



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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April 1, 2025

Via E-mail and U.S. Mail

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RE: Northwest Laborers Apprenticeship Committee No. 71
Director No. 2025-009-APP

Dear Parties:

Please find the enclosed Director's Order After Remand, which is served on the date of mailing.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Sacks". The signature is written in a cursive, flowing style.

Joel Sacks
Director

Enclosure

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

In re:

Northwest Laborers Apprenticeship
Committee No. 71

No. 2025-009-APP

**DIRECTOR'S ORDER AFTER
REMAND**

Joel Sacks, Director of the Washington State Department of Labor and Industries, having considered the final decision of the Washington State Apprenticeship and Training Council ("Council") dated December 13, 2024 that amended the program standards of the Northwest Laborers Apprenticeship Committee, No. 71 ("Laborers"), having considered the petition for administrative review filed by the Laborers, and having reviewed the briefing and record, issues this Director's Order After Remand.

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

FINDINGS OF FACT

1. Sponsor Northwest Labor Employers Training Trust (also "Laborers") created proposed amendments to their program standards.
2. Several "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) raised objections to the proposal.

3. The Electrical Programs did not timely object to the Laborers' proposed amendments to the standards filed in June 2023.
4. With no timely objection, the Council did not hold an adjudicative proceeding to create an evidentiary record.
5. At the October 2023 meeting, because the matter had not been resolved, the Council appointed Councilmember Ed Kommers to mediate regarding timely and non-timely objections.
6. The Laborers then revised their proposed amendments.
7. On January 16, 2024, the Electrical Program's counsel wrote a letter raising safety concerns about conduits and racking. This letter was part of the record in the previous proceedings, during which the Laborers participated. It provided:

The Laborers' proposed revised standards also include "Installation, removal, and maintenance of various racking systems. Placement and setting of attachments to various racking systems" under the Heavy/Highway, Renewable Energy Project and Utility Construction Work Process. This is an apparent reference to the installation of [photovoltaic] modules, which present a *significant* safety hazard when being installed. When exposed to daylight, [photovoltaic] modules will generate significant voltages and currents. Licensed electricians are trained in NFPA 70E, including AC and DC hazards. If apprentices are not properly trained and supervised by licensed electricians with a sufficient understanding of the relevant danger (including shock, arc flash, arc blast, and electrocution) they will be subject to substantial unnecessary risk. Electrical apprenticeship programs have specific courses for [photovoltaic] installation and working around energized circuits. Electrical apprentices are also supervised 1:1 by electricians trained and certified to work around these specific hazards. Proper installation of [photovoltaic] modules requires a complete understanding of the National Electric Code ("NEC") and various building codes. The very purpose of the NEC is "the practical safeguarding of persons & property from the hazards arising from the use of electricity." Improper installation compromises the system installation and presents a real danger to both the apprentice and the public.

Unless the Laborers intend to hire licensed electricians as instructors to teach this work, those instructors will not be "competent instructors" under WAC 296-05-003(14) and WAC 296-05-015(g). This lack of competence does not

adequately serve apprentice welfare and in fact will put apprentices at severe safety risk for hazards common to work involving electricity.

Ltr. from SaNni Lemonidis, Counsel for Electrical Programs, to Peter Guzman, Apprenticeship Program Manager (Jan. 16, 2024)

8. 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.
9. Also at the January 2024 meeting, the Electrical Programs raised objections, about which the Council allowed their representative 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.
10. The Council approved the revised proposal for the amended standards at the January 2024 Council meeting.
11. The Electrical Programs appealed to the Director.
12. On July 9, 2024, the Director issued a Director's order.
13. On July 19, 2024, the Electrical Programs moved for reconsideration.
14. On September 10, 2024, the Director issued a Final Order on Reconsideration that was interlocutory as to the Electrical Programs, remanding the case to the Council.
15. In the September 10, 2024 order, the Director stated:

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.

