
**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

WESTERN WASHINGTON OPERATING ENGINEERS
APPRENTICESHIP COMMITTEE; WESTERN STATES OPERATING
ENGINEERS INSTITUTE OF TRAINING APPRENTICE-SHIP
COMMITTEE; AND OREGON/SOUTH-WEST WASHINGTON IUOE
701 AND AGC HEAVY EQUIPMENT OPERATORS JATC
Petitioners/Appellants,

v.

WASHINGTON STATE APPRENTICESHIP AND TRAINING
COUNCIL,
Respondent/Appellee,

and

CONSTRUCTION INDUSTRY TRAINING COUNCIL OF
WASHINGTON AND DEPARTMENT OF LABOR AND INDUSTRIES
OF THE STATE OF WASHINGTON,

Interested Parties.

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I. NATURE OF THE CASE

This is an administrative appeal filed by three union affiliated apprenticeship sponsors (union Joint Apprenticeship Training Committees, or JATCs) of a decision by the Washington State Apprenticeship and Training Council (Council) to approve the non-union-affiliated Construction Industry Training Council (CITC) apprenticeship program in the heavy equipment operator (or “operating engineer”) trade. The Apprenticeship and Training Section of the Department of Labor and Industries (Department) is the administrative arm of the Council. The Department is a party to this appeal.

As explained in greater detail below, this is the second time this Court has reviewed the JATCs’ challenge to a Council decision regarding a proposed CITC operating engineer training program that would compete with their training program. In 2005, this Court decided a case that involved a challenge by these same three JATCs to CITC’s then-proposed apprenticeship standards for CITC training. *Western Washington Operating Engineers, et al. v. Wash. State Apprenticeship & Training Council*, 130 Wn. App. 510, 514, 123 P.3d 533 (2005) (“*W. Wash. Op. Engineers I*”). This Court reversed Council approval of a prior CITC-proposed apprenticeship training program based on Council errors (1) in not allowing the JATCs to object to CITC’s committee composition as

part of the apprenticeship standards, and (2) in determining under the evidence of record at that time that CITC's standards were "reasonably consistent," as required by WAC 296-05-316(26),¹ with existing programs particularly with respect to the hands-on training component in the related/supplemental instruction (RSI). *Id.*

Following remand, the Council held an adjudicatory hearing and took evidence relating to CITC's committee, provision of RSI, and appeal rights language in the revised standards that CITC proposed. The Council held that CITC's revised standards met the requirements of this Court's 2005 decision, as well as other legal requirements.² The JATCs have again appealed to this Court.

Like CITC, the Department supports the Council's decision. The Department agrees with the arguments set forth by CITC in its Brief of Interested Party.

II. COUNTERSTATEMENT OF THE ISSUES

1. RCW 49.04.040(2) provides that employee representatives on a committee may be chosen "in a manner which selects representatives of management and nonmanagement" When the law does not provide specific guidelines for the method by which an open-shop apprenticeship

¹ This Department rule and other key rules and statutes discussed in this Brief of Respondent are set forth in full in Appendix A to this brief.

² A copy of the Council-approved program standards is in Appendix B.

program is to select its apprenticeship committee members, was the Council's decision to approve CITC's committee selection procedure legally correct and supported by substantial evidence when the *only* evidence presented to the Council was that each member of the proposed committee was familiar with apprenticeship, the CITC program, and the Operating Engineer trade?

2. Are Administrative Procedure Act (APA) provisions requiring that testimony be under oath and subject to cross examination implicated when the JATCs' challenge relates to a procedural discussion between the Council and CITC, and no unsworn "testimony" was presented to the Council?

3. When the Council relied upon its own precedent in reviewing CITC's committee selection procedure, was the Council required to follow the APA provisions for the "taking of official notice?"

4. This Court previously held in *W. Wash. Op. Engineers I* that the "hands-on" training portion of CITC's RSI must be included in CITC's written standards. Was the Council's decision to approve CITC's standards as reasonably consistent with existing programs supported by substantial evidence when CITC amended its standards to specify the same percentage of "hands-on" training as provided by other

apprenticeship sponsors, including the existing programs of the appealing JATCs?

5. When the Council approved CITC's written standards as amended and presented during the adjudicative hearing, and the Department made a clerical error in distributing a document that did not correspond to the Council-approved standards, does that clerical error invalidate the Council's approval of the amended standards?

6. Is an award of attorney fees to the JATCs against the Council justified under RCW 4.84.350 when either a) the Council decision is correct and the JATCs will not be prevailing parties, or b) the Council's decision was substantially justified?

III. COUNTERSTATEMENT OF THE CASE

A. Background of the Case

1. Overview of Apprenticeship Programs

Apprenticeship is the process of learning a skilled trade in a practical, "hands-on," manner. In Washington, apprenticeship is a voluntary program regulated by the Council. *See* RCW 49.04; WAC 296-05. The Council's primary function is to review, approve, and register apprenticeship and training agreements that are in the best interests of apprentices and which conform to the standards established by RCW 49.04 and corresponding rules in WAC 296-05.

RCW 49.04.030(3). All adjudications relating to the Council's decisions are conducted under RCW 34.05, the APA. WAC 296-05-007.

As noted, the Apprenticeship and Training Section of the Department acts as the administrative arm of the Council. In this role, the Department enforces apprenticeship laws, maintains apprenticeship documents (such as Council approved standards), and is available to assist both union-affiliated programs and open shop programs to develop proposed standards. *See* RCW 49.04.030; WAC 296-05-107.

Formal, Council-approved Apprenticeship training is a benefit to apprentices, employers, and the skilled industry as a whole. Registered apprentices learn a skilled trade while earning wages. *See* WAC 296-05-316(27). Employers benefit by paying reduced wages to apprentices and by paying less than prevailing journey level wages in public works projects. *See* RCW 39.12.021; WAC 296-05-316(27).

RCW 39.04.320 requires that on all public works projects (with some exception for the Department of Transportation) estimated to cost over one million dollars, no less than fifteen percent of the labor hours must be performed by apprentices. "Apprentice" is defined in RCW 39.04.310(1) as "an apprentice enrolled in a state-approved apprenticeship training program." In RCW 39.04.310(4), "State-approved apprenticeship training program" is defined as "an apprenticeship training

program approved by the Washington state apprenticeship council”. This statute creates an additional competitive benefit for contractors bidding on public works projects who have access to apprentices in state-approved programs.

Organizations wishing to start a registered apprenticeship program are called “sponsors” who must first organize an apprenticeship and training committee. WAC 296-05-300(1). The sponsor must obtain Council approval and registration of its committee. RCW 49.04.040; WAC 296-05-300(1).

Once approved and registered by the Council, the committee can submit proposed apprenticeship standards for the Council’s approval. WAC 296-05-300(2). The proposed standards may be challenged by any interested party.³ WAC 296-05-300(6).

2. The Parties and Prior Litigation

CITC consists of seven open shop organizations which joined together to sponsor apprenticeship training programs in the construction industry. *W. Wash. Op. Engineers I*, 130 Wn. App. at 514.

Western Washington Operating Engineers Apprenticeship

³ An “interested party” is essentially an existing program, which has an interest in contesting proposed apprenticeship standards seeking to train apprentices in the same trade or occupation, and in the same geographic area as the existing program. Such a program would compete for apprentices and apprentice employment with an existing program. *Seattle Bldg. & Constr. Trades Coun., et al. v. WSATC*, 129 Wn.2d 787 at 796, 920 P.2d 581 (1996), *cert. denied*, 520 U.S. 1210 (1997).

Committee, Western State Operating Engineers Institute of Training Apprenticeship Committee, and Oregon/Southwest Washington IUOE 701 & AGC Heavy Equipment Operators JATC (collectively, “the JATCs”) are three union apprenticeship program sponsors who objected to CITC’s proposed standards when they were first submitted to the Council, and who ultimately appealed the Council’s prior decision approving CITC’s standards to this court. *W. Wash. Op. Engineers I*, 130 Wn. App. at 515.

In the prior appeal, this Court reversed the Council decision approving CITC’s then-submitted standards, and remanded the case to the Council to hold a further adjudicatory hearing regarding CITC’s committee composition. *W. Wash. Op. Engineers I*, 130 Wn. App. at 527. The Court further vacated the Council’s findings that CITC’s standards were reasonably consistent with existing programs in provision of RSI, and that the program standards adequately articulated an apprentice’s appeal rights. *Id.*

B. Hearing Before The Council On Remand

Following remand, the Council held an adjudicative proceeding on February 16, 2006. R 272.⁴ The issues addressed were limited to those remanded from the Court. R. 272.

⁴ “R” references that administrative record of the Council proceedings.

CITC presented evidence about its proposed committee members through the testimony of Halene Sigmund, CITC's Vice President of Apprenticeship. R. 50. She testified she solicited employer member names from the training agents who participated in CITC's program. R. 51. She further testified she sent requests for volunteers for employee members to the training agents as well, and received calls or faxes from employees interested in serving on the committee. R. 53-55, 65-67.

David Perrin, CITC's Vice President for Education, testified that CITC amended its standards for RSI to specifically reflect that instruction included 60 to 80 percent of hands-on training. R. 87-88. Mr. Perrin testified that the amendment to the language of the standards captured the percentage of hands-on training actually implemented in CITC's curriculum. R. 90.

Following the adjudicatory hearing, the Council determined that:

1. CITC's committee members were appropriately solicited from the group served by the apprenticeship committee. R. 275-76. The committee members either had or would be given adequate information regarding the program and apprenticeship in general to function effectively as apprenticeship committee members. R. 275-76;

2. CITC amended its proposed standards to reflect that "Related/supplemental instruction shall consist of between 60 to 80

percent practical training (skill training or seat time),” which was reasonably consistent with existing program standards in the same trade. R. 274; R. 154; and

3. CITC amended its explanation of disciplinary appeal rights to be consistent with WAC 296-05-009. R. 274; R. 121-22.

C. Appeal By The JATCs

The JATCs petitioned for judicial review specifically challenging the Council’s determinations regarding CITC’s committee and RSI.⁵ The superior court for Thurston County rejected their arguments. Their appeal followed.

IV. STANDARD OF REVIEW

This Court’s review of agency orders is governed by the APA, RCW 34.05. *Dep’t of Ecology v. Theodoratus*, 135 Wn.2d 582, 589, 957 P.2d 1241 (1998). Review is of the administrative decision, not that of the superior court. *Id.* Review of the facts is confined to the record before the Council. RCW 34.05.558. The burden of establishing the invalidity of the Council’s action is on the JATCs as the parties seeking to have the Council’s action overturned. RCW 34.05.570(1)(a).

Generally, the courts may grant relief in this context under three circumstances. *Port of Seattle v. Pollution Control Hearings Bd.*, 151

⁵ The JATCs do not dispute the Council’s decision regarding appeal rights. *See* JATC BA at 4 n.1.

Wn.2d 568, 587, 90 P.3d 659 (2004). First, this Court may grant relief if it finds that the Council's order is "outside the statutory authority or jurisdiction" of the Council, or if the Council "erroneously interpreted and applied the law." RCW 34.05.570(3)(b), (d). Second, this Court may grant relief if the Council order is inconsistent with an agency rule. RCW 34.05.570(3)(h). Finally, this Court may grant relief if the Council's order is not supported by evidence that is substantial when viewed in light of the entire record before the court. RCW 34.05.570(3)(e).

