



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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February 11, 2025

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RE: **Brinderson LLC**
Director Order No. 2025-003-APP

Dear Parties:

Enclosed please find the Director's order. For your convenience the Council order is attached.

Sincerely,

Joel Sacks
Director

Enclosures

cc: Anastasia Sandstrom, AAG

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

In re:

BRINDERSON LLC – INDUSTRIAL
MAINTENANCE MECHANIC
(PETROLEUM REFINERY)

No. 2025-003-APP

DIRECTOR'S ORDER

This matter came before the Director of the Department of Labor and Industries upon review of the September 20, 2024 decision of Washington State Apprenticeship and Training Council (Council) to consider the rescission of Brinderson LLC's (Brinderson) Industrial Maintenance Mechanic program.

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

I. FINDINGS OF FACT

The Director adopts and incorporates the Council's Findings of Fact No.1 through 13.

II. CONCLUSIONS OF LAW

The Director adopts and incorporates the Council's Conclusions of Law No. 1 through 8.

9. The Director has jurisdiction over the subject matter and the parties to this action, under RCW 49.04, RCW 34.05, and WAC 296-05.
10. Brinderson argues that its policy that sets forth its criteria to grant standing or credit should not be the focus and that failure to follow the policy is only a procedural violation. Brinderson excuses its lack of compliance with its policy on a theory that "[t]hey had worked alongside [the apprentices] at Brinderson for several years before they entered the program and were familiar with their knowledge, experience and

NO. 2025-003-APP

DIRECTOR'S ORDER

competency. They did not need to conduct hours of review to re-confirm what they already knew about the applicants.” Brinderson, LLC, Appeal of Wash. State Apprentices Council’s Order and Request to Stay Pending Appeal 7 (Oct. 18, 2024). But its very own policy required a level of inquiry that could not be done in 12 minutes of review. A sponsor must “operat[e] and administer[er] . . . apprenticeship program and [fulfill] all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices.” WAC 296-05-003(37). It must adopt and necessarily follow “program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules.” WAC 296-05-015(2)(j). It chooses, subject to Council approval, the methods that it will operate to provide credit hours for apprenticeship work. “A sponsor of an approved apprenticeship program with five or more apprentices must uniformly apply all rules related to apprentices.” WAC 296-05-407(2). And not only does WAC 296-05-407(2) require uniform application, but it is also only fair and equitable that a policy about standing or credit be administered consistently.

11. The evidence is that Brinderson rubberstamped the 7000 hours for several apprentices without sufficient inquiry as to the apprentices’ work experiences. This failure meant that there were not uniform qualifications of the apprentices. This result does not comply with WAC 296-05-015(11)’s requirement to show “demonstrated competency, acquired experience, training, education, or skills in or related to the occupation.” This approach was not in the best interests of the apprentices because they were not trained in all the necessary areas—instead they were trained in areas that met Brinderson’s business needs. WAC 296-05-407(2) requires rules be followed, and WAC 296-05-051(2)(c) requires apprentices to be rotated in the various processes to ensure they become “a well-rounded competent worker.” Brinderson’s rubberstamping of the hours did not ensure this.
12. The Council’s and hearing officer’s evidentiary and discovery rulings are adopted. There was no prejudice regarding the evidentiary or discovery rulings. The hearings officer did not abuse the discretion to set the parameters for discovery. RCW 34.05.446.
13. For failure to comply with RCW 49.04 and WAC 296-05, Brinderson’s Industrial Maintenance Mechanic provision registration is rescinded.

III. FINAL ORDER

Based on the foregoing findings of fact and conclusions of law, the Council's provisional registration of Brinderson's apprenticeship program for the occupation of Industrial Maintenance Mechanic (Petroleum Refinery) is RESCINDED effective July 24, 2024. It is so ORDERED.



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 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. 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 the date listed below to the following via regular, postage prepaid:

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DATED this 11 day of February, 2025, at Tumwater, Washington.


