



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

P.O. Box 44000 • Olympia, Washington 98504-4000

November 26, 2024

**Via E-mail and U.S. Mail**

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Tzur Wilfand  
17613 29th Dr SE  
Bothell, WA 98012  
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**RE: Tzur Wilfand  
OAH Docket No. 09-2023-LI-01939  
Director No. 2024-016-WPA**

Dear Parties:

Please find the enclosed Director's Order, which is served on the date of mailing. A copy of the Initial Order is enclosed for your convenience.

Sincerely,

Joel Sacks  
Director

Enclosure

cc: Judge Lisa Dublin  
Haley Bobbitt, Tacoma OAH  
Anastasia Sandstrom, AAG

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

In re:

TZUR WILFAND,

Appellant,

Determination of Compliance No.  
DOC-167-23

OAH Docket No. 09-2023-LI-01939

No. 2024-016-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the appeal filed by Tzur Wilfand, (Appellant), 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.

**I. FINDINGS OF FACT**

1. The Office of Administrative Hearings issued and served the Initial Order on May 6, 2024.
2. The Director received a timely filed petition for review from the Appellant.
3. The Director adopts and incorporates the Initial Order's "Issues," "Order Summary," and "Hearing" sections.

NO. 2024-016-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

4. The Director adopts and incorporates the Initial Order's findings of facts 4.1 through 4.21.

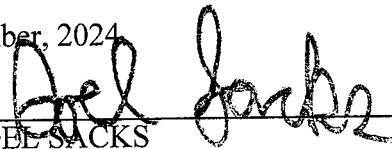
## **II. CONCLUSIONS OF LAW**

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
2. The Director adopts and incorporates the Initial Order's conclusions of law 5.1 through 5.14.

## **III. DECISION AND ORDER**

Consistent with the above Findings of Fact and Conclusion of Law, the Determination of Compliance is AFFIRMED, and the Initial Order of May 6, 2024, is incorporated by reference herein.

DATED at Tumwater this 24 day of November, 2024.

  
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 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 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 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 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 49.48.084(5) 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 chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

### DECLARATION OF MAILING

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the **DIRECTOR'S ORDER** was mailed on the 26 day of November 2024, to the following via regular, postage prepaid:

Heather Klein Leibowitz, AAG  
Department of Labor & Industries  
800 Fifth Avenue Suite 2000  
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Tzur Wilfand  
17613 29th Dr SE  
Bothell, WA 98012  
[Tzurwatu587@gmail.com](mailto:Tzurwatu587@gmail.com)

DATED this 26 day of November, 2024, at Tumwater, Washington.

  
\_\_\_\_\_  
LISA DECK

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Tzur Wilfand,

Appellant/Wage Claimant.

Docket No. 09-2023-LI-01939

**INITIAL ORDER**

Agency: Labor and Industries

Program: Wage Payments

Agency No. DOC - 167-23

**1. ISSUES**

- 1.1. Did King County DNRP/WTB dba East Operating Base Annex violate RCW 49.46.130 by failing to pay overtime wages to Tzur Wilfand during the period of May 2, 2022 to May 13, 2022, as addressed in Determination of Compliance No. 167-23?
- 1.2. If so, what is the total amount of unpaid wages?

**2. ORDER SUMMARY**

- 2.1. No. King County DNRP/WTB dba East Operating Base Annex did not violate RCW 49.46.130 with respect to Tzur Wilfand during the period of May 2, 2022 to May 13, 2022.
- 2.2. Because no violation occurred, King County DNRP/WTB dba East Operating Base Annex owes no unpaid wages.
- 2.3. Determination of Compliance No. 167-23 is AFFIRMED.

**3. HEARING**

- 3.1. Hearing Date: March 7, 2024
- 3.2. Administrative Law Judge: Joni Derifield
- 3.3. Appellant: Tzur Wilfand ("Appellant")
  - 3.3.1. Representative: Mark Knapp
  - 3.3.2. Witnesses:
    - 3.3.2.1. Tzur Wilfand, Appellant
    - 3.3.2.2. Theresa Tobin, Transit Operator
- 3.4. Agency: Labor and Industries ("Department")
  - 3.4.1. Representative: Heather Leibowitz, Assistant Attorney General