V. ARGUMENT

A. **Substantial Evidence Supports the Council's Approval of CITC's Apprenticeship Committee, and by Extension, Its Selection Procedure.**

The JATCs claim the Council's approval of CITC's committee was wrong on grounds that 1) there was no evidence that the employees chose the employee members; 2) there was no evidence that three committee members possess required knowledge of apprenticeship; 3) the Council's decision was based on "illegal procedure;" and 4) there was no substantial evidence to support the Council's determination that the hands-on training in the CITC program is reasonably consistent with that offered

in existing apprenticeship programs. JATC BA 11-24. They are incorrect on all counts.⁶

1. The employee representatives were properly selected.

The first step for an organization desiring to start apprenticeship training is to organize an apprenticeship and training committee. WAC 296-05-300. The composition of the committee must conform to RCW 49.04.040 (requiring equal number of employer and employee representatives, for example) and WAC 296-05-303. The law governing committee selection does not provide guidance for open shop groups. RCW 49.04.040 simply states: “Such apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen . . . (2) [i]n a manner which selects representatives of management and nonmanagement served by the apprenticeship committee.” RCW 49.04.040.

The JATCs dispute that CITC’s committee selection process complies with RCW 49.04.040. More specifically, the JATCs argue there is no evidence the employee members were chosen by the employees.

⁶ The JATCs couch many of their arguments in such a way as to imply that the burden of proof is on CITC. Here too they are incorrect. As the parties appealing the agency decision, they bear the burden of proof. RCW 34.05.570(1)(a). As discussed further below, the *only* evidence in the record supports the Council’s conclusion. Once CITC made a prima facie case for approval of its committee and standards, it was incumbent upon the JATCs to present evidence to rebut CITC’s evidence. *State v. McAllaster*, 31 Wn. App. 554, 557, 644 P.2d 677 (1981); *Lyle v. Dep’t of Licensing*, 94 Wn. App. 357, 362, 971 P.2d 969 (1999).

JATC BA at 12. While this may be true, it is irrelevant. There is no requirement in statute or administrative code for an open shop program to conduct an employee vote or otherwise mandate that employee representatives be “chosen” by employees. In this instance, the un rebutted testimony was that CITC contacted its training agents to solicit volunteers for both the employer and employee committee members, and those volunteers then contacted CITC. Exhibit 4 to the February proceeding is one of the forms used by CITC in its search for committee members. R. 206. This memorandum states:

CITC is requesting volunteers interested in sitting on the heavy equipment operators committee as employee representatives In order to fulfill this requirement [50% employee and 50% management representation] we are reaching out to any journey level employees who feel they will be able to contribute their time as members of the apprenticeship committee.

R. 206. The form further lists a “job description” for committee members.

Contrary to the JATCs’ assertions, there is simply no evidence in the record to support their contention that the employee representatives were improperly selected. Indeed, the only evidence in the record supports the Council’s conclusion that the committee members came from the group served by the apprenticeship committee, as required by

RCW 49.04.040.⁷ The JATCs argue that in order for employee committee members to “represent” employee interests, they must have been “elected” by employees associated with CITC’s proposed apprenticeship program. None of the definitions of “represent” provided by the JATCs in their brief actually requires some sort of vote, or selection by employees, nevertheless the JATCs infer that requirement from the definitions which they did provide.

RCW 49.04.040 simply requires the committee members be selected “in a manner which selects *representatives* of management and nonmanagement.” RCW 49.04.040(2), (emphasis added). Webster’s Third New International Dictionary defines a representative as “one that stands for a number or class (as of persons or things.)” Webster’s Third New International Dictionary 1926 (1997). The American Heritage Dictionary defines a representative as “one that serves as an example or type for others of the same classification.” The American Heritage Dictionary, Fourth Edition. Houghton Mifflin Company, 2004. 12 Jul.

⁷ As with other aspects of their appeal, the JATCs failed to present critical evidence before the Council on their “employee selection” argument. The JATCs allege that CITC’s committee was improperly constituted because the employee representatives were not chosen by employees. *E.g.*, JATC BA at 12. However, the only evidence in the record on this issue is that CITC asked employers to solicit volunteers for the committee positions. As the JATCs admit, “[t]here is no evidence how the employers went about doing so.” JATC BA at 14. Thus, while insisting that CITC’s committee was created in violation of the law, the JATCs recognize that there is no actual evidence that demonstrates that the committee composition violates the law in the manner in which it was created.

2007. <Dictionary.com <http://dictionary.reference.com/browse/represent>>. Although the JATCs assume this means the representative must be “elected” by the group being represented, there is nothing in the statute imposing this requirement. In this case, the employee representatives were selected from volunteers who were willing to invest the time necessary to be committee members, and who submitted declarations indicating they were employees in the trade with journey level skills. As employees, they share the interests of other employees, and may be said to be representatives of them, as defined above. There is nothing in the record to suggest these employee volunteers are other than they have stated in their declarations, or that they will fail to represent their own interests, or those of other employees in serving on CITC’s committee.

2. The un rebutted evidence shows the proposed committee members meet the knowledge requirements of WAC 296-05-313.

WAC 296-05-313(4) provides that “[a]ll committee members must be knowledgeable in the process of apprenticeship and/or the application of chapter 49.04 RCW and these rules.” The JATCs argue that CITC failed to provide any evidence that three of CITC’s six proposed committee members had *any* knowledge of apprenticeship. JATC BA at 17. The JATCs specifically argue there is no evidence that Whiteis, Dotson and Bogardus have any required knowledge. JATC BA at 17.

This argument ignores critical evidence in the record and the Court should reject it.

There is no requirement that the committee members have the apprenticeship statutes or administrative codes committed to memory. The rule requires that committee members be *knowledgeable* about apprenticeship or the apprenticeship laws. As a practical matter, this requirement may be met if the committee members are familiar with the processes of apprenticeship and the operating engineer trade, and if copies of the relevant statutes are available to them.

This is analogous to the situation with attorneys. The Rules of Professional Conduct require a lawyer to be “knowledgeable” in order to provide competent representation. RPC 1.1. However, the RPCs do not require a lawyer to have statutory citations, rules, or case passages memorized.

CITC proposed Tim Whiteis, Phil Bogardus, and Rod Majors as the three employer representatives.⁸ R. 50. Tim Whiteis was described as a Project Manager for Imco General Construction. R. 51. Imco General Construction participated as a training agent in CITC’s Operating

⁸ The JATCs do not take issue with Rod Majors’ knowledge of apprenticeship. *See*, JATC BA, at 17.

Engineer program.⁹ *Id.* Phil Bogardus was employed by Wilder Construction, another of CITC's training agents. R. 51.

Each of these men signed the Request for New Apprenticeship Committee form submitted to the Department. R. 156. The form states, "We, the undersigned, verify our willingness to serve on the above named apprenticeship committee and that these committee members meet the requirements of WAC 296-05-313." R. 156.

Lonnie Dotson was proposed as one of the employee representatives. R. 53, 160. Halene Sigmund, CITC's Vice President of Apprenticeship, testified that she spoke with Mr. Dotson over the telephone and discussed his responsibilities as an employee representative on the committee. R. 54. She also asked Mr. Dotson to fill out an "Affidavit of Experience." R. 162. She testified she wanted to "ensure again that he was an employee, that he had a good understanding of the work processes and the responsibilities of sitting on the Committee as an employee rep." R. 54, ll. 20-23. The application Mr. Dotson completed in order to become an employee representative also contains a brief "job description," of duties required of the committee member. R. 160. In his "affidavit," Mr. Dotson indicates he is "fully capable of performing the work processes as outlined in the CITC Heavy Equipment Operator

⁹ A training agent is an employer who agrees to furnish on-the-job training to the sponsor's apprentices according to the sponsor's standards. WAC 296-05-003.

standards at journey level and I am fully aware of the importance of my role on the CITC operators committee.” R. 162.

Additionally, Ms. Sigmund testified she telephoned each of the men and spoke with them about their responsibilities as committee members. R. 69-70. She also testified she provided copies of CITC’s standards, WACs and RCWs relating to apprenticeship at a meeting held for that sole purpose. R. 70. She further testified they discussed the standards at that meeting. R. 71. Although Mr. Whiteis did not attend this meeting, Ms. Sigmund testified she will meet with him and provide the standards and applicable RCWs and WACs to him. R. 72; R. 75.

WAC 296-05-313(4) does not specify a particular quantum of “knowledge” which must be shown or proven before a committee member can be approved. The JATCs’ contention that “[t]here is no evidence that the three others, those being Whiteis, Dotson and Bogardus, had any required knowledge” is plainly incorrect.

3. **There was no “unsworn testimony” from CITC during the Council’s quarterly meeting, nor did the Council’s decision hinge upon any such “testimony.”**

The JATCs contend the Council allowed unsworn “testimony” from CITC, and did not allow the JATCs to cross examine on this alleged “testimony.” JATC BA at 18 (citing RCW 34.05.449(2), RCW 34.05.452(3)). This assertion relates *only* to the following exchange

(which took place not during the February adjudicatory hearing, but during the Council's regular quarterly meeting in April 2006):

CHAIRWOMAN NICHOLS: I have a question. Historically for your other programs, is this a selection process that was approved by the Council?

MS. SIGMUND: I'm sorry?

CHAIRWOMAN NICHOLS: Historically for your other approved programs, was this a process that was utilized in order to select committee members?

MS. SIGMUND: Yes.

CHAIRWOMAN NICHOLS: Have you articulated, before, the description of how you choose your committee members?

MS. SIGMUND: No. It's never been requested, other than that they're volunteers.

R. 242.

As an initial matter, even if Ms. Sigmund's description to the Council of its own prior approvals of CITC programs were "testimony," the JATCs failed to object to the "questioning" of Ms. Sigmund by the Council. R. 246-47. Failure to object in a timely fashion waives the objection on appeal. *State v. Guloy*, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985), *cert. denied*, 475 U.S. 1020 (1986). Indeed, although counsel for the JATCs had the opportunity to object, counsel chose instead to request

the Council members base their decision on the testimony given at the February 16 hearing. R. 256.

Furthermore, the exchange with which the JATCs take issue was not “testimony.” Rather, it was simply a response from CITC’s vice-president to a question regarding Council actions in prior adjudications.¹⁰ As the superior court noted in its review in this case, because this was essentially a procedural issue, it was not testimony, Ms. Sigmund did not need to be sworn, and there was no right of cross-examination.¹¹ CP 114. (“This Court concludes that while the answer certainly wasn’t testimony, it was a reference to precedent, if you will, the way things had been done in the past.”).

The JATCs’ argument that Ms. Sigmund’s reference to CITC’s other programs was “testimony” is belied by the fact that the JATCs themselves in similar manner and content asked the Council to examine other training programs during its quarterly meeting. Specifically, counsel for the JATCs argued,

¹⁰ Tellingly, the JATCs have never suggested that the “unsworn testimony” regarding CITC’s “historical[]” committee selection process was untrue, nor have they given any hint as to what, if anything, cross examination might have addressed or revealed. Hence, Judge Tabor’s statement during his oral ruling that, “if indeed [Halene Sigmund, CITC’s Vice President of Apprenticeship,] saying, Yes, we’ve always done it that way, was untrue, if relying upon precedent was inappropriately referring to something that never happened or that didn’t happen in the way it was set forth, that would be a different story”. CP 114-15.

¹¹ It is axiomatic that arguments are not evidence. *State v. Weber*, 159 Wn.2d 252, 278, 149 P.3d 646 (2006).

I'd also suggest that Council look at the track record of this CITC program sponsor – they currently have six approved programs – and ask that the Council look at what their track record has been in those programs: how many completions there have been, what the retention rate has been. This is a struggling program.

R. 241-242. Thus, while they take issue with the Council's alleged consideration of "unsworn testimony" regarding CITC's programs, the JATCs *asked* the Council to consider CITC's *other* approved training programs, not one of which was before the Council. The JATCs can hardly now complain the Council erred when it did what they asked it to do. *State v. Korum*, 157 Wn.2d 614, 646, 141 P.3d 13 (2006) ("Under the invited error doctrine, a party may not set up error at trial and then complain about the error on appeal.")