LISA DECK

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**APPRENTICESHIP AND TRAINING COUNCIL
OF THE STATE OF WASHINGTON**

In Re: BRINDERSON LLC –
INDUSTRIAL MAINTENANCE
MECHANIC (PETROLEUM REFINERY)

No. 2022-03-007

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER

I. HEARING SUMMARY

This matter came before the Washington State Apprenticeship and Training Council to consider whether to rescind Brinderson LLC’s provisionally approved apprenticeship program for the occupation of Industrial Maintenance Mechanic – Petroleum Refinery. The Department of Labor & Industries identified several deficiencies in the administration and/or operation of Brinderson’s program, and at the October 2022 meeting of the Council’s Compliance Review and Retention Subcommittee, the Department recommended rescission. Based on the Department’s recommendation, the Compliance Review and Retention Subcommittee also recommended that the Council rescind Brinderson’s provisionally approved program.

The Council met on October 20, 2022, to consider these recommendations. Brinderson appeared at the meeting to contest rescission, and the Council voted to hold an adjudicative proceeding pursuant to RCW 34.05.422(1)(c). It assigned councilmember Ed Kommers as the hearing officer.

Before the hearing, Boilermakers Local 502, Western States Boilermakers Apprenticeship Committee, and Northwest Laborers Employers Training Trust moved to

1 intervene, and the hearing officer granted this motion. The parties also provided briefing on the
2 Council's authority to hold an adjudicatory hearing, the order of evidentiary presentation, and
3 the appropriate burden of proof at hearing. The hearing officer ordered: (1) that the Council
4 was required, under RCW 34.05.422(1)(c), to provide Brinderson with the opportunity for an
5 adjudicative hearing; (2) that the Department should present its evidence first; and (3) that the
6 Department bore the burden to prove, by a preponderance of evidence, that Brinderson's
7 provisionally approved apprenticeship program should be rescinded. The Council hereby adopts
8 and incorporates these rulings by its hearing officer.

9 An evidentiary hearing was held on September 6, 2023; September 21, 2023;
10 November 3, 2023; November 6, 2023; November 13, 2023; December 18, 2023; January 31,
11 2024; February 1, 2024; March 6, 2024; and March 7, 2024. At hearing, the Department was
12 represented by the Office of the Attorney General, per Ryan Houser, Assistant Attorney
13 General. Brinderson was represented by Tim O'Connell and Aaron Doyer from Stoel Rives.
14 The Intervenors were represented by Kristina Detwiler from Robblee Detwiler PLLP.

15 The Department presented the testimony of Gary Peterson and Brittany Craighead.
16 Brinderson presented the testimony of Mike Castillo, Kevin Rhoades, Rhett Dixon, Colin
17 Moore, and Colby Weg.

18 The hearing officer admitted the parties' factual stipulations as Joint Exhibit 1;
19 Department Exhibits 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 21, 22, 23, 23, 25, 26,
20 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52,
21 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62; Brinderson Exhibits B-1, B-2, B-3, B-4, B-9, B-18,
22 B-28, B-29, B-30, B-33, B-38, and B-40; and Intervenor Exhibits I-5, I-15, and I-17. The
23 hearing officer rejected Brinderson Exhibits B-31 and B-34. The Council adopts and
24 incorporates all the hearing officer's evidentiary rulings.

25 The Council, having reviewed the transcript of the proceedings, and having
26

1 considered the exhibits and briefing submitted by the parties, hereby enters the following
2 Findings of Fact, Conclusions of Law, and Decision and Order, which is the final order of the
3 Council.
4