3.4.2. Witnesses:

3.4.2.1. Alfredo Di Tolla, Industrial Relations Agent

3.4.2.2. Meg Safranek, Deputy Director

3.5. Employer: King County DNRP/WTD dba East Operating  
Base Annex ("King County Metro" or "Employer")

3.5.1. Representative: Susan Slonecker, Senior Deputy Prosecuting  
Attorney

3.5.2. Witnesses:

3.5.2.1. Terrie Kennedy, Bellevue Base Superintendent

3.5.2.2. Martin Larson, Bellevue Base Chief

3.6. Exhibits:

3.6.1. The Department's Exhibits 1 through 47 were admitted.

3.6.2. King County Metro's Exhibits AA through DD were admitted.

3.6.3. The Appellant did not offer any exhibits for admission.

#### 4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

*Jurisdiction*

4.1. On May 18, 2023, the Department issued Determination of Compliance No. 167-23 in this matter. Ex. 1, pg. 1-3.

4.2. On June 14, 2023, the Appellant timely appealed the Determination of Compliance. Ex. 2, pg. 1-16.

*King County Metro and Tzur Wilfand*

4.3. The Employer, King County Metro, operates bus service throughout King County.  
*Larson Testimony.*

4.4. The Appellant, Tzur Wilfand, has been employed as a transit operator (bus driver) for King County Metro for nearly 25 years. *Wilfand Testimony.* During the relevant period, his regular rate of pay was \$37.96 per hour. Ex. 4, pg. 1.

*"The Pick"*

4.5. Twice per year, King County Metro transit operators participate in an event called "the pick" to select their preferred schedules and routes for the next six months. *Larson Testimony.* The pick lasts nine or 10 days. *Id.* Transit operators are assigned a pick time based upon seniority. *Id.*

- 4.6. Transit operators have several ways to participate in the pick. *Id.* They may participate in person, at the Central Atlantic base in downtown Seattle. *Id.* Additionally, they may participate by absentee, indicating preferences on a form or by telephone for the union official making the selection. *Id.* Finally, transit operators may elect not to show up at all nor indicate their preferences, in which case a union official will pick a schedule closest to the operator's prior schedule. *Id.*
- 4.7. Although he is not required to do so, the Appellant prefers to attend the pick in person so that he does not have to rely on the union to select work that is best for him. *Wilfand Testimony.*
- 4.8. The Appellant was scheduled for his pick on May 9, 2022 at 9:34 a.m. *Id.*; Ex. BB, pg. 1. That day, the Appellant was scheduled to drive a bus from 4:37 a.m. to 7:51 a.m., and again at 9:05 a.m. *Larson Testimony.* However, the latter portion of his work day conflicted with his pick time. *Id.*
- 4.9. King County Metro is obligated under the collective bargaining agreement to make operators available for their pick. *Larson Testimony*; see also Ex. 17, pg. 2. If a transit operator is scheduled to work on the day of their pick, King County Metro relieves the transit operator from duty one hour before through one hour after their pick time. *Larson Testimony.* It does not, however, pay operators for attending the pick on their day off. *Larson Testimony*; *Wilfand Testimony.* Attending the pick is not a part of a transit operator's assigned work. *Larson Testimony.*
- 4.10. While King County Metro relieves transit operators who are working one hour prior to their pick, the Appellant was not scheduled to work until 9:05 a.m. with a 9:34 a.m. pick time. *Id.* For his time prior to the pick, King County Metro paid the Appellant for his pick-related absence from work from 9:05 a.m. to 9:34 a.m. *Id.* It did not pay the appellant for the period of 8:35 a.m. to 9:04 a.m.—a full hour prior to the pick—because the Appellant was not scheduled to drive a bus during that time. *Id.* The Appellant contends he should be compensated for this period. Ex. 4, pg. 1.
- 4.11. On May 9, 2022, the Appellant was free to do as he wished from 7:51 a.m., when his first shift ended, to 11:10 a.m., when his next shift began. *Larson Testimony.*
- 4.12. Also relevant is the fact that King County Metro has a formal written policy regarding base relief cars. Ex. 36, pg. 78. It states: "[i]f base relief cars are used and travel time is paid to and/or from *relief points*, the operator is required to use the base car and will be paid the standardized travel time. Operators are not to use private vehicles while they are on the payroll and traveling between the base and a relief point *for the purpose of making a road relief.*" *Id.* (emphasis added).