Finally, assuming for the sake of argument that (a) the discussion of past Council action was testimony, and (b) the JATCs' failure to object was not fatal to their argument, the Court should still affirm the trial court. This is because any error in admitting the evidence was harmless. *See generally, Thieu Lenh Nghiem v. State*, 73 Wn. App. 405, 413, 869 P.2d 1086 (1994). The evidence presented during the adjudicative hearing of February 16, in which Halene Sigmund was sworn as a witness and was cross examined by counsel for the JATCs, provides independent and

substantial evidence that the committee members had knowledge of apprenticeship, as required by WAC 296-05-313(4).

At the February 16 adjudicatory hearing, Ms. Sigmund testified she went out to the contractors participating in CITC's apprenticeship program as training agents for apprentices, and solicited volunteers for employer and employee committee members. R. 49. She testified that all of the proposed committee members, both employer and employee representatives, responded to the request for volunteers. R. 51. Lonnie Dotson, Al Myers and Bruce Solt were the proposed employee representatives. R. 52.

Each proposed employee representative completed a form indicating interest in being a committee member. R. 53. The form included information about the duties of a committee member and a place to indicate years of experience as an operating engineer. R. 53, 160, 162, 164, 166. In addition, Mr. Dotson and Mr. Myers completed affidavits of experience, indicating that they were journey level heavy equipment operators, the number of years of experience in the trade, that they were fully capable of performing the work processes as outlined in CITC's Heavy Equipment Operator standards, and that they were aware of the importance of their roles as committee members. R. 162, 168.

Ms. Sigmund also had follow up conversations with Mr. Dotson and Mr. Myers about their duties as committee members, and their understanding of the requirements of the apprenticeship standards. R. 54, R. 58. Mr. Myers has been an instructor for CITC in their Operator's program. R. 58. Because Mr. Solt was a recent graduate of the CITC Operators program, Ms. Sigmund did not seek an affidavit of experience from him, as she knew he was fully aware of the work processes required by CITC's standards and their apprenticeship. R. 57.

The three employer representatives, Tim Whiteis, Phil Bogardus and Rod Majors also responded to the request for volunteers. R. 51. Mr. Whiteis is a project manager for Imco General Construction. R. 51, 156. Imco is a company working in heavy highway, civil and waste water treatment plant construction. R. 51. It is also a training agent, and has apprentices placed in CITC's Operators' program. R. 51. Mr. Bogardus is a senior project manager with Wilder Construction. Wilder performs the same type of work Imco performs, and has also placed CITC apprentices. R. 51-52, R. 156.

Plainly, the committee members had knowledge of apprenticeship and the operators trade. Substantial evidence thus supports the Council's decision to approve the committee and the standards, taking into consideration only the evidence presented at the February 16 adjudicatory

hearing. Any error regarding the alleged “testimony” of Ms. Sigmund at the April quarterly meeting was harmless. Improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the evidence as a whole. *Nghiem*, 73 Wn. App. at 413.

B. The Council Can Properly Rely upon Its Own Precedent Without Following the APA Requirement for the Taking of Official Notice.

The JATCs argue the Council took “official notice” of its earlier decision regarding CITC’s committee, and in so doing the Council violated RCW 34.05.452(5), which provides that “official notice” may be taken of certain type of evidence and provides a protocol for the taking of such official notice. JATC BA 19. The JATCs’ arguments are misplaced.

A regulatory body may consider the results of its prior experience and the general information making up its fund of knowledge. *State ex rel. County Club of Seattle v. Dep’t of Public Service*, 198 Wash. 37, 86 P.2d 1104 (1939). *See also* RCW 34.05.461(5) (“Where it bears upon the issues presented, the agency’s experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.”) Certainly, its own prior decisions make up the Council’s “fund of knowledge.”

The Secretary of the Council is required to take and keep minutes of all special and regular meetings of the Council. The secretary must

forward copies of minutes of all meetings to all regular and ex officio members of the council, and must make copies of the minutes of all meetings available to the public upon written request. WAC 296-05-105(3). These minutes include all actions taken by the Council at each meeting and are, in effect, the published opinions of the Council. Arguing that the Council must take official “judicial notice” of these minutes is akin to requiring this Court to take judicial notice of its own published opinions before making decisions consistent with those prior published opinions. Further, it should be noted that the Council specifically relied on its prior decision, as reflected in its published minutes, as opposed to “unsworn testimony” of CITC’s vice president regarding that prior determination. This situation is analogous to a judge reviewing case law which has been argued by the parties at trial before rendering a decision.

Additionally, the Council’s prior decisions are not “evidence” of which “judicial notice” need be taken. They are decisions with which the Council has an obligation to be consistent. There is an abundance of case law which makes clear that agencies must follow their own prior decisions. An agency acts in an arbitrary and capricious manner when it treats “similar situations in dissimilar ways.” *Vergyle v. Employment Security*, 28 Wn. App. 399, 404, 623 P.2d 736 (1981). Agencies do not have “carte blanche”. They must “apply the same basic rules to all

similarly situated supplicants.” *Henry v. INS*, 74 F.3d 1, 6 (1st Cir. 1996). An agency thus may not “adopt significantly inconsistent policies that result in the creation of ‘conflicting lines of precedent governing the identical situation.’” *Davila-Bardales v. INS*, 27 F.3d 1, 5 (1st Cir. 1994) (citing *Shaw’s Supermarket, Inc. v. N.L.R.B.*, 884 F.2d 34, 37 (5th Cir. 1989)). When “an administrative agency decides to depart significantly from its own precedent, it must confront the issue squarely and explain why the departure is reasonable.” *Davila-Bardales*, 27 F.3d at 5. The agency must give some reasoned analysis for the change so it is apparent that precedent is not being “casually ignored.” *Springfield, Inc. v. Buckles*, 292 F.3d 813, 819 (D.C. Cir. 2002). Where an “agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious.” *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995).

These cases make it clear that agency precedent *must* be considered when making decisions of a similar nature. The JATCs do not claim the Council did not make the previous decision or that the Council’s previous decision regarding committee selection procedures was unreasonable. Rather, they simply complain that the Council should not

have acknowledged its existence.¹² A decision consistent with the prior decision is appropriate, especially as here, where there is no specific method of selection mandated by statute, WAC or case law.

C. Substantial Evidence Supports The Council's Conclusion That The Practical Hands-On Portion Of RSI Is Reasonably Consistent With That Offered By Program Sponsors Of Existing Apprenticeship Programs.

The JATCs argue there is not substantial evidence to support the Council's determination that the hands-on training in the CITC program is reasonably consistent with that offered in existing apprenticeship programs. JATC BA 20-24. They are incorrect.

When this Court considered the JATCs' challenge to CITC's initial proposed apprenticeship program, the Court found the RSI portion of CITC's program was not reasonably consistent with that offered by other Council-approved programs. *W. Wash. Op. Engineers I*, 130 Wn. App. at 525. This was because other programs had approximately 100 to 120 hours (or 60 to 80 percent) of hands-on training during classroom instruction, while CITC anticipated at most 80 hours (50 percent) of hands-on training during at the time their standards were initially proposed

¹² Furthermore, in light of the lack of any dispute by the JATCs as to the existence and content of the prior decision, any error in not following the protocols of RCW 34.05.452(5) was both harmless error and not prejudicial. It would be a futile gesture for this Court to remand the case based on the protocols of RCW 34.05.452(5) when the practical consequences of remand would be for the Council to again recognize, without any valid objection by the JATCs, the prior decisions of the Council.

in 2000. *Id.* at 524. The Court held that in order for CITC to be consistent with other programs in terms of the hands-on training hours during classroom instruction, 60 to 80 percent of classroom time would need to be hands-on practical training. *Id.*

During her testimony in the post-remand adjudicatory hearing of February 16, Ms. Sigmund testified that CITC had amended its written standards on RSI to include 60 to 80 percent practical training (skill time or seat time). R. 49, 154.

CITC also presented testimony at the February 16 hearing from David Perrin, CITC's Vice President for Education. Mr. Perrin testified he was responsible for overseeing the actual implementation of related instruction for CITC's apprenticeship programs. R. 80. He also testified the Operating Engineers' curriculum that CITC was using was new in 2002 when the first hearings were held on this matter. R. 80. Because implementation of the program occurred after the program was initially approved in 2002, Mr. Perrin saw that the program would actually require more than the minimum of 50 percent of hands-on training. R. 83. The original plan had been for two week blocks of instruction, with two weeks on the equipment, and two weeks in the classroom. As it turned out, much of the two weeks of classroom time also involved hands-on training. Consequently, hands-on training constitutes much more than 50 percent of

the RSI training in CITC's standards. R. 83-84. CITC has amended its proposed standards to reflect that "Related/supplemental instruction shall consist of between 60 and 80 percent practical training (skill training or seat time)." R. 154.

This un rebutted testimony of David Perrin constitutes substantial evidence supporting the Council's determination that CITC's standards for RSI are reasonably consistent with other programs, particularly where there is absolutely no evidence to the contrary.

The requirement that an agency treat similar situations similarly applies here as well as in the approval of CITC's committee composition. In other cases where the Council is considering the approval of program standards, the Council does not consider compliance as part of the approval process. Compliance review obviously cannot occur until standards have been approved, the program has been operational, and there has been some evidence presented that the program sponsors are not complying with Council-approved standards. See WAC 296-05-011. The Council cannot simply assume that CITC will not comply with its standards until the standards have actually been approved. The *only* evidence presented at the hearing was that CITC was not only amending their program standards to require 60 to 80 percent hands-on practical

training during classroom instruction, but that CITC was *actually* providing hands-on training at that level prior to the amendment.¹³

D. The Department's Error In Publishing An Incorrect Set Of Standards Does Not Invalidate The Council's Approval Of CITC's Program.

Finally, the JATCs argue the "official" standards, meaning those distributed by the Department, were not the same as those approved by the Council. JATC BA at 24. According to the JATCs, this procedural issue dooms CITC's entire program.

This argument is a red herring and it is clear the JATCs seek to exploit a simple clerical error. The standards approved by the Council clearly state "[r]elated/supplemental instruction shall consist of between 60 and 80 percent practical training (skill training or seat time)." R. 154.¹⁴ The Council found this was reasonably consistent with standards for apprenticeship already approved in the trade.

The JATCs note the Department published a set of standards that do not contain that language. As the Department cannot unilaterally change the standards from those approved by the Council, it is clear this is

¹³ Curiously, the JATCs' current argument that it is inappropriate for the Council to rely upon the description of RSI contained within CITC's standards contradicts the position they took in their last appeal to this Court, in which they successfully argued that it was not enough for CITC to simply state to the Council the description of RSI, but that such description had to be articulated within the written standards themselves. *W. Wash. Op. Engineers I*, 130 Wn. App. at 524-25.

¹⁴ The standards approved by the Council are set forth in full in Appendix B to the Department's Brief of Respondent, and are in the administrative record at R. 174-97.

a simple clerical error and the actual Council-approved standards govern, not a document distributed by the Department in error.

E. The Equal Access To Justice Act (EAJA), RCW 4.84.350, Does Not Authorize An Award Of Attorney Fees Here Because the JATCs' Arguments On The Merits Fail.

The JATCs have requested an award of costs and attorney fees under RCW 4.84.350, Washington's Equal Access to Justice Act. JATC BA at 24. Attorney fees are not authorized under the circumstances of this case, however, because the Council's decision was correct. Moreover, even assuming for the sake of argument that the Council was incorrect in some respect, the decision is substantially justified.

The EAJA allows for attorney fees for prevailing parties against an agency up to \$25,000 from a judicial review. RCW 4.84.350. Because the Council's decision was correct, the JATCs will not be "prevailing parties" on appeal and will not be entitled to an award for attorney fees.