5 II. FINDINGS OF FACT

- 6 1. In 2019, the Legislature enacted House Bill 1817 (later codified as RCW 49.80), requiring
7 employers in high hazard facilities like refineries to utilize increasing percentages of
8 apprenticeship graduates in their workforces. Under the law, at least 20 percent of such
9 employers' skilled journeypersons were required be graduates of a Council-approved
10 apprenticeship program by January 1, 2021. RCW 49.80.030(1). By January 1, 2022, this
11 percentage rose to 35 percent. *Id.* And by January 1, 2024, it was set at 60 percent. *Id.*
- 12 2. As a refinery maintenance contractor, Brinderson was subject to RCW 49.80's
13 requirements. Tr. 1555. In response to the new law, Brinderson submitted proposed
14 apprenticeship standards for the occupation of Industrial Maintenance Mechanic –
15 Petroleum Refinery. *See* Tr. 669, 1555. In early 2021, following a lengthy hearing, the
16 Council issued a written order approving Brinderson's proposed program. Ex. B-33. The
17 Council explained that its approval constituted a one-year provisional registration that
18 could be rescinded following a Department compliance review. Ex. B-33 at 9.
19 Brinderson's provisional registration period was April 15, 2021 through April 14, 2022.
20 Tr. 82-83, 86.
- 21 3. Brinderson's apprenticeship program required 8,000 hours (or approximately four years)
22 of on-the-job training for graduation. Ex. 1 at 5, 7-8. Given this term of apprenticeship, its
23 new apprentices would not graduate in time to comply with RCW 49.80's implementation
24 schedule. But as required by WAC 296-05-015(11), Brinderson's standards contained a
25 provision for awarding advanced standing or credit for "demonstrated competency,
26 acquired experience, training or education in or related to the occupation." Ex. 1 at 10. By
granting advanced standing or credit, an apprenticeship program can more quickly
advance apprentices with previous experience toward graduation. Brinderson's standards
required that it "ensure that a fair and equitable process is applied to apprentices seeking
advanced standing or credit." Ex. 1 at 10.
4. In January 2021, Brinderson adopted an "advanced standing criteria policy" for evaluation
of its apprentices for advanced credit. Tr. 716; Ex. B-38. The policy stated that the process
for credit determination would be uniformly applied to all apprentices. Ex. B-38. And it
contained the following criteria for awarding advanced credit:
- Work experience in the occupation as certified by appropriate records to
substantiate experience, including an affidavit of experience with verification of
dates of employment and position held;

- 1 • A careful review of the documented work experience by the Committee or
- 2 Sponsor;
- 3 • Enrollment in the applicable program for a term of at least six months to be
- 4 considered for early graduation, unless this requirement is waived by the
- 5 Registration Agency or Department.
- 6 • Completes the related supplemental instruction activities scheduled during the
- 7 period they are enrolled in program.
- 8 • Demonstrated competency of skills required for industrial maintenance mechanic
- 9 by passing a competency test consistent with the Industrial Maintenance Mechanic
- 10 Apprenticeship program. In preparing the list of key skills for the trade in
- 11 question, the apprenticeship committee shall consider:
 - 12 ○ Skills designated for certification in all levels of the NCCER certification
 - 13 applicable;
 - 14 ○ Its own judgment as to the key skills required for the apprenticeable trade.
 - 15 ○ Skill assessments must be based on the supervisor's direct observation of
 - 16 the apprentice's work.
- 17 • Advanced standing graduation requests must meet all the criteria above unless
- 18 waived by the governing authorities of the program (i.e. the federal or state
- 19 government department supervising the particular program).

20 Ex. B-38.

- 21 5. Brinderson enrolled its first seven apprentices in February 2021, and it awarded each of
- 22 them 7,000 hours of advanced credit. Tr. 719, 833. Brinderson later registered eight more
- 23 apprentices during the provisional period, awarding all but one 7,001 hours of advanced
- 24 credit. Tr. 1126. This was the maximum amount of advanced credit permitted by law, as
- 25 an apprentice must be an active participant in a program for at least six months (or
- 26 approximately 1,000 hours) to complete an apprenticeship.¹ See WAC 296-05-003(11).
- Due to the awards of advanced credit, Brinderson was able to graduate its first apprentices
- in November 2021.
6. Brinderson did not follow its advanced standing policy in awarding advanced credit to its
- new apprentices. The policy required Brinderson's apprenticeship committee to "carefully
- review" each apprentice's documented work experience when awarding advanced credit,
- with prior experience in the industrial maintenance mechanic occupation "certified by
- appropriate records to substantiate experience, including an affidavit of experience with
- verification of dates of employment and position." Ex. B-38. Brinderson's new
- apprentices filled out a skilled journeyman intake form that listed their prior positions
- and total hours. Tr. 751-52, 1047-48, 1054, 1157-58, 1495-96, 1538. But it made no

¹ Brinderson asked the Council for a variance to exempt seven apprentices from WAC 296-05-003(11)'s six-month participation requirement. Tr. 791-792; Ex. I-17. Brinderson asserted these individuals were already fully trained journey-level workers. Ex. I-17 at 5. The Council denied the variance request.