16. The Director's order was served on the Laborers' representative Brandon Jordan, Training Director. Final Director Order on Reconsideration 11 (Sept. 10, 2024).
17. The Director's order informed the Laborers that the Council would be considering this matter on remand, including notice that the Council would consider whether to grant an adjudicative proceeding.
18. The Council placed the matter on its agenda for the October 17, 2024 Quarterly Meeting, publishing the notice. The Laborers representative, Training Director Jordan, appeared and participated in all the meeting agenda items related to the Laborers.
19. In addition to previously submitted materials, the Electrical Programs submitted a letter on September 16, 2024, urging the Council to conduct an adjudication regarding the issue of racking. The letter stated that the "racking" language within the Laborers' revised standards was an "apparent reference to the installation of [photovoltaic] modules, which present a significant safety hazard during the installation process."
20. At the October 2024 meeting, Councilmember Kommers indicated he had considered this information as well as the letter dated January 16, 2024 from the Electrical Programs previously submitted in the record. He said that he didn't "think we need an adjudicative proceeding because there is enough information already." Council Tr. 192 (Oct. 17, 2024).
21. Councilmember Kommers signaled that he would move to modify the racking provision to only include non-photovoltaic modules. He invited the Laborer representative to place objections on the record: "Do you want to - you know, you're welcome to go on the record to say that you don't like that or you do want to do that or you're neutral on it or whatever." Council Tr. 195. The Laborer representative said he was "blindsided" by this potential action. *Id.* He asked for a continuance, which was denied because "given the notice that the order was coming and that was on our Agenda today, I'm going to go ahead with the motion." *Id.* at 195-96. The Laborer representative did not submit an offer of proof regarding the safety of installing racking systems, did not object to Councilmember Kommer's consideration of the Electrical Programs' letters, did not move for an adjudicative proceeding after the continuance was denied, and did not object to the modification
22. The Council's December 13, 2024 order stated:

As it explained at the October 2024 meeting, the Council finds an adjudication unnecessary to decide this issue. The Council agrees that installation of photovoltaic modules presents a significant safety hazard and that licensed electricians must supervise and conduct this work. While the language relating to racking in the Laborers' standards does not specifically reference photovoltaic modules, the Council chooses to exercise its discretion to eliminate any ambiguity. Accordingly, the Council modifies this language to

include the word, “non-photovoltaic,” before the word, “racking,” in the Laborers’ apprenticeship standards.

Order on Remand (Dec. 13, 2024).

23. Based on the Electrical Program’s offer of proof and previous correspondence regarding concerns with installation of photovoltaic modules, the Council’s revision best protects the safety and well-being of laborer apprentices. The Laborers placed no countervailing offer of proof in the record.
24. The Laborers appeal.

CONCLUSIONS OF LAW

1. The Director has the authority to consider this matter under RCW 49.04.065(1). 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.
2. 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.*
3. 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 the Department’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).
4. 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).
5. The Director engages in de novo review of Council orders. RCW 34.05.464(4); RCW 49.04.065. The Director has “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).

6. The Director reviews the Council record, WAC 296-05-008(7)(b), but does not take evidence. *Towle v. Dep't of Fish & Wildlife*, 94 Wn. App. 196, 205, 971 P.2d 591 (1999); RCW 34.05.464. The Laborers offer newly submitted declarations, which, to the extent they offer new information, the Director cannot consider, and they are not admitted.
7. The Laborers argue that the Council did not follow the terms of the Director's order on remand. In the September 10, 2024 order, the Director gave the Council discretion to resolve the issue of safety of racking. The Council acted substantially within the ambit of this discretion. Although it considered safety issues previously, it was within its discretion to adopt a clarification of the standards to provide for the safety of laborer apprentices. At all times, the Council acted to further the welfare of the apprentices. *See* WAC 296-05-001(1). The Director rules the Council could modify the standards to only allow racking involving non-photovoltaic systems because acting to further the welfare of the apprentice is the paramount consideration. *See* RCW 34.05.464(4); WAC 296-05-001(1).
8. The Director affirms the Council's modification to the program standards:

VIII. WORK PROCESSES:

<u>...</u> A. Laborer	Approximate Hours
1. Core Competencies.....	4000
a. <u>Site/Project Preparation and Maintenance</u>	
...	
• Transportation, dismantling, and stockpiling of scaffolding and work platforms and various <i>non-photovoltaic</i> racking systems including, but not limited to, frame and brace scaffold, systems scaffold (cuplock scaffolding, Kwikstage scaffolding, staircase scaffolding, Haki scaffold), tube and clamp scaffold, suspended/swing-stage scaffold, mast climbing (hydromobile) scaffold, shoring scaffold.	
2. Areas of Concentration.....	2000
...	
c. <u>Heavy/Highway and Utility Construction</u>	
...	
• Installation, removal and maintenance of racking methods on <i>non-photovoltaic</i> systems installed by construction craft laborers. Placement and setting of attachments on <i>non-photovoltaic</i> racking systems installed by construction craft laborers.	