The Council carefully considered the JATCs' arguments and clearly articulated its rationale for its decision. The Council's approval of CITC's apprenticeship program was correct, and supported by case law, as analyzed in Section V. *supra*. Therefore, the JATCs are not entitled to EAJA fees.

Moreover, a prevailing party is not entitled to attorney fees under the EAJA if an agency's action was substantially justified.

RCW 4.84.350(1). As demonstrated in Section V. *supra*, and as demonstrated by the superior court decision affirming the Council's decision, the Council's action, even if ultimately determined incorrect in some respect, was substantially justified. Thus, even assuming the JATCs prevail in their appeal to this Court, EAJA attorney fees should be denied.

VI. CONCLUSION

The JATCs again present no evidence to support their contention that the Council's review of CITC's program was flawed by comparison to the Council's review and approval of their own programs. They have presented no evidence that the Council has been inconsistent in its treatment of CITC's program under WAC 296-05-316(26) as compared to approval of their own programs, and no evidence that the Council has subjected their programs to the level of scrutiny they would require of the Council here. In reality, what the JATCs are asking is that CITC be held to a higher standard than any of their own programs in seeking approval from the Council.

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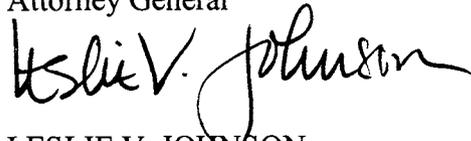
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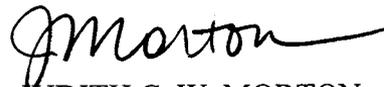
The Council's final order approving CITC's Operating Engineers' standards should be affirmed.

RESPECTFULLY SUBMITTED this 16th day of July, 2007.

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DATED this 16th day of July, 2007, at Tumwater, Washington.

[Signature]
Aleta Johnston

Appendix A

RCW 4.84.350**Judicial review of agency action -- Award of fees and expenses.**

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

(2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. Subsection (1) of this section shall not apply unless all parties challenging the agency action are qualified parties. If two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars. The court, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

[1995 c 403 § 903.]

NOTES:

Findings -- 1995 c 403: See note following RCW 4.84.340.

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 34.05.449
Procedure at hearing.

(1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

[1989 c 175 § 18; 1988 c 288 § 414.]

NOTES:

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.452

Rules of evidence -- Cross-examination.

(1) Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings.

(3) All testimony of parties and witnesses shall be made under oath or affirmation.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(5) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

[1988 c 288 § 415; 1959 c 234 § 10. Formerly RCW 34.04.100.]

RCW 34.05.558

Judicial review of facts confined to record.

Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter.

[1988 c 288 § 513.]

RCW 34.05.570
Judicial review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to

follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 39.04.310

Apprenticeship training programs -- Definitions.

The definitions in this section apply throughout this section and RCW 39.04.300 and 39.04.320 unless the context clearly requires otherwise.

(1) "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program.

(2) "Apprentice utilization requirement" means the requirement that the appropriate percentage of labor hours be performed by apprentices.

(3) "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.

(4) "State-approved apprenticeship training program" means an apprenticeship training program approved by the Washington state apprenticeship council.

[2005 c 3 § 2.]

NOTES:

Effective date -- 2005 c 3: See note following RCW 39.04.300.

RCW 39.04.320**Apprenticeship training programs -- Public works contracts of one million dollars or more -- Fifteen percent of labor hours to be performed by apprentices -- Exceptions.**

(1) From January 1, 2005, and thereafter, for all public works estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(2) Awarding agency directors may adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas;

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;

(c) Participating contractors have demonstrated a good faith effort to comply with the requirements of chapter 3, Laws of 2005; or

(d) Other criteria the awarding agency director deems appropriate, which are subject to review by the office of the governor.

(3) This section applies only to public works contracts awarded by the state. However, this section does not apply to contracts awarded by state four-year institutions of higher education, state agencies headed by a separately elected public official, or the department of transportation.

(4)(a) The department of general administration must provide information and technical assistance to affected agencies and collect the following data from affected agencies for each project covered by this section:

(i) The name of each apprentice and apprentice registration number;

(ii) The name of each project;

(iii) The dollar value of each project;

(iv) The date of the contractor's notice to proceed;

(v) The number of apprentices and labor hours worked by them, categorized by trade or craft;

(vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and

(vii) The number, type, and rationale for the exceptions granted under subsection (2) of this section.

(b) The department of labor and industries shall assist the department of general administration in providing information and technical assistance.

(5) At the request of the senate labor, commerce, research and development committee, the house of representatives commerce and labor committee, or their successor committees, and the governor, the department of general administration and the department of labor and industries shall compile and

summarize the agency data and provide a joint report to both committees. The report shall include recommendations on modifications or improvements to the apprentice utilization program and information on skill shortages in each trade or craft.

[2005 c 3 § 3.]

NOTES:

Effective date -- 2005 c 3: See note following RCW 39.04.300.

RCW 39.12.021

Prevailing rate to be paid on public works -- Apprentice workers.

Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

[1989 c 12 § 8; 1963 c 93 § 1.]

RCW 49.04.030**Supervisor of apprenticeship -- Duties.**

Subject to the confirmation of the state apprenticeship council by a majority vote, the director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote apprenticeship programs conforming to the standards established under this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state apprenticeship committees; (3) when authorized by the apprenticeship council, register apprenticeship agreements that are in the best interests of the apprentice and conform with standards established under this chapter; (4) keep a record of apprenticeship agreements and upon successful completion issue certificates of completion of apprenticeship; and (5) terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements.

The supervisor may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally. The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the supervisor of apprenticeship in the execution of the supervisor's functions under this chapter.

[2001 c 204 § 2; 1979 ex.s. c 37 § 2; 1961 c 114 § 2; 1941 c 231 § 2; Rem. Supp. 1941 § 7614-4.]

NOTES:

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

RCW 49.04.040**Apprenticeship committees -- Composition -- Duties.**

Upon July 22, 2001, all newly approved apprenticeship programs must be represented by either a unilateral or joint apprenticeship committee. Apprenticeship committees must conform to this chapter, the rules adopted by the apprenticeship council, and 29 C.F.R. Part 29 and must be approved by the apprenticeship council. Apprenticeship committees may be approved whenever the apprentice training needs justify such establishment. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen:

(1) From names submitted by the respective local or state employer and employee organizations served by the apprenticeship committee; or

(2) In a manner which selects representatives of management and nonmanagement served by the apprenticeship committee. The council may act as the apprentice representative when the council determines there is no feasible method to choose nonmanagement representatives.

Apprenticeship committees shall devise standards for apprenticeship programs and operate such programs in accordance with the standards established by this chapter and by council-adopted rules. The council and supervisor may provide aid and technical assistance to apprenticeship program sponsors and applicants, or potential applicants.

[2001 c 204 § 3; 1941 c 231 § 3; Rem. Supp. 1941 § 7614-5.]

WAC 296-05-007 Rules of procedure. All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapter 34.05 RCW, the Administrative Procedure Act and chapter 10-08 WAC, Model Rules of Procedure. The chair (or designee) is the presiding officer for adjudicative proceedings, held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication has been held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five working days after the next regular quarterly meeting unless:

- (1) The WSATC upon its own motion determines that the initial order should be reviewed; or
- (2) A party to the proceedings files a petition for review of the initial order.

The WSATC may appoint a person to review the initial order and prepare and enter the final WSATC order.

[Statutory Authority: RCW 49.04.010, 04-10-032, § 296-05-007, filed 4/28/04, effective 6/1/04. Statutory Authority: RCW 49.04.010 and 2001 c 204 (SHB 1234), 02-10-083, § 296-05-007, filed 4/29/02, effective 6/1/02. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW, 01-22-055, § 296-05-007, filed 10/31/01, effective 1/17/02.]

WAC 296-05-011 Compliance reviews. (1) The purpose of a compliance review is to systematically and periodically review apprenticeship programs to ensure that the sponsor is complying with the approved program standards and these rules. Compliance reviews consist of a comprehensive analysis and evaluations of each aspect of the apprenticeship program. They must include on-site investigations and audits.

(2) A compliance review may be required:

(a) For all existing programs on a regular and comprehensive basis.

(b) When the WSATC receives a complaint, which has not been referred to a private review body. (See WAC 296-05-009.)

(c) When a sponsor seeks to reregister a program.

(d) When a sponsor seeks to register a new program.

(3) If a compliance review indicates that the sponsor is not operating as required by these rules, the supervisor must notify the sponsor in writing of the results of the review. The supervisor must:

(a) Make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before penalizing as authorized in WAC 296-05-013.

(b) Provide recommendations to the sponsor to assist in achieving compliance.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-011, filed 10/31/01, effective 1/17/02.]

WAC 296-05-105 Officer duties. (1) The chair shall preside over all meetings, conducting them in accordance with *Robert's Rules of Order* as modified by these rules and regulations. The chair may vote in all matters before the WSATC as a regular member and may participate in discussion of all matters before the WSATC. The chair may also have other powers and duties that are provided in these rules; and are usual or necessary with the office of the chair; and as provided in *Robert's Rules of Order*.

(2) The vice-chair shall preside over all WSATC meetings in the absence of the chair. When presiding, the vice-chair shall have all of the powers and duties of the chair.

(3) The secretary, with the assistance of a recording secretary, must take and keep minutes of all special and regular meetings on file in the supervisor's office. The secretary must forward copies of minutes of all meetings to all regular and ex officio members of the WSATC. The secretary must also make copies of the minutes of all meetings available to the public upon written request. The secretary may also have other powers and duties that are provided in these rules or are usual or customary to the office of secretary; and as provided in *Robert's Rules of Order*.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-105, filed 10/31/01, effective 1/17/02.]

WAC 296-05-107 Additional duties for the supervisor-administrator of WSATC. (1) In addition to being the council secretary, the apprenticeship supervisor (supervisor) is the WSATC administrator. As WSATC administrator, the supervisor must:

- (a) Perform the duties listed in RCW 49.04.030;
- (b) Register all apprenticeship agreements that comply with the rules in this chapter;
- (c) Review apprenticeship programs and recommend cancellation of any committee program, or plant program previously registered which is not operated in conformity with its apprenticeship standards; and
- (d) Receive all documents concerning apprenticeship or training agreements (including revisions to) or any other matters affecting apprenticeship or training.

All written correspondence to the supervisor should be addressed to:

Supervisor of Apprenticeship and Training

Department of Labor and Industries

Apprenticeship Section

P.O. Box 44530

Olympia, Washington 98504-4530

(2) The supervisor and the supervisor's staff:

- (a) May be consulted on any matters concerning apprenticeship and training and will provide on request, any information concerning apprenticeship and training available to them.
- (b) Will conduct systematic reviews of the operation of all programs and investigate any discrepancies between the actual and required operations of any program. The supervisor will notify the noncompliant committee of any violation.
- (c) May recommend sanctions including cancellation of a program not in compliance with its approved program standards.
- (d) Assists in the resolution of any complaints against committees or other organizations administering apprenticeship agreements, which have been filed with the WSATC by apprentice(s) who have completed his/her initial probationary period.
- (e) Must investigate any discrepancies of all complaints as specified in WAC 296-05-009.
- (f) Conducts compliance reviews as specified in WAC 296-05-011.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-107, filed 10/31/01, effective 1/17/02.]

WAC 296-05-300 Apprenticeship and training programs -- Approval. The WSATC is the body responsible for matters concerning apprenticeship and training in the state of Washington. The principal function of the WSATC is to approve, register, and regulate apprenticeship and training agreements. Persons or organizations desiring to institute an apprenticeship or training program must follow these steps:

(1) Organize an apprenticeship and training committee according to WAC 296-05-303 and file affidavits with the WSATC requesting that the committee be recognized.