1 attempt to verify this information was correct. Tr. 1054-56. And in many cases, the forms
2 were not available to Brinderson's apprenticeship committee when it granted advanced
3 credit to apprentices. Tr. 1147, 1429-32, 1545. Several of the forms post-dated the award
4 of advanced credit. *Id.*; *see also* Ex. 35 at 4-5; Ex. 43 at 4-5; Ex. 55 at 5-6. Some were
5 incomplete. Ex. 48 at 4-5; Ex. 53 at 4-5. And Brinderson's training director, Kevin
6 Rhoades, acknowledged that in any event, he did not provide these forms to Brinderson's
7 committee for review. Tr. 1147-49.

8 Brinderson's site manager, Coby Weg, referenced a "massive spreadsheet" that
9 purportedly documented its apprentices' specific work experiences. Tr. 1491-92. But
10 Brinderson never produced any such document at hearing. And in contrast to Weg's
11 testimony, Rhoades testified that the only spreadsheets available to Brinderson's
12 committee were generated by the company's timekeepers/personnel department.
13 Tr. 1047-48. These spreadsheets contained no information about the individual's
14 particular work experience in prior positions. *See, e.g.*, Ex. 34 at 8; Ex. 38 at 8. Given this
15 record, the Council finds that Weg's recollection about the availability of spreadsheets
16 documenting apprentice work experience is likely incorrect.

- 17 7. Rather than determine whether an apprentice's work experience related to the industrial
18 maintenance mechanic occupation (as opposed to work processes in other occupations),
19 Brinderson granted every apprentice at least 7,000 hours of advanced credit based on
20 Brinderson documents showing that they had worked at least 7,000 general hours for
21 Brinderson. Tr. 936, 947, 1052, 1054-59, 1142, 1379-81, 1399, 1401. Underscoring the
22 lack of careful analysis, the February 2021 committee meeting resulting in the award of
23 7,000 hours of credit to Brinderson's first seven apprentices took only 12 minutes.
24 Ex. B-3.
- 25 8. Brinderson asserts that its committee members were already familiar with the individuals
26 seeking advanced credit, making a thorough documentary review unnecessary. *See*
Brinderson Br. 47-61. But in fact, many of the new apprentices' prior experience did not
relate to the industrial maintenance mechanic occupation. Three apprentices were recent
graduates of the CITC Laborer apprenticeship program,² and in granting them
advanced credit, Brinderson did not account for this unrelated work experience. Tr.
936, 947, 1052, 1057-59, 1142, 1379-81, 1399, 1401. The CITC Laborer program is a
6,000-hour program, and much of these apprentices' recent work experience would
necessarily relate to laborer work processes, not industrial maintenance mechanic work.
Nevertheless, Brinderson granted each apprentice 7,000 hours of advanced credit
without further analysis. Tr. 1180-81, 1432, 1546; Ex. 30; Ex. B-3 at 5. Brinderson
likewise granted 7,000 hours of credit to individuals with work histories in welder,
pipefitter, boilermaker, equipment operator, and laborer job titles. *See* Exs. 34, 38, 44,
40, 56, 58. In each case, Brinderson failed to conduct any review of the apprentice's

² CITC is the Construction Industry Training Council, a longstanding Washington apprenticeship program.

1 actual work experiences to determine how much time was specific (or sufficiently
2 related) to the industrial maintenance mechanic occupation to warrant advanced standing
3 or credit.