- 4.13. The Appellant could have driven his own vehicle to the pick because he did not have a work conflict with driving a bus; he had not been relieved from the road. *Larson Testimony*. Even so, the Appellant checked out a King County Metro unscheduled relief car to travel to the pick. Ex. CC, pg. 1. He checked the vehicle out at 8:34 a.m. and returned it at approximately 10:20 a.m. *Id.*
- 4.14. On five other occasions thereafter, the Appellant used a Metro vehicle to attend a pick. *Wilfand Testimony*. He did so on August 15, 2022, February 13, 2022, May 8, 2023, July 31, 2023, and February 23, 2023. *Larson Testimony*. On three of those occasions, he was driving a bus and was road relieved to attend the pick. *Id.* On the remaining two occasions, he was not the transit operator who checked out the metro vehicle but was the individual who returned it. *Id.*
- 4.15. The supervisor who checks out relief cars does not verify anything when checking out a vehicle to the transit operator. *Tobin Testimony*. The transit operator signs out the vehicle, takes the keys from a box, and departs with the vehicle. *Id.*

#### *Wage Complaint*

- 4.16. On May 31, 2022, the Appellant filed a worker rights complaint with the Department. Ex. 4, pg. 1-23. The Appellant alleged in his complaint that King County Metro “refused to pay me for all hours worked attending a *required* meeting picking my work . . . King County metro provide[d] me with a company car to drive to downtown to the ‘pick’ room but refused to pay me for all the time that had been scheduled,” including driving to the pick. *Id.* at 1 (emphasis added). The Appellant alleged that he is owed \$29.42 for 31 minutes of overtime work he performed from 9:34 a.m. to 9:05 a.m. on May 9, 2022. *Id.*
- 4.17. Alfredo Di Tolla, an Industrial Relations Agent with the Department, investigated the Appellant’s complaint. *Di Tolla Testimony*. He followed the Department’s standard investigation process. *Id.* Mr. Di Tolla spoke with the Appellant as well as individuals at King County Metro, and reviewed all of the documentation provided by each party. *Di Tolla Testimony*. Mr. Di Tolla recommended issuing a Determination of Compliance. *Id.* He did so primarily because nobody at King County Metro informed him the Appellant was required to take a company vehicle, and because the Appellant was not required to attend the pick in-person. *Di Tolla Testimony*. On that basis, he concluded the Appellant was not on duty when he was driving to the pick. *Id.*
- 4.18. On May 18, 2023, the Department issued Determination of Compliance No. 167-23. Ex. 1, pg. 1-3. The Determination of Compliance stated that King County Metro did not violate the Wage Payment Act or Minimum Wage Act with respect to Tzur Wilfand during the period of May 2, 2022 to May 13, 2022. *Id.* at 1-2.

- 4.19. On June 14, 2023, the Appellant appealed the Department's Determination of Compliance. Ex. 2, pg. 1.

*Conflicting Testimony*

- 4.20. There were conflicts in the testimony regarding whether the Appellant was required to use a King County Metro vehicle to travel to the pick. The Appellant contends that Terrie Kennedy told him he was required to use a King County Metro car to travel to the pick because he was on the clock. *Wilfand Testimony*. He testified that she told him he was not allowed to drive his own vehicle for liability reasons. *Id.* Ms. Kennedy disputes that she gave that directive. *Kennedy Testimony*. Ms. Kennedy, Mr. Larson, and Meg Safranek testified that relief cars are used when a transit operator is relieved from their work on the road, which was not the case with the Appellant. *Kennedy Testimony; Larson Testimony*.
- 4.21. The Appellant never mentioned Ms. Kennedy's directive during the Department's investigation. Furthermore, the Appellant's testimony is contradicted by the testimony of Ms. Kennedy, Mr. Larson, Ms. Safranek, and to some extent by the Appellant's own witness, Ms. Tobin. Therefore, the undersigned finds the testimony offered by the Employer's witnesses more credible as a whole than that of the Appellant.

**5. CONCLUSIONS OF LAW**

Based upon the facts above, I make the following conclusions:

*Jurisdiction*

- 5.1. I have jurisdiction over the persons and subject matter of this case under RCW 49.48.084(3) and Chapter 34.05 RCW.

*Wage Payment Laws*

- 5.2. When an employee files a wage complaint, the Department must investigate. RCW 49.48.083(1). If the Department determines that the employer violated one or more wage payment requirements, the Department shall issue a Citation and Notice of Assessment. *Id.* If the Department determines that the employer complied with the law, the Department shall issue a Determination of Compliance. *Id.*
- 5.3. Wage payment requirements are those "set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department." RCW 49.48.082(12). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. *Id.*

- 5.4. Employers must comply with wage payment requirements and are liable for wage payment violations. RCW 49.48.083(2).
- 5.5. Generally, employers are obligated to pay employees at least one and one-half times the regular rate of pay for work in excess of forty hours per week. RCW 49.46.130(1).
- 5.6. Pursuant to RCW 49.52.050(2), it is unlawful for any employer or agent of any employer to "[w]ilfully and with intent to deprive the employee of any part of his or her wages . . . pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract."