(2) Once the committee is recognized, it must propose standards conforming to these rules and to chapter 49.04 RCW. In addition, the standards must include the composition of the committee and general rules that it will follow in administering the program. (The apprenticeship supervisor and department apprenticeship coordinators are available to give assistance drafting standards.)

(3) These standards must be presented to the supervisor at least forty-five days before the regular quarterly meeting at which the WSATC is requested to consider such proposed standards.

(4) At the regular quarterly meeting, the proposed standards will be considered by the WSATC. The WSATC will:

(a) Approve;

(b) Approve provided the sponsor accepts the changes recommended by the WSATC; or

(c) Disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

If the WSATC disapproves the standards, it shall direct the department to inform the sponsor in writing the reason for disapproval.

(5) Once the WSATC approves the program standards the committee is authorized to function and perform its duties as described in WAC 296-05-316.

(6) If a competitor objects to the proposed standards or proposed amendment(s) to existing standards, the WSATC may either adjudicate the objection(s) with the proposed standards or refer the objection(s) with the proposed standards or proposed amendment(s) to existing standards to an administrative hearing as described in WAC 296-05-007. For purposes of this subsection "competitor" means a competing apprenticeship program in a similar or subset of the trade, craft, or occupation within the geographic area served.

[Statutory Authority: RCW 49.04.010 and 2001 c 204 (SHB 1234). 02-10-083, § 296-05-300, filed 4/29/02, effective 6/1/02. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-300, filed 10/31/01, effective 1/17/02.]

WAC 296-05-303 Apprenticeship committees -- Duties and responsibilities. (1) Apprenticeship committees are appointed according to the provisions of RCW 49.04.040 and are composed of at least four members but no more than twelve. However, the WSATC may grant exceptions to this provision.

(2) Chapter 49.04 RCW, these rules, and the approved standards under which a committee operates define the duties of an apprenticeship committee. Committees shall function, administer or relinquish authority only with the consent of the WSATC.

(3) A committee is responsible for:

- The day-to-day operations of the apprenticeship and training program;
- Operating the program according to WSATC approved standards;
- Accepting or rejecting applicants for apprenticeship or training;
- Registering approved applicants with the supervisor;
- Removing apprentices from the program as provided by the approved program standards;
- Informing the supervisor of any matters that affect the standing of individuals as apprentices; and
- Entering into agreements with other apprenticeship committees for the use of apprentices by training agents that are working outside their approved geographic area served.

The WSATC will only recognize apprentices registered with the supervisor.

(4) Committees approved by the WSATC must offer training opportunities on an equal basis to all employers and apprentices including all rights, appeals, and services available in the existing apprenticeship program. All existing committees that represent multiple employer or employer associations, except for committees that represent plant programs, are expected to provide access to apprenticeship and training opportunities to employers not currently participating in the program. Those opportunities must:

- Provide training at a cost equivalent to that incurred by currently participating employers and apprentices;
- Grant equal treatment and opportunity for all apprentices;
- Offer reasonable working and training conditions and apply those conditions to all apprentices uniformly and equally;
- Not require an employer to sign a collective bargaining agreement as a condition of participation in an apprenticeship program;
- Require all employers requesting "approved training agent" status to comply with an WSATC approved agreement and all federal and state apprenticeship rules and the appropriate apprenticeship standards. (The training agent shall employ only registered apprentices when training for that occupation or trade);
- Require sponsors, who approve "approved training agent" agreements, to furnish the department

with a copy of the agreement and/or the list of approved training agents within thirty days of committee approval; and

- Require sponsors who rescind "approved training agent" agreements and/or the list of approved training agents to notify the department that they have done so within thirty days of said action.

(5) Apprenticeship program sponsors may send registered apprentices to limited training agents.

This shall be called a "limited training agent agreement," which is when an employer that is not currently a registered training agent to a set of apprenticeship standards, enters into a single public works project agreement with the program sponsor for the purposes of apprenticeship utilization. The limited training agent agreement must specify that:

- The program sponsor must ensure that all program requirements are being followed.
- Apprenticeship utilization requirements must be in the public works contract.
- The agreement is for a specific trade(s) or occupation(s).

The limited training agent must sign the training agent form.

This limited training agent agreement does not obligate the employer to use registered apprentices in any other type of work or trade or occupation other than the one for which the limited training agreement is entered into.

This is a pilot program lasting for two years (July 2004 - July 2006) in Spokane County only.

The department must conduct a study and provide a report back to the Washington state apprenticeship and training council on the effect of the rule. This report should contain vital information including the numbers of apprenticeship hours generated, any adverse impacts on apprenticeship programs and apprentices, any compliance problems, any health and safety problems, or other considerations requested by the council at a later date. This report is due to the WSATC by March 15, 2006.

(6) If an existing committee fails to or refuses to offer apprenticeship and training opportunities to all employers, the WSATC may take action to remove the restrictions to access in order to comply with the intent of chapter 49.04 RCW and these rules. Action may include, but is not limited to, the decertification of the existing committee and recognition of a new committee.

[Statutory Authority: RCW 49.04.010. 05-04-093, § 296-05-303, filed 2/2/05, effective 4/1/05. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-303, filed 10/31/01, effective 1/17/02.]

WAC 296-05-313 Apprenticeship committees -- Composition. (1) Apprenticeship committees must be composed of an equal number of management and nonmanagement representatives.

(2) For apprenticeship committees that represent one occupation, at least fifty percent of the members of committees must be occupationally qualified by education and experience in the specific occupation for which the committee is responsible. The committee must be able to verify the occupational qualifications of the members.

(3) For apprenticeship committees that represent multiple occupations, the committee members must either:

- Be occupationally qualified by education and experience in the specific occupations for which the committee is responsible and must be able to verify the occupational qualifications of the members; or
- Be known to represent the interests of the multiple occupations served.

(4) All committee members must be knowledgeable in the process of apprenticeship and/or the application of chapter 49.04 RCW and these rules.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-313, filed 10/31/01, effective 1/17/02.]

WAC 296-05-316 Apprenticeship agreements -- Standards requirements. The WSATC shall have the authority to develop, administer, and enforce program standards for the operation and success of an apprenticeship and training program.

The sponsor's proposed program standards must include a list of duties and responsibilities of the program sponsor reasonably consistent with other approved program standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee.

EXCEPTION: This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be at least three times per year, be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Conference call meetings may be conducted in lieu of regular meetings but must not exceed the number of attended meetings and no disciplinary action shall be taken at conference call meetings.

(c) Determine the program sponsor's need for apprentices in the area covered by the apprenticeship standards established under these rules.

The following are some examples of ways the program sponsor can demonstrate that the need for apprentices exists:

- Statistical analysis of workload projections;
- Demographics;
- Information relating to expected workload growth.

(d) Establish minimum standards of education and skilled occupational experience required of apprentices.

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker.

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards.

EXCEPTION: This does not apply to plant programs.

(g) Recommend competent instructors and related/supplemental instruction in accordance with local vocational requirements.

(h) Recommend a course outline for related/supplemental instruction, as well as coordinate related/supplemental instruction with on-the-job work experience.

(i) Hear and adjust all complaints of violations of apprenticeship agreements.

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules.

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period.

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules. (See WAC 296-05-318.)

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex, color, religion, national origin, age, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an affirmative action plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, hours of study per year (which shall be a minimum of one hundred forty-four hours per year).

(7) An attendance policy which includes a provision that if the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement. A provision that time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not paid for the classroom time. A provision that the hours of actual attendance by the apprentice in related supplemental instruction classes must be reported to the department on a quarterly basis for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the department.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including:

- Certificate of completion;
- Additional credit;
- Suspension;
- Military service;
- Reinstatement;
- Cancellation; and
- Corrections.

(11) A provision for advancing an apprentice's standing based on previous experience in the skilled trade or in some other related capacity.

(12) A provision for the transfer of an apprentice from one training agent to another training agent or the sponsor in order to provide as much as possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04, 34.05 RCW, and these rules.

(15) A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related/supplemental instruction which instruction shall be not less than one hundred forty-four hours per year.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of age. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established trade procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

- Withhold periodic wage advancements;
- Suspend or cancel the apprenticeship agreement;
- Take further disciplinary action; or
- The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal, of the committee's action, to the WSATC.

(22) A provision for an initial probation which the WSATC or the supervisor of apprenticeship may terminate an apprenticeship agreement at the written request by any affected party. The initial probation must not exceed twenty percent of the term of apprenticeship unless an exemption has been granted for longer probationary periods as specified by Civil Service or law. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause. An appeal process is available to apprentices who have completed the initial probationary period.

(23) Provisions prohibiting discrimination on the race, sex, color, religion, national origin, age, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure adequate records of the selection process are kept for a period of at least five years and are available to the WSATC or its representative on request. ("Adequate records" means at least a brief summary of any interviews and the conclusions reached on each of the specific factors which are part of the total judgment concerning each applicant.)

(25) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

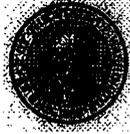
(26) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry, craft or trade in question taking into account the WSATC's determination of the apprenticeship needs of the trade and geographic area. (Statistical analysis of workload projections, demographics, and information relating to expected workload growth are examples of ways the sponsor may demonstrate that the need for apprentices exists.) The goal is to achieve general statewide uniformity of standards in each industry, trade or craft. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor for a trade, craft, or occupation. If the United States Department of Labor has not established a minimum number of hours for a trade, craft, or occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be designed to achieve the same levels of skills as existing standards within the state for that industry, trade, or craft.

(27) A provision to ensure that the progressively increasing wage scales based on specified percentages of journey-level wage, which must be submitted, at least annually, to the WSATC. These may be submitted on a form provided by the department.

A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

[Statutory Authority: RCW 49.04.010. 05-10-087, § 296-05-316, filed 5/4/05, effective 6/15/05. Statutory Authority: RCW 49.04.010 and 2001 c 204 (SHB 1234). 02-10-083, § 296-05-316, filed 4/29/02, effective 6/1/02. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-316, filed 10/31/01, effective 1/17/02.]

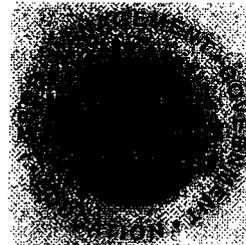
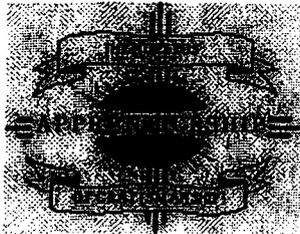
Appendix B



STANDARDS OF APPRENTICESHIP
adopted by

CONSTRUCTION INDUSTRY TRAINING COUNCIL OF WASHINGTON

| <u>Skilled Occupational Objective(s):</u> | <u>(sponsor)</u> | <u>DOT</u> | <u>Term</u> |
|---|------------------|-------------|-------------|
| CONSTRUCTION EQUIPMENT OPERATOR | | 859.683-010 | 7000 HOURS |



APPROVED BY
Washington State Apprenticeship and Training Council
REGISTERED WITH
Apprenticeship Section of Specialty Compliance Services Division
Washington State Department Labor and Industries
Post Office Box 44530
Olympia, Washington 98504-4530

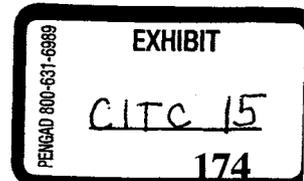
APPROVAL:

Initial Approval _____ FEBRUARY 16, 2006
Committee Amended

Standards Amended (review) _____ FEBRUARY 16, 2006
Standards Amended (administrative)

By: MELINDA NICHOLS
Chair of Council

By: PATRICK WOOD
Secretary of Council



CONSTRUCTION INDUSTRY TRAINING COUNCIL OF WASHINGTON

The Washington State Apprenticeship and Training Council (WSATC) has the authority to develop, administer, and enforce apprenticeship program standards (Standards) for the operation and success of an apprenticeship and training program in the State of Washington.