4 9. Brinderson created a written aptitude test and skills assessment for determining whether to
5 grant advanced credit. Tr. 1052, 1126. But for at least eight apprentices, it awarded
6 advanced credit *before* a skills assessment was completed, so it could not have relied on
7 the assessments when making these determinations. *See* Exs. 34, 36, 42, 44, 46, 52, 56,
8 58. Similarly, many of the apprentices' written aptitude tests were incomplete, unscored,
9 or had missing pages. Three apprentices failed portions of the skills assessment but still
10 received the same amount of advanced credit (the maximum) as other apprentices. *See*
11 Tr. 834-36, 864, 1064, 1169; Exs. 36, 42, 52. Other apprentices failed sections of their
12 written tests. Brinderson admitted that it provided no additional training to apprentices in
13 areas they had failed.

14 10. Given this record, Brinderson's grant of advanced credit was not based on "demonstrated
15 competency, acquired experience, training or education in or related to the occupation."
16 Ex. 1 at 10. Nor did Brinderson "ensure that a fair and equitable process [was] applied to
17 apprentices seeking advanced standing or credit." Ex. 1 at 10.

18 11. In April 2022, at the end of the provisional registration period, the Department's
19 apprenticeship section began a compliance review of Brinderson's apprenticeship
20 program. A Department apprenticeship consultant, Gary Peterson, traveled to
21 Brinderson's offices in Burlington on May 12 and 16, 2022, and photographed documents
22 in its apprentice files. Peterson took photos of each document Brinderson provided during
23 his in-person review. Tr. 161-64, 218-22, 390-92. Yet when Brinderson produced the
24 same apprentice files for the recission hearing, they were substantially different,
25 containing both altered documents and new documents. Tr. 167-68, 176, 1050-51. During
26 Peterson's review, Brinderson did not provide its advanced standing criteria policy,
apprentice aptitude tests, or skills assessments. While Brinderson suggests that Peterson
failed to request these documents (*see* Brinderson Br. 39-41), the Council finds that the
documents were not in the company's apprentice files when Peterson conducted his
review.

12 12. The Department prepared a report and recommendation outlining its findings. Ex. 62.
13 While it identified several recordkeeping issues, its leading concern was the absence of
14 evidence for a fair and equitable process in Brinderson's grant of advanced credit to its
15 new apprentices. Ex. 62. The granting of advanced credit is also the focus of both the
16 Department and the Intervenors' post-hearing briefs in this matter.³

17 ³ The Department's recommendation to the Council's Compliance Review and
18 Retention Subcommittee also noted Brinderson's alleged failures to report RSI hours and
19 timely submit committee minutes. *See* Ex. 62. While the Council finding these procedural

1
2 13. The Department provided its report to the Council's Compliance Review and Retention
3 Subcommittee with a recommendation to rescind Brinderson's provisional registration.
4 Based on the Department's recommendation, the Compliance Review and Retention
5 Subcommittee voted to also recommend rescission.

6 III. CONCLUSIONS OF LAW

- 7 1. Under WAC 296-05-011(1)(c), an initial registration is provisional and lasts one year.
8 After one year, the provisional registration "may be made permanent[,] continued as
9 provisional through the first full training cycle, or rescinded following a compliance
10 review." WAC 296-05-003("provisional registration"). A full training cycle begins with
11 the registration of the program's first apprentice and continues for one calendar year.
12 WAC 296-05-003 ("first full training cycle").
- 13 2. The Department's apprenticeship section is responsible for conducting reviews for
14 compliance with chapter 49.04 RCW and the apprenticeship rules. WAC 296-05-003(33).
15 Compliance reviews consist of a comprehensive analysis and evaluation, including an
16 on-site visit and performance review. WAC 296-05-109(1). While the Department must
17 generally provide a program sponsor with a reasonable opportunity to correct any
18 deficiencies identified in the compliance review (*see* WAC 296-05-109(3)(b)), when a
19 program is provisionally registered and the Department identifies deficiencies its review,
20 the Council "may continue provisional program approval through the first full training
21 term, or rescind program approval." WAC 296-05-109(5).
- 22 3. In general, an apprentice must complete a full term of apprenticeship to complete an
23 apprenticeship program. *See* WAC 296-05-015(1). But in certain limited circumstances, a
24 program may grant its apprentices advanced standing or credit. Under WAC 296-05-
25 015(11), the program may grant advanced standing or credit for "demonstrated
26 competency, acquired experience, training, education, or skills in or related to the
occupation." The rule requires that the program ensure that "a fair and equitable
process is applied to apprentices seeking advanced standing or credit." WAC 296-05-
015(11)(b).
4. Brinderson failed to comply with either these provisions or its own policies in granting 14
of its 15 new apprentices at least 7,000 hours of advanced credit. In its rush meet the
apprentice graduation requirements of RCW 49.80, Brinderson did little to ensure that that
its new apprentices demonstrated the competency, experience, training, education or skills
warranting such awards. Its own advanced standing policy required that apprentice work
experiences be "certified by appropriate records to substantiate experience, including an
affidavit of experience with verification of dates of employment and position held." And