9. The Laborers argue that they should receive an adjudicative hearing on the modification. There is no requirement for adjudicative proceeding in RCW 49.04 and WAC 296-05 for a request to modify program standards, but the agency may permit such a hearing. RCW 34.05.413(1). If a party requests an adjudicative hearing for a contested matter about modification of program standards, the Council should grant an adjudicative hearing.
10. Here the Director's order was issued on September 10, 2024, more than 20 days before the October 17, 2024 hearing. The Laborers were put on notice by the Director's order that safety concerns about racking would be addressed by the Council and the order said that an adjudicative hearing was one of the options available. The Laborers received the Director's order. The Laborers knew of the racking issue as it was in the Director's order.
11. At the October 2024 Council meeting, Councilmember Kommers raised the adjudicative hearing issue and specifically gave the Laborers' representative an opportunity to address all issues raised by the councilmember. The Laborers participated in the Council proceedings and did not request an adjudicative proceeding. Their representative merely said that he was "blindsided" by the Councilmember Kommer's proposed motion to only allow non-photovoltaic systems and sought a continuance. Council Tr. 195. The request for a continuance was denied because the matter was on the Agenda and in the Director order. When a matter is duly on a Council Agenda, the Council has the authority to act. A party would have notice that the status quo could be changed by virtue of the agenda item. The Council has authority to consider any relevant factor about the approval of program standards and their amendments. RCW 49.04.010, .050, .065; WAC 296-05-001, -008, -011. It had the authority to consider the Electrical Program's offer of proof, correspondence, and information it had about the safety issue.¹ The Laborer's did not object to consideration of this information at the Council meeting. Failure to object waives any issue. *See Matthias v. Lehn & Fink Prods. Corp.*, 70 Wn.2d 541, 550, 424 P.2d 284 (1967).
12. When the continuance was denied, it was incumbent on the Laborer representative, at the very minimum, to object to the modification and object to the lack of an adjudicative hearing. To excuse these failures, the Laborers argue that there was insufficient notice. An adjudicative proceeding is not a self-executing right. Instead the party must take steps to request such a hearing once notified it is an option. And, if the Laborers thought they had insufficient notice about this option, it was incumbent upon them to object at the Council meeting. *See State v. Robinson*, 120 Wn. App. 294, 299, 85 P.3d 376 (2004).² The Laborer

¹ It unclear from the transcript whether Councilmember Kommers did his own research on the photovoltaic issue. In any event, if the Laborers disagreed with this possible approach, it was incumbent on the Laborers to object.

² In any event, if there was a procedural imperfection, the Director's order and the Agenda substantially complied with any notice requirement. The doctrine of substantial compliance allows a court to find compliance with a statute even though there are procedural imperfections if the actual aim of the statute is complied with. *Cont'l Sports Corp. v. Dep't of Lab. & Indus.*, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996).

representative merely stated that he was blindsided by the proposal to not allow photovoltaic work, not that the Laborers did not have notice about the fact that the Director order would be considered at the Council meeting. There was notice that about the potential modification of program standards.

13. And, because the notice requirement is not jurisdictional, the Laborers would have to demonstrate prejudice for any lack of notice. "Error without prejudice is not grounds for reversal, and error is not prejudicial unless it affects the case outcome." *Qwest Corp. v. Washington Utilities & Transp. Comm'n*, 140 Wn. App. 255, 260, 166 P.3d 732 (2007). There is no prejudice here because the Laborers did not object to the decision to modify the proposed amendments, they did not object to a purported lack of notice about the Council meeting and the Director's order (only about notice regarding the specifics of the modification), and they did not object to the decision to not conduct an adjudicative hearing, so because of waiver of these issues the outcome is not affected.
14. The Director may consider the information the Council had and the lack of appropriate action by the Laborers at the October Council meeting. RCW 34.05.464. In doing so, the proposed amendments, as modified by the Council, are affirmed.
15. The Director has no authority to address the Laborer's constitutional arguments. *See Bare v. Gorton*, 84 Wn.2d 380, 383, 526 P.2d 379 (1974).
16. The Laborers can request a modification of the newly amended racking standard in a new proceeding, and it may request an adjudicative hearing. As discussed, a sponsor may seek to amend its program standards by sending a request to the Department's apprenticeship supervisor at least 45 days before the next quarterly meeting. WAC 296-05-008(3)(c). This matter in this case is not barred by either claim or issue preclusion.
17. The Director denies the Laborers' request for a stay as prematurely requested. RCW 34.05.467.

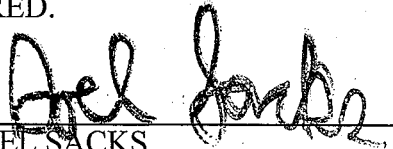
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ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Director affirms the Council's modification to the Laborers' revised apprenticeship standards to include the word "non-photovoltaic" as described above. It is so ORDERED.



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 was e-mailed and mailed on the date listed below via U.S. Mail, postage prepaid, to the following:

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DATED this 1st day of April 2025, at Tumwater, Washington.



LISA DECK