Apprenticeship programs and committees function, administer, or relinquish authority only with the consent of the WSATC and only apprentices registered with the supervisor or recognized under the terms and conditions of a reciprocal agreement will be recognized by the WSATC. Parties signatory to these Standards declare their purpose and policy is to establish and sponsor an organized system of registered apprenticeship training and education.

These Standards are in conformity and are to be used in conjunction with the Apprenticeship Rules, Chapter 296-05 WAC (Washington Administrative Code); Apprenticeship Act, Chapter 49.04 RCW (Revised Code of Washington); The National Apprenticeship Act, 29 U.S.C. (United States Code) 50; Apprenticeship Programs, Title 29 Part 29 CFR (Code of Federal Regulations); and Equal Employment Opportunity in Apprenticeship and Training, Title 29 Part 30 CFR which govern employment and training in apprenticeable occupations. They are part of this apprenticeship agreement and bind all signers to compliance with all provisions of registered apprenticeship. Additional information may need to be maintained by the program that is supplemental to these apprenticeship standards. This information is for purposes of ensuring compliance with decisions of the WSATC and the apprenticeship laws identified above.

If approved by the council, such amendment/s and such changes as adopted by the council shall be binding to all parties. Sponsors shall notify apprentices of changes as they are adopted by the council. If and when any part of these Standards becomes illegal, as pertains to federal and/or state law, that part and that part alone will become inoperative and null and void, and the Department of Labor and Industries (L&I) may adopt language that will conform to applicable law. The remainder of the Standards will remain in full force and effect.

See WAC 296-05-003 for the definitions necessary for use with these Standards.

I. GEOGRAPHIC AREA COVERED:

The sponsor has no authority to conduct training outside of the geographical area covered by these Standards. The sponsor may enter into an agreement (portability agreements – see WAC 296-05-303(3)) with other apprenticeship committees for the use of apprentices by training agents that are working outside their approved geographic area. Also, if a reciprocity agreement (see WAC 296-05-327) is in place, the out-of-state sponsor may use their registered apprentices. The sponsor will ensure compliance with the provisions of any agreement recognized by the WSATC.

The area covered by these Standards shall be the State of Washington.

CONSTRUCTION INDUSTRY TRAINING COUNCIL OF WASHINGTON

II. MINIMUM QUALIFICATIONS:

Minimum qualifications must be clearly stated and applied in a nondiscriminatory manner (see WAC 296-05-316).

Age: Not less than 18 years.

Education: Applicant must have a high school diploma or G.E.D. at the time of application. A waiver for high school diploma/G.E.D. may be granted for applicants who can provide documentation that they have worked two (2) or more years in the constructions industry.

All applicants must submit to the Apprenticeship Committee, a copy of documents showing proof of age, high school diploma or G.E.D., DD-214 (if applicable), resume, work history, letters of recommendation, and additional information the applicant feels beneficial, within sixty (60) days after making application.

Physical: The applicant must be physically and mentally able to perform the work of the trade.

Testing: Schieg Utility Worker 1.0 Assessment. Must score a minimum of T-50.

Other: Applicants must have a valid Washington State Drivers License and dependable transportation.

III. CONDUCT OF PROGRAM UNDER WASHINGTON EQUAL EMPLOYMENT OPPORTUNITY PLAN:

Sponsors with five (5) or more apprentices must adopt an Equal Employment Opportunity (EEO) Plan and Selection Procedures (see Part D of Chapter 296-05 WAC and 29 CFR Part 30).

The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex, color, religion, national origin, age, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations. (WAC 296-05-316(3))

A. Selection Procedures:

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1. **Applications are accepted at the Construction Industry Training Council's training facility, 1930 - 116th Avenue, NE, Suite 201, Bellevue, every Thursday between 9:00 a.m. and 12:00 p.m. year around, except for holidays.**
2. **The applicant will sign a "Record of Apprentice Applicants", which acts as a logbook, then the applicant will be given an "Application for Apprenticeship." The application must be completed on site. In this logbook each line will carry a number corresponding to the serial number of an application. Columns will be provided to show progress, by dates, and final disposition.**
3. **After acceptance as an applicant by completing the application and providing the required information relating to meet the minimum requirements, an applicant will be scheduled for an interview. Interviews will be held in January, April, June, and September.**
4. **The Committee will determine the number of applicants to be accepted prior to holding interviews.**
5. **Applicants are instructed that CITC will keep a record of their Application on file for five years.**
6. **In January and June, applicants will be placed in rank order. Applicants being interviewed in April and September will not be ranked and placed on the Ranked Eligibility Pool until the following January or June, unless there are no available applicants on the list.**
7. **In January and June, any applicants remaining in the Ranked Eligibility Pool will be re-contacted to determine their continued eligibility, willingness and commitment to being registered and referred for work. All applicants will then be re-ranked in the Ranked Eligibility Pool every six months**
8. **Employers may request women and minority applicants in order to meet their own contractual affirmative action requirements for public works projects or other projects with affirmative action requirements.**
9. **The order of the pool may be superseded to meet CITC affirmative action goals in conformation with the Washington State Apprenticeship and Council Rules.**
10. **A company who becomes a training agent with CITC must register their employees within 30 days of the Company's registration date. Graduates**

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of committee approved programs such as Job Corps may receive direct entry to direct referral.

11. CITC's Training Agents may incorporate their employment practices with applicants and apprentices from the pool
12. Applicants with previous experience or training in the trade may request to have previous hours accounted for toward their apprenticeship certification. Each individual case would come before the Apprenticeship Committee for review and recommendation.
13. Prior to placement on the Ranked Pool of Eligibles, the Committee shall evaluate each applicant's prior experience and work history in order to place the applicant into the program at the proper level of work experience and wage progression.
14. **The Interview Session:**
 - a. The interview committee shall have in its possession for review with regard to each applicant: Application form, education transcript, and proof of birth date.
 - b. Each applicant shall be interviewed by members or designated representatives of the Committee.
 - c. After a brief introduction, the Committee will ask questions of the applicant with the purpose of finding out as much as possible about him/her as an individual and about his/her capacity to participate in apprenticeship.
 - d. Questions for the interview and for purposes of evaluation will be on topics related to job performance such as: Work experience, mechanical abilities, and motivation.
 - e. Evaluation must be based on a standard of industry needs, and not by a comparison with other applicants.
 - f. Evaluation of the interview will be based on Excellent, Good, Fair, Poor, and Unacceptable responses on each topic.
 - g. Excellent will be given a numerical range of 16 to 20; Good will be given a numerical range of 11 to 15; Fair will be given a numerical range of 6 to 10; Poor will be given a numerical range of 1 to 5; Unacceptable will be given a zero value. Any applicant who has 50% or more unacceptable responses will not be considered for apprenticeship.

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- h. Answers to questions must be recorded during the interview to produce a record for the applicant's file.**
- i. All applicants must be asked the same questions.**

15. Exceptions:

- a. Individuals who are currently employed by an approved training agent under an employment category or classification other than the occupation covered by these standards whose position or classification is being revised by the employer to another occupation covered by these standards may receive direct entry into the apprenticeship program. For entry into the program, the applicant must have been employed by the training agent in the original classification a minimum of 6 consecutive months immediately preceding the revision and submit letters of support by their employer.**
- b. Individuals relocating from another SAC/ATELS approved apprenticeship program may receive direct entry into the apprenticeship program providing he or she is in good standing with the program from which they are transferring. The apprentices must formally request by letter that the committee accept their transfer and provide official documentation pertaining to their apprenticeship program from which they are transferring. The Committee will examine all documentation submitted prior to granting the transfer for registration into the apprenticeship program.**
- c. Military veterans who have completed military technical training or who have participated in a registered apprenticeship program or involved with Helmets to Hardhats while in the military in the trade covered by these standards may be given direct entry.**
- d. Registered Native Americans who have secured work under TERO project may receive direct entry into apprenticeship provided: (1) The employer is an approved training agent of these standards, (2) The applicant has met the minimum qualifications.**

B. Equal Employment Opportunity Plan:

- 1. Participation in annual workshops, if available, designed to familiarize all concerned with the apprenticeship system and current opportunities.**

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2. **Cooperate with school boards, community colleges, and vocational schools to develop programs, which prepare students for entrance into apprenticeship.**
3. **Disseminate information, within shops or concerns, concerning equal opportunity policies of the program's Sponsor(s).**
4. **Engage in such programs designed to recruit, pre-qualify, and place minorities and women (minority and non-minority) in apprenticeship.**
5. **To encourage establishment and use of pre-apprenticeship preparatory trade training and to provide that those who engage in such programs are given full and equal opportunity for admission into the apprenticeship program.**
6. **Grant credit for previous trade experience or related-trade courses for all applicants equally.**
7. **Use minority and women (minority and non-minority) journey-level workers and apprentices to promote the program.**

Discrimination Complaints.

Any apprentice or applicant for apprenticeship who believes they have been discriminated against may file a complaint (WAC 296-05, Part D).

IV. TERM of APPRENTICESHIP:

The minimum term of apprenticeship must not be less than 2000 hours or 12 months of work experience in each occupation identified in these Standards as apprenticeable. The term of apprenticeship must be stated in hours or months of employment.

The term of apprenticeship for construction equipment operator shall not be less than 7000 hours of reasonably continuous employment.

V. INITIAL PROBATIONARY PERIOD:

All apprentices are subject to an initial probationary period, stated in hours or months of employment for which they receive full credit toward completion of apprenticeship. Advance credit/standing will not reduce the initial probationary period. The initial probationary period:

- Is the period following the apprentice's acceptance into the program and during which the apprentice's appeal rights are impaired. The initial probation must not

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exceed twenty percent (20%) of the term of apprenticeship unless an exemption by the WSATC has been granted for longer probationary periods as specified by Civil Service or law.

- Is the period that the WSATC or the supervisor of apprenticeship may terminate an apprenticeship agreement at the written request by any affected party. The sponsor or the apprentice of the apprenticeship agreement may terminate the agreement without a hearing or stated cause. An appeal process is available to apprentices who have completed the initial probationary period.

The first 1000 hours of employment shall constitute the probationary period. During the period, the apprenticeship registration may be canceled by either party without the formality of a hearing. The Registration Agency shall be notified of such cancellation.

During the probationary period, the Committee shall make a thorough review of the apprentice's ability and development. After the first 1000 hours of employment, action must be taken on each probationary apprentice to end the probation or cancel the registration. All interested parties shall be notified of such action.

VI. RATIO OF APPRENTICES TO JOURNEY LEVEL WORKERS:

Supervision is the necessary education, assistance, and control provided by a journey-level employee that is on the same job site at least seventy-five percent of each working day, unless otherwise approved by the WSATC. The sponsor will assure that apprentices are under the supervision of competent and qualified journey-level workers on the job who are responsible for the work being performed, to ensure safety and training in all phases of the work. Apprentices will work the same hours as journey-level workers, EXCEPT where such hours may interfere with related/supplemental instruction. (see WAC 296-05-316(5))

An employer employing one (1) or more journey-level workers in the trade of construction equipment operator at a job site may employ one (1) apprentice and one (1) additional apprentice may be employed for five (5) journey-level workers employed at the job site.

VII. APPRENTICE WAGES and WAGE PROGRESSION:

The apprentice will be paid a progressively increasing schedule of wages based on specified percentages of journey-level wage consistent with skills acquired. These may be indicated in hours or monthly periods set by the sponsor. The entry wage will not be less than the minimum wage prescribed by the Fair Labor Standards Act, where

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applicable, unless a higher wage is required by other applicable federal law, state law, respective regulations, or by collective bargaining agreement.