issues concerning, like the Department and the Intervenors, its inquiry focuses on Brinderson's
awards of advanced standing credit to its apprentices.

1 before granting advanced standing, Brinderson's committee was required to perform "a
2 careful review of the documented work experience." Yet Brinderson gave short shrift to
3 these requirements, failing to consider necessary documentation of prior work experience,
4 granting advanced standing to apprentices with inapplicable work histories, and
5 conducting its review in only 12 minutes. In fact, despite its requirement for a written
6 aptitude test and skills assessment, Brinderson granted advanced credit to at least eight
7 apprentices before a skills assessment was completed.

8 5. Given this record, the Council concludes that Brinderson's grant of advanced credit was
9 not based on "demonstrated competency, acquired experience, training or education in or
10 related to the occupation." Nor did Brinderson "ensure that a fair and equitable process
11 [was] applied to apprentices seeking advanced standing or credit" when it granted such
12 credit without regard to documented work experience or testing results.

13 6. Nevertheless, Brinderson asserts that the Council cannot review whether its apprenticeship
14 committee's decisions to grant advanced standing are "substantively correct." Brinderson
15 Br. 42. But the apprenticeship rules require that advanced standing be granted only for
16 "*demonstrated* competency, acquired experience, training or education in or related to the
17 occupation." WAC 296-05-015(11) (emphasis added). Thus, an apprenticeship program is
18 not free to award such credit in the absence of demonstrated merit, particularly when other
19 considerations (present here in the form of RCW 49.80) incentivize the program to
20 graduate its apprentices as quickly as possible. The Council's paramount duty is to protect
21 the best interest of apprentices, and it must ensure that apprentices graduate their programs
22 as fully trained and competent journeypersons. Brinderson's assertion that its advanced
23 standing decisions are insulated from review is not well taken.

24 In any event, advanced standing must be awarded in a "fair and equitable process," not
25 indiscriminately. WAC 296-05-015(11)(b). Brinderson chose the method for that process,
26 adopting an advanced standing policy that required a careful review of documented work
history, as well as a skills evaluation and written aptitude test. Yet the evidence shows that
it ignored these requirements, granting the same advanced credit to apprentices regardless
of their actual work experience or assessment and testing results. Because this hardly
constitutes a fair and equitable process, even were the Council limited to reviewing this
aspect of Brinderson's program, it would find it deficient.

27 7. Brinderson argues that it received inadequate notice of the findings against it, asserting
28 that the Department failed to comply with certain procedural requirements in federal
29 apprenticeship law. *See* Brinderson Br. at 69-71 (citing 29 C.F.R. § 29.8(b)(3), (b)(4)). But
30 Brinderson's reliance on federal law is misplaced when the federal rules expressly
31 contemplate that that state apprenticeship laws may "depart from or impose requirements
32 in addition" to the federal rules. *See* 29 C.F.R. § 29.13; *see also Indep. Training &*
33 *Apprenticeship Program v. Cal. Dep't of Indus. Rels.*, 730 F.3d 1024, 1029 n.2 (9th Cir.
34 2013). And while Washington law also requires that the Department provide a
35 permanently registered program with a reasonable opportunity to correct deficiencies

1 identified in a compliance review (see WAC 296-05-109(3)(b)), when a program is still
2 within its provisional period, both the Department and Council have long interpreted this
3 requirement inapplicable. Instead, under WAC 296-05-109(5), when the Department finds
4 deficiencies during a performance review of a provisionally registered program, it must
5 recommend that the Council either rescind the program or extend its provisional
6 registration. Having found such deficiencies, the Department was required to make such a
7 recommendation. And in any case, even if WAC 296-05-109(3)(b) applies, it is unclear
8 how Brinderson could have corrected the identified deficiencies when it had already
9 graduated apprentices based on the awards of advanced credit.

