as to the Electrical Programs and the Laborers. The wording of the previous decision is immaterial to the meaning of this decision. Upon remand, the Council should issue a new order as to the Electrical Programs, subject to the applicable appeal deadlines under RCW 49.04.065.

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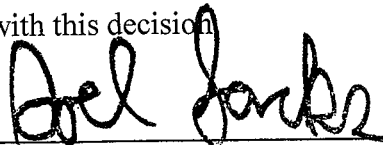
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ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Director **MODIFIES** the Director's order on reconsideration, and the Competitors' appeals to the January 2024 approval of Laborers' program standards are **DISMISSED** as to the Cement Masons and **REMANDED** as to the Electrical Programs in conformity with this decision.



JOEL SACKS
Director

SERVICE

This Order was entered and 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 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, should be filed by mailing, or by emailing to DirectorAppeal@LNI.WA.GOV, 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 and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: 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 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 it 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(2). "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." RCW 49.04.065(3). Proceedings for judicial

review may be instituted by petitioning in superior court according to the procedures specified in chapter 34.05 RCW, 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 ON RECONSIDERATION was e-mailed and mailed on the date listed below via U.S. Mail, postage prepaid, to the following:

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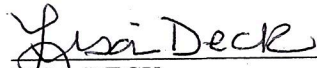
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DATED this 10 day of September 2024, at Tumwater, Washington:



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