The sponsor may accelerate, by an evaluation process, the advancement of apprentices who demonstrate abilities and mastery of the occupation to the level for which they are qualified. When the apprentice is granted advanced standing the sponsor must notify the employer/training agent of the appropriate wage per the wage progression schedule specified in these Standards.

The journey-level worker rate for construction equipment operator will be the average journey-level worker rate for all of the employers participating in the construction equipment operator program. Once each year, all participating employers will be surveyed for the average wage rate of their journey-level workers performing non-prevailing wage work. These average wage rates will then be averaged to determine the minimum journey-level workers rate for the program in construction equipment operator . The survey forms will be signed by the company owner/officer and will become official records of the Committee. Employers reserve the right to pay apprentices more than the wage determined by this average wage, but they may not pay less.

| Step | Number of hours/months | Percentage of journey-level rate |
|------|------------------------|----------------------------------|
| 1 | 0000 - 1000 hours | 60% |
| 2 | 1001 - 2000 hours | 65% |
| 3 | 2001 - 3000 hours | 70% |
| 4 | 3001 - 4000 hours | 75% |
| 5 | 4001 - 5000 hours | 80% |
| 6 | 5001 - 6000 hours | 90% |
| 7 | 6001 - 7000 hours | 95% |

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VIII. WORK PROCESSES:

The apprentice shall receive on the job instruction and experience as is necessary to become a qualified journey-level worker versed in the theory and practice of the occupation covered by these Standards. The following is a condensed schedule of work experience, which every apprentice shall follow as closely as conditions will permit.

Employers/training agents shall only use registered apprentices to perform the work processes as stated in this section. (WAC 296-05-003 - Definitions)

A. Construction Equipment Operator APPROXIMATE HOURS

- 1. Track type equipment (shall include the following)1750
 - a. Bulldozers
 - b. Pushcats
 - c. Hydraulic Cranes-all (including A-frames)
 - d. Track type backhoes
 - e. Tractor drawn scrapers
 - f. Track type trenchers
 - g. Asphalt machines
 - h. Concrete paving machines
 - i. Screeds

To include all attachments and support equipment; lubrication, grades and stakes, signals, soils and compaction, including dredging type equipment.

- 2. Rubber tire type equipment (shall include the following).....1750
 - a. Scrapers
 - b. Rubber tire loaders
 - c. Rubber tire dozers
 - d. Rubber tire backhoes and backhoe/loader combinations
 - e. All compactors (including steel wheel & sheep foot rollers)
 - f. Hot rollers (including breakdown and finish)
 - g. Brooms
 - h. Blades (all)
 - i. Dump trucks/off road

To include all attachments and support equipment; lubrication, grades and stakes, signals, soils and compaction.

- 3. Hoisting type equipment (shall include the following)1750
 - a. Cranes - all (including draglines, clam shells, and pile drivers)
 - b. Tower cranes
 - c. A-frames
 - d. Derricks

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- e. Power shovels
- f. Fork lifts
- g. Pavement breakers
- h. Other self propelled boom type lifting devices

To include all attachments and support equipment; lubrication, grades and stakes, signals, soils and compaction.

- 4. Stationary type equipment (shall include the following).....1750
 - a. Asphalt plants
 - b. Crushing plants
 - c. Washing plants
 - d. Screening plants
 - e. Concrete batch plants
 - f. Drilling and boring equipment
 - g. Concrete pumps
 - h. Concrete saws
 - i. Chippers

To include all attachments and support equipment; set-up, tear down, lubrication and preventative maintenance, grades and stakes, signals, soils and compaction.

TOTAL HOURS: 7000

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IX. RELATED/SUPPLEMENTAL INSTRUCTION:

The apprentice must attend related/supplemental instruction. Time spent in related/supplemental instruction will not be considered as hours of work, and the apprentice is not to be paid for time so spent, unless otherwise stated in these Standards.

The sponsor/training agent must provide for instruction of the apprentice during the related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

In case of failure on the part of any apprentice to fulfill this obligation, the sponsor has authority to take disciplinary action (see Administrative/Disciplinary Procedures section).

Clock hours of actual attendance by the apprentice in related/supplemental instruction classes at the community/technical college or other approved training locations shall be reported to L&I on a quarterly basis for verifying attendance and industrial insurance purposes.

For industrial insurance purposes, the WSATC will be considered as the employer should any apprentice, not being paid to attend, sustain an injury while participating in related/supplemental classroom activity, or other directly related activity outside the classroom. The activities must be at the direction of the instructor.

Related/supplemental instruction shall consist of between 60 and 80 percent practical training (skill training or seat-time.)

The methods of related/supplemental training must consist of one or more of the following:

- (X) Supervised field trips
- () Approved training seminars
- () A combination of home study and approved correspondence courses
- (X) State Community/Technical college
- () Private Technical/Vocational college
- (X) Training trust
- (X) Other (specify): **The Construction Industry Training Council, a private vocational school licensed by the Workforce Training and Coordinating Board of the State of Washington.**

160 Minimum RSI hours per year, (see WAC 296-05-305(5))

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Additional Information:

Safety instruction is included at every level of curriculum of this craft.

X. ADMINISTRATIVE/DISCIPLINARY PROCEDURES:

Sponsors may include in this section requirements and expectations of the apprentices and training agents and an explanation of disciplinary actions that may be imposed for noncompliance. The sponsor has the following disciplinary procedures that they may impose: Disciplinary Probation, Suspension, or Cancellation.

Disciplinary Probation: A time assessed when the apprentice's progress is not satisfactory. During this time the program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. A disciplinary probation may only be assessed after the initial probation is completed. During the disciplinary probation, the apprentice has the right to file an appeal of the committee's action with the WSATC (as described in WAC 296-05-009).

Suspension: A suspension is a temporary interruption in progress of an individual's apprenticeship program that may result in the cancellation of the Apprenticeship Agreement. Could include temporarily not being allowed to work, go to school or take part in any activity related to the Apprenticeship Program until such time as the Apprenticeship Committee takes further action.

Cancellation: Refers to the termination of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor. (as described in WAC 296-05-009).

A. General Procedures

1. Administrative Procedures:

- a. All Committee members shall be actively participating in the industry as an employer, supervisor, or employee.
- b. A quorum must be present to carry on the regular business of the apprenticeship Committee. A quorum shall consist of two-thirds of its members.
- c. The Director of Apprenticeship oversees the day-to-day operations of the program under the auspices of the Apprenticeship Committee.

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- d. The Committee may accelerate or extend, through the evaluation process, the advancement of an apprentice in each and every wage progression period.
- e. When an apprentice is notified that an employment referral is available, he/she must be able to report to work within 24 hours. If the apprentice cannot respond in a timely fashion, the next apprentice on the list may be offered the referral.
- f. An apprentice who has been issued a refuse to rehire notice will be interviewed by the Director of Apprenticeship, who will review the circumstances and outline corrective steps leading to successful employment. A second refusal to rehire on the same apprentice will result in a committee citation where the apprentice could be dropped from the program.
- g. All apprentices must be released from "on-the-job" commitments to attend scheduled related instruction.
- h. Any applicant who is notified of an employment referral and does not respond to the Committee within 10 days may be dropped from the list.
- i. An apprentice who is discharged by three (3) employers for the reasons set forth in B.6. below may have his/her apprenticeship agreement canceled.
- j. The Committee may, at any time, rotate an apprentice who is not receiving proper training or for any reason they feel will benefit the apprentice
- k. The apprentice will have a valid Washington State driver's license at all times.
- l. The apprentice will report physically, by fax, mail or email a *Request for Dispatch* form to the CITC office located in Bellevue, WA within one week of lay-off or termination.
- m. Classroom instructors shall keep an attendance record of apprentice's actual class hours, which shall be turned in to the CITC Director of Apprenticeship at the end of each class period. All records shall note tardiness and early departures and shall be forwarded to the Committee for disposition.
- n. It is the apprentice's responsibility to keep his or her current address on file with the Committee.

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- o. An apprentice must have adequate dependable transportation to the job.**
- p. Apprentices are responsible for the payment of their books, lab fees, and incurred late fees for related classroom instruction.**
- q. Each apprentice shall be required to perform assigned tasks in the classroom in accordance to industry standards at the jobsites. The determination by the Apprenticeship Committee of an apprentice's progress and fitness for the trade shall be based in part on the proficiency shown in subjects covered in the related trade instruction as well as on-the-job.**
- r. The employer shall be included in the evaluation process through jobsite observation. Observations will be forwarded to the Committee for review and appropriate action.**
- s. The requirements for advancement are: Regular attendance at related classes, a 70% minimum grade, satisfactory reports from the employer and journey-level workers, and work experience reports turned in monthly.**
- t. Apprentices may make a complaint to the Apprenticeship Committee for issues pertaining to either related instruction or on-the-job training. The apprentice must submit the complaint in writing to the Director of Apprenticeship no later than 10 days prior to the Apprenticeship Committee meeting. The complaint must be submitted in writing within 60 days of the occurrence. The apprentice shall have the right to appear in person before the Committee. The apprentice shall be notified of the decision of the Apprenticeship Committee in writing. All decisions of the Apprenticeship Committee shall be final, subject to the apprentice's right to file an appeal of the Apprenticeship Committee's decision as provided in WAC 296-05-009.**
- u. The Sponsor retains the right to submit revision to these Standards to the Washington State Apprenticeship and Training Council, according to Council rules.**

2. Disciplinary Procedures:

- a. Disciplinary problems may first be handled by the Training Director or Director of Apprenticeship. Whenever either Director desires, the matter may be referred to the Committee for action.**
- b. The Committee and/or its designate shall notify the apprentice of any violations of these Standards and the apprentice shall be subject to the disciplinary action procedures as outlined below.**

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- c. **Failure to show regular attendance at related classes may be deemed sufficient cause for the Apprenticeship Committee to initiate disciplinary action procedures as outlined below. Regular attendance is defined as not missing more than two classes per calendar year.**
- d. **More than two unexcused absences from class during each calendar year may be deemed cause by the Committee for the apprentices completion date being extended an additional three (3) months with a corresponding three (3) months delay in the apprentices next scheduled increase**

Four (4) unexcused absences from class during the calendar year may be deemed cause by the committee for the apprentice being dropped from the program.

Two (2) tardies to class is equal to one (1) absence.

Excused absences may be allowed for:

Illness of apprentice

Trips and/or vacations. (By prior approval of the Apprenticeship Committee)

Death in immediate family

Any other reasons deemed appropriate by the Committee

- e. **Apprentices who have missed related instruction, as outlined in these Standards, will not be eligible for advancement until such time as the requirement is satisfied.**
- f. **A contractor may discharge an apprentice for substandard performance, improper conduct, indifference to the contractor's or Committee's rules and regulations, or insubordination. Apprentices shall be informed of their work and related training obligations as stated in these Standards.**
- g. **If an apprentice is fired for cause or quits (after their 1000 probationary period), he/she will not be redispached until he/she appears before the Apprenticeship Committee at their next meeting and is subsequently released by the Committee as eligible for work.**
- h. **It shall be the apprentice's responsibility to maintain a progress record of work experience performed in accordance with the appropriate classification schedule. Such records shall be forwarded by the apprentice to the Director of Apprenticeship at the Construction Industry Training Council on the 20th day of each month after they have been signed by the employer or appropriate representative of the employer. The above records shall contain the apprentice's (a) name,**

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(b) classification, (c) employer, (d) months and year of report, as well as hours of work performed. The Director of Apprenticeship shall then forward these records to the Apprenticeship Committee prior to each Committee meeting or upon request of the Committee. The work process classifications in which the apprentice has worked each day shall be recorded in the apprentice's record book. The record book is designed with each month in triplicate for the purpose of providing a copy of on the job training for the employer's record, a copy for the apprentice, which stays in the book, and the original, which is sent to the CITC Director of Apprenticeship. The books are available at CITC.