8. Rescission is warranted here when Brinderson's actions show it had little interest in the
best interests of its apprentices. Brinderson contends that the Department's
recommendation to rescind varied from its past actions, pointing to recommendations for
other provisionally registered programs. *See* Brinderson Br. at 25-33. But in none of those
cases had a program awarded 14 of its first 15 apprentices at least 7,000 hours of advanced
credit without regard to its own policies.⁴ Brinderson's awards of advanced credit without
regard to apprentices' documented work experience, skills assessments, or written aptitude
tests reflect a single minded focus on meeting the apprentice graduation requirements of
RCW 49.80. Because such conduct is incompatible with both the letter and spirit of
apprenticeship law, the Council concludes that rescission of Brinderson's provisionally
approved program is the proper remedy.

14 IV. DECISION AND ORDER

15 Based on the foregoing findings of fact and conclusions of law, the Council's
16 provisional registration of Brinderson's apprenticeship program for the occupation of
17 Industrial Maintenance Mechanic (Petroleum Refinery) is RESCINDED effective July 24,
18 2024. It is so ORDERED.

19 DATED this 20th day of September, 2024.



21 _____
22 MARK RIKER, Chair
23 Washington State Apprenticeship and Training
24 Council

24 _____
25 ⁴ The hearing officer properly rejected this evidence, offered as Brinderson Exhibit B-
26 31, as irrelevant to the Council's decision in this matter. The Department's recommendations
in past cases have no bearing on whether the Council should rescind Brinderson's program
based on the unique fact pattern presented at hearing.

APPEAL RIGHTS

1
2 This Order was served on you the day it was transmitted electronically. RCW 34.05.010(19).
3 **Appeal.** You may appeal this decision to the Director of the Department of Labor and
4 Industries by filing a notice of appeal with the Director within thirty (30) days of service of this
5 decision. The notice of appeal should be filed by mailing it to Joel Sacks, Director of the
6 Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, by emailing
7 it to DirectorAppeal@LNI.WA.GOV, or by delivering it to the Department of Labor and
8 Industries, 7273 Linderson Way SW, Tumwater, WA 98501, with a copy to all other parties of
9 record and their representatives. Filing means actual receipt of the document at the Director's
10 office. RCW 34.05.010(6). A copy shall also be transmitted electronically to William F. Henry,
11 Assistant Attorney General, attorney for the Washington State Apprenticeship and Training
12 Council, at WilliamF.Henry@atg.wa.gov and his Paralegal, Melanie Ruha, at
13 Melanie.Ruha@atg.wa.gov.

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Upon receipt of a notice of appeal, the Director or her designee shall review the record created
by the Washington State Apprenticeship and Training Council and shall issue a written
determination including his or her findings. A judicial appeal from the Director's
determination may be taken in accordance with RCW 34.05.

This written decision was served on you the day it was transmitted electronically. RCW
34.05.010(19). If the decision is not appealed within thirty (30) days, it is final and binding,
and not subject to further appeal. See RCW 49.04.065.

1 This Notice was served on you the day it was deposited in the United States mail. RCW
2 34.05.010(19).

3 **Certificate of Mailing**

4 I, Melanie Ruha, certify under penalty of perjury under the laws of the State of
5 Washington that I caused to be served via electronic service by email (except as otherwise
6 indicated) to the following:

7 Brinderson LLC
8 Kevin Rhoades
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19 ***Intervenor 1***

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WSATC Members (by e-mail only)

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DATED this 20th day of September, 2024 at Seattle, King County, Washington.


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