*Burden of Proof, Standard of Proof, and Standard of Review*

- 5.7. In appealing a Citation and Notice of Assessment or Determination of Compliance, the party challenging the Department's decision has the burden of proof, by a preponderance of the evidence. See RCW 34.05.570(1)(a).
- 5.8. A preponderance of the evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915).
- 5.9. The standard of review by the administrative law judge is de novo. RCW 49.48.084(3).

*Analysis*

- 5.10. In this case, the Appellant, who bears the burden of proof, did not establish by a preponderance of the evidence that he is owed additional wages.
- 5.11. The Appellant was not scheduled to work on May 9, 2022 during the period of 8:35 a.m. to 9:04 a.m., and could spend that time in any way he chose. He was not required to drive a King County Metro vehicle, and was not obligated to do anything at all for King County Metro during that time. Furthermore, he was not required to travel to the pick in-person during that time; he did so at his own discretion, and for his own benefit. As such, King County Metro was not obligated to pay him wages during that period.
- 5.12. The Appellant's reliance on King County Metro's base relief car policy is unpersuasive. That policy clearly applies to road relief, which is not what occurred in this instance.
- 5.13. The undersigned concludes King County Metro did not violate RCW 49.46.130 with respect to Tzur Wilfand during the period of May 2, 2022 to May 13, 2022.
- 5.14. Accordingly, Determination of Compliance No. 167-23 will be AFFIRMED.

**6. INITIAL ORDER**

IT IS HEREBY ORDERED THAT:

- 6.1. Determination of Compliance No. 167-23 is AFFIRMED.
- 6.2. King County Metro did not violate RCW 49.46.130 with respect to Tzur Wilfand during the period of May 2, 2022 to May 13, 2022.
- 6.3. Because no violation occurred, King County Metro owes no unpaid wages.

Issued from Olympia, Washington, on the date of mailing.



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Joni Derifield  
Administrative Law Judge  
Office of Administrative Hearings

**CERTIFICATE OF SERVICE ATTACHED**

## PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Review with the Director of the Department of Labor and Industries.<sup>1</sup> You may e-mail your Petition for Review to the Director at [directorappeal@lni.wa.gov](mailto:directorappeal@lni.wa.gov). You may also mail or deliver your Petition for Review to the Director at the Department's physical address listed below.

Mailing Address:

Director  
Department of Labor and Industries  
PO Box 44001  
Olympia, WA 98504-4001

Physical Address:

7273 Linderson Way SW  
Tumwater, WA 98501

If you e-mail your Petition for Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Review, the Director *must actually receive* the Petition for Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Review to the other parties at the same time.

If the Director does not receive a Petition for Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.<sup>2</sup>

If you timely file a Petition for Review, the Director will conduct an administrative review under chapter 34.05 RCW.

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<sup>1</sup> RCW 49.48.084 and RCW 34.05.464.

<sup>2</sup> RCW 49.48.084 and Chapter 34.05 RCW.

# CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 09-2023-LI-01939

I certify that true copies of this document were served on those listed below, from Olympia, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by Email.

Tzur Wilfand 17613 29th Dr SE Bothell, WA 98012 <b><i>Appellant Wage Claimant</i></b>	<input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail <a href="mailto:Tzurwatu587@gmail.com">Tzurwatu587@gmail.com</a>
Mark S. Knapp, Attorney P.O. Box 914 Liberty Lake, WA 99019 <b><i>Appellant Representative</i></b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail <a href="mailto:Mark@firearmslawyer.net">Mark@firearmslawyer.net</a>
Heather Klein Leibowitz, AAG Department of Labor & Industries 800 Fifth Avenue Suite 2000 Seattle, WA 98104 <b><i>Agency Representative</i></b>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail <a href="mailto:Heather.Leibowitz@atq.wa.gov">Heather.Leibowitz@atq.wa.gov</a> <a href="mailto:Eileen.West@atq.wa.gov">Eileen.West@atq.wa.gov</a> <a href="mailto:Iniseaeservice@atq.wa.gov">Iniseaeservice@atq.wa.gov</a>
Rose Stafford Metro Transit Labor & Employee Relations Mail Stop KSC-TR-0419 201 S Jackson St Seattle, WA 98104 <b><i>Intervenor/Employer</i></b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Susan N. Slonecker King County Prosecuting Office Civil Division 701 5th Avenue Suite 600 Seattle, WA 98104 <b><i>Intervenor Representative</i></b>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail <a href="mailto:Susan.Slonecker@kingcounty.gov">Susan.Slonecker@kingcounty.gov</a>

Date: Monday, May 06, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson  
Legal Assistant 2