- i. Work experience reports must be turned into the apprenticeship office made out completely and properly, on time, which is once a month following the performance on the 20th of each month. Failure to comply will result in notification of no pay progression until records are completed.
- j. Each apprentice who is late in turning in his/her work experience report every three (3) months will have the following penalties imposed:
 - First Offense:* Up to 30 days actual work delay in his/her next advancement.
 - Second Offense:* Up to 60 days actual work delay in his/her work advancement.
 - Third Offense:* Cause for cancellation of registration. Future advancements will be calculated from the new date.
- k. All other disciplinary action procedures are as follows: (i.e. See #6)
 - 1st infraction:* A written warning.
 - 2nd infraction:* Appearance before the Apprenticeship Committee by the apprentice to justify why advancement should not be denied, his/her apprenticeship agreement should not be canceled or whatever other action is being contemplated by the Apprenticeship Committee.
 - 3rd infraction:* Cause for possible immediate cancellation of the apprenticeship agreement.
- l. If the apprentice fails to appear before the committee after due notice, disciplinary action may be invoked without hearing.
- m. Should the Apprenticeship Committee find reason to suspend or cancel an apprenticeship agreement, the apprentice shall be notified in writing, specifying the reason for the suspension, cancellation or any disciplinary action. The apprentice shall be notified 20 days in advance of the meeting of the Committee for the purpose of the disciplinary

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action, suspension, or cancellation. An apprentice who receives disciplinary action, suspension or cancellation shall be notified in writing.

- n. **The apprentice shall read Section X in its entirety and be thoroughly familiarized with its content. The apprentice shall keep a copy for ready reference at all times. The apprentice is cautioned that the penalties are enforced and failure to read the regulation will be no excuse.**
- o. **The Apprenticeship Committee solicits and appreciates any constructive criticism which will further this program.**
- p. **The terms "apprenticeship committee" or "committee" refer to the apprenticeship committee of the Construction Industry Training Council (CITC), the sponsor of these standards.**

B. Local Apprenticeship Committee Policies

NONE

C. Complaint and Appeal Procedures:

All approved programs must establish procedures explaining the program's complaint review process. Complaints that involve matters covered by a collective bargaining agreement are not subject to the complaint review procedures in this section.

Complaint (after initial probation completed) – WAC 296-05-009 and 296-05-316(21)

Prior to: 20 days of intention of disciplinary action by a committee/organization

- Committee/organization must notify the apprentice in writing of action to be taken
- Must specify the reason(s) for discipline, suspension, or cancellation
- Decision will become effective immediately
- Written reason(s) for such action will be sent to the apprentice

Within: 30 days request for reconsideration from the committee

- Apprentice to request local committee to reconsider their action

Within: 30 days of apprentice's request for reconsideration

- Local committee/organization must provide written notification of their final decision

If apprentice chooses to pursue the complaint further:

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Within: 30 days of final action

- Apprentice must submit the complaint in writing to the supervisor (L&I)
- Must describe the controversy and provide any backup information
- Apprentice must also provide this information to the local committee/organization

Within: 30 days for supervisor to complete investigation

- If no settlement is agreed upon during investigation, then supervisor must issue a written decision resolving the controversy when the investigation is concluded

If the apprentice or local committee/organization disputes supervisor decision:

Within: 30 days of supervisor's decision, request for WSATC hearing

- Request must be in writing
- Must specify reasons supporting the request
- Request and supporting documents must be given to all parties
- WSATC must conduct the hearing in conjunction with the regular quarterly meeting

Within: 30 days after hearing

- WSATC to issue written decision

XI. COMMITTEE – RESPONSIBILITIES AND COMPOSITION

NOTE: The following is an overview of the requirements associated with administering an apprenticeship committee and/or program. These provisions are to be used with the corresponding RCW and/or WAC.

The sponsor is the policymaking and administrative body responsible for the operation and success of this apprenticeship program. A committee is responsible for the day-to-day operations of the apprenticeship program and they must be knowledgeable in the process of apprenticeship and/or the application of Chapter 49.04 RCW and Chapter 296-05 WAC. Sponsors must develop procedures for:

A. Committee Operations (WAC 296-05-316): (Not applicable for Plant Programs)

Convene meetings at least three times per year of the program sponsor and apprenticeship committee attended by a quorum of committee members as defined in the approved Standards. If the committee does not indicate its definition of quorum, the interpretation will be "50% plus 1" of the approved committee members.

Conference call meetings may be conducted in lieu of regular meetings but must not

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exceed the number of attended meetings and no disciplinary action can be taken during conference call meetings.

B. Program Operations (Chapter 296-05 WAC - Part C & D):

1. The sponsor will record and maintain records pertaining to the local administration of the apprenticeship program and make them available to the WSATC or its representative on request.

Records required by WAC 296-05-400 through 455 (see Part D of Chapter 296-05 WAC) will be maintained for five (5) years; all other records will be maintained for three (3) years.

2. The sponsor will submit to L&I through the assigned state apprenticeship coordinator the following list:

Forms are available on line at <http://www.LNI.wa.gov/scs/apprenticeship> or from your assigned apprenticeship coordinator.

- Apprenticeship Agreement Card – within first 30 days of employment
- Authorization of Signature - as necessary
- Authorized Training Agent Agreements (committee approving or canceling) – within 30 days
- Apprenticeship Committee Meeting Minutes – within 30 days of meeting (not required for Plant program)
- Change of Status – within 30 days of action by committee, with copy of minutes
- Journey Level Wage – at least annually, or whenever changed
- Revision of Standards and/or Committee Composition - as necessary
- RSI (Quarterly) Reports:
 - 1st quarter: January through March, by April 10
 - 2nd quarter: April through June, by July 10
 - 3rd quarter: July through September, by October 10
 - 4th quarter: October through December, by January 10

3. Adopt, as necessary, local program rules or policies to administer the apprenticeship program in compliance with these Standards that must be submitted for L&I approval and updating these Standards. The L&I apprenticeship program manager may administratively approve requests for revisions in the following areas of the Standards:

- Program name
- Section III: Conduct of Program Under Washington Equal Employment Opportunity Plan
- Section VII: Apprentice Wages and Wage Progression
- Section IX: Related/Supplemental Instruction
- Section XI: Committee - Responsibilities and Composition (including opening statements)

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- Section XII: Subcommittees
- Section XIII: Training Director/Coordinator

C. Management of Apprentices:

1. Each apprentice (and, if under 18 years of age, the parent or guardian) will sign an apprenticeship agreement with the sponsor, who will then register the agreement, with L&I before the apprentice attends the related/supplemental instruction classes, or within the first 30 days of employment as an apprentice. For the purposes of industrial insurance coverage and prevailing wage exemption under RCW 39.12.021, the effective date of registration will be the date the agreement is received by L&I.

L&I must be notified within 30 days of program approval, of all requests for disposition or modification of agreements, with a copy of the committee minutes approving the changes, which may be:

- Certificate of completion
 - Additional credit
 - Suspension (i.e. military service or other)
 - Reinstatement
 - Cancellation and/or
 - Corrections
2. Rotate apprentices in the various processes of the skilled occupation to ensure the apprentice is trained to be a competent journey-level worker.
 3. Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period. The evidence of such advancement will be the record of the apprentice's progress on the job and during related/supplemental instruction.
 4. The sponsor has the obligation and responsibility to provide, insofar as possible, continuous employment for all apprentices in the program. The sponsor may arrange to transfer an apprentice from one training agent to another, or to another sponsor when the sponsor is unable to provide reasonably continuous employment, or they are unable to provide apprentices the diversity of experience necessary for training and experience in the various work processes as stated in these Standards. The new sponsor or training agent will assume all the terms and conditions of these Standards. If, for any reason, a layoff of an apprentice occurs, the apprenticeship agreement will remain in effect unless canceled by the sponsor.
 5. An apprentice who is unable to perform the on-the-job portion of apprenticeship training may, if the apprentice so requests and the sponsor approves, participate in related/supplemental instruction, subject to the apprentice obtaining and providing to the sponsor written requested document/s for such participation. However,

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time spent will not be applied toward the on-the-job portion of apprenticeship training.

6. Hear and adjust all complaints of violations of apprenticeship agreements.
7. Upon successful completion of apprenticeship, as provided in these Standards, and passing the examination that the sponsor may require, the sponsor will recommend that the WSATC award a Certificate of Completion of Apprenticeship. The program will make an official presentation to the apprentice that has successfully completed his/her term of apprenticeship.

D. Training Agent Management:

1. Offer training opportunities on an equal basis to all employers and apprentices. Grant equal treatment and opportunity for all apprentices through reasonable working and training conditions and apply those conditions to all apprentices uniformly. Provide training at a cost equivalent to that incurred by currently participating employers and apprentices. Not require an employer to sign a collective bargaining agreement as a condition of participation.
2. Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of these Standards. Require all employers requesting approved training agent status to complete an approved training agent agreement and comply with all federal and state apprenticeship laws and the appropriate apprenticeship Standards.
3. Submit approved training agent agreements to the department with a copy of the agreement and/or the list of approved training agents within thirty days of committee approval. Submit rescinded approved training agent agreements and/or the list of approved training agents to the department within thirty days of said action.

E. Composition of Committee: (see WAC 296-05-313)

Apprenticeship committees must be composed of an equal number of management and non-management representatives composed of at least four members but no more than twelve. If the committee does not indicate its definition of a quorum, the interpretation will be "50% plus 1" of the approved committee members.

Apprenticeship committees shall elect a chairperson and a secretary who shall be from opposite interest groups, i.e., chairperson-employers; secretary-employees, or vice versa; EXCEPT, this does not apply where the Registration Agency represents the apprentice(s).

For plant programs the WSATC or the department designee will act as the employee representative.

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Quorum: A quorum must be present to carry on the regular business of the apprenticeship Committee. A quorum shall consist of one member representing management and one member representing employees.

Program type administered by the committee: GROUP NON-JOINT.

The employer representatives shall be:

Tim Whiteis, Chair
8495 Double Ditch
Lynden, WA 98264

Phil Bogardus
1525 East Marine Drive
Everett, WA 98201

Rod Majors
10721 Vernon Road
Lake Stevens, WA 98258

The employee representative shall be:

Lonnie Dotson
1930 116th Avenue NE, Suite 201
Bellevue, WA 98004

Mike Rutgers, Alternate
1930 116th Avenue NE, Suite 201
Bellevue, WA 98004

Allan Myers
4586 SR 9
Sedro Wooley, WA 98284

Bruce Solt, Secretary
1930 116 Avenue NE, Suite 201
Bellevue, WA 98004

XII. SUBCOMMITTEE:

Subcommittee(s) approved by L&I, represented equally from management and non-management, may also be established under these Standards, and are subject to the main committee. All actions of the subcommittee must be approved by the main committee.

NONE.

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XIII. TRAINING DIRECTOR/COORDINATOR:

The sponsor may employ a person(s) as a full or part-time training coordinator(s)/training director(s). This person(s) will assume responsibilities and authority for the operation of the program as are delegated by the sponsor.

**Sandra J. Olson, Executive Director
Construction Industry Training Council
1930 - 116th Avenue NE, Suite 201
Bellevue, WA 98004**

**Halene Sigmund, Apprenticeship Coordinator
Construction Industry Training Council
1930 - 116th Avenue NE, Suite 201
Bellevue, WA 98004**

**David Perrin, Director of Education
Construction Industry Training Council
1930 - 116th Avenue NE, Suite 201
Bellevue, WA 98004**