



February 15, 2023

SENT VIA EMAIL ONLY

Nevada State Apprenticeship Council
Department of Business & Industry
Office of the Labor Commissioner
3340 W. Sahara Avenue
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ewoltz@labor.nv.gov

**Re: February 23, 2023 Nevada State Apprenticeship Council Meeting
Opposition to Program Submitted by Pole Line Contractors, Inc.**

Dear Members of the State Apprenticeship Council:

Please be advised that this law firm and the undersigned have been retained as counsel for the California-Nevada Line JATC ("JATC" or "our client") with regard to the above-referenced matter. The JATC is a joint labor-management committee sponsoring and operating an apprenticeship program as defined within Nevada Administrative Code Chapter 610. Their sponsored program is registered with the Nevada State Apprenticeship Council ("NSAC" or "Council"). ***Our client asks that the NSAC deny approval to the program submitted by Pole Line Contractors, Inc. that will be reviewed at the February 23, 2023 NSAC meeting.***

The Pole Line Contractors' Program must be denied because the proposed program fails to meet the minimum apprenticeship standards under Nevada law. The proposed program must also be denied under analysis of the factors set out in the requirements of Senate Bill 247 and Assembly Bill 459 from the 2021 Nevada Legislative Session. Those recent legislative enactments, which are now codified at NRS 610.144(2), require the NSAC to conduct a hearing to evaluate several factors before approving programs like the one proposed by Pole Line Contractors. Moreover, even if the NSAC inclined to approve the Pole Line Contractors' Program, the approval must be conditioned on payment of wages consistent with the Program sponsored by the JATC.

I. NRS 610.144 REQUIRES THE NSAC TO EVALUATE NUMEROUS FACTORS BEFORE APPROVING THE POLE LINE CONTRACTORS' PROGRAM AND THOSE FACTORS DEMONSTRATE THE POLE LINE PROGRAM SHOULD BE DENIED.

NRS 610.144 provides the requirements for programs to be eligible for registration and approval by the NSAC. The Legislature substantially amended this section of the Nevada Revised

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Statutes during the 2021 Nevada Legislative Session through its enactment of Senate Bill 247 and Assembly Bill 459. Those changes are now codified within NRS 610.144, and those changes are important to the NSAC's consideration of the Pole Line Contractors' Program. NRS Chapter 610 also provides the purposes of the Chapter of NRS are to "regulate the supply of skilled workers in relation to the demand for skilled workers." NRS 610.020(4).

If a program of apprenticeship in a skilled trade is proposed by an employer or association of employers for approval and registration by the Council and the Council has previously approved and registered a program for the skilled trade, the Council shall provide a copy of the proposed program to the sponsor of the approved and registered program and hold a hearing before approving or rejecting the application. *The Council shall not approve a proposed program pursuant to this subsection unless the program requires the completion of at least as many hours of on-the-job learning or the demonstration of at least the same number and quality of skills, or both, as applicable, as all existing approved and registered programs in the relevant skilled trade.*

NRS 610.144(2) (emphasis added).

The Legislature also directed the NSAC how to determine whether such a program should be approved or rejected under subsection 2 of NRS 610.144. In addition to the requirements of subsection 1 of NRS 610.144, the NSAC must consider the following eight factors:

- (a) Relevant information concerning the approved and registered program, including, without limitation, the standards for apprenticeship of the program;
- (b) *Whether the sponsor of the approved and registered program is jointly administered by labor and management;*
- (c) The provisions of any applicable collective bargaining agreements;
- (d) Dictionaries of occupational titles;
- (e) Opinions of experts provided by interested parties, including, without limitation, organized labor, licensed contractors and associations of contractors;
- (f) Recognized labor and management practices in the relevant industry;
- (g) *Scope of work descriptions issued by the Labor Commissioner and the United States Department of Labor; and*
- (h) *The supply of skilled workers in the trade in relation to the demand for skilled workers in the trade and the extent to which the sponsor of the approved and registered program is willing and able to provide apprentices to the proposed program.*

NRS 610.144(3)(a)-(h) (emphasis added). Finally, "[t]he Council may condition approval of the proposed program on the payment of compensation to apprentices that is equal to or greater than the compensation provided by the approved and registered apprenticeship program." *Id.*

A. The Pole Line Contractors' Program Fails to Teach Specific Skills Necessary for the Occupation in Which it Seeks to Train Apprentices.

In Appendix A, at pages A-3 and A-4 of *Work Process Schedule, of the Pole Line Contractors' Program Standards.*, the Pole Line Contractors' Program explains its work processes. The work processed do not include important skills for the occupation. It does not include training and skills that

are trained by the JATC in its program, which are necessary for allowing for a full trained journey person in the industry.

The Pole Line Contractors' Program not include any training, on the job or in classroom, in the following areas:

- Transmission training hours
- Specific training hours for working on energized low voltage (<600v.) circuits
- Specific training hours for working on energized high voltage (>600v.) circuits.

Without specific training in these areas, it is impossible to train a journey person within the proposed program. The purpose of apprenticeship training is to ensure a fully trained journey person can perform all necessary tasks within their occupation. The practice in the electrical, construction and utility industries is to teach skills within a fully apprenticeable occupation and not merely pick and choose specific skills on which to train apprentices. Even in their most modern form (since the National Apprenticeship Act of 1937), apprenticeships in the construction industry have followed a model of providing full instruction for apprentices in becoming a journey person in a specific trade. They have not been cut into pieces and trained for specific portions of the construction industry.

The Pole Line Contractors' Program does not train an apprentice full in the trade and this deficiency is written within their submission to the NSAC. This demonstrates that the NSAC should deny approval because the Pole Line Contractors' Program does not demonstrate "*at least the same number and quality of skills, or both, as applicable, as all existing approved and registered programs in the relevant skilled trade.*" See NRS 610.144(2) (emphasis added).

B. The Proposed Apprenticeship Agreement for the Pole Line Contractors' Program is Lacking Significant Information.

The Pole Line Contractors proposed Apprenticeship Agreement is contained at Page B-2 of its submission and is missing important information. The following information is missing and should be included in the application:

- Question 2a: Occupation not listed
- Question 2b: Occupation code not listed
- Question 4: Term is not listed
- Question 5: Probationary Period is not listed

All of this is information that must be provided to apprentices registering with the Pole Line Contractors' Program. Without this information, the apprentice does not know what they are signing up for or what is expected of them. Lack of information can also lead to a changing of systems and procedures on a per apprentice process, which is not supposed to happen within apprenticeship training.

The Pole Line Contractors' Program is also missing any mention of how an apprentice can cancel their apprenticeship agreement or even if they are permitted to do so. There is also no mention of suspensions for apprentices or stipulations for cancellation of suspension of an apprenticeship agreement. These are necessary elements of a program not contained within the Pole Line Contractors proposed program standards.

Unless Pole Line Contractors cures this issue and brings the Program back before the NSAC, its Program should not be approved.

C. The JATC, as the Sponsor of the Already Approved Program, is a Joint Labor-Management Program and Pole Line Contractors is Only a Single Employer Sponsored Program.

The JATC is a joint labor-management apprenticeship program; whereas the Pole Line Contractors' Program is a single employer program that is completely run and operated by the employer. Joint labor-management apprenticeship training is viewed as the gold standard in apprenticeship and all job training for decades. This is for good reason because the joint labor-management training provides for better training and better trained workers.

Beyond merely providing better training and better trained workers, the joint labor-management training method provides for a more adequate supply of skilled workers and ensures that the apprentices have a voice in the apprenticeship committee through the employee/union representatives on the joint committee. In a single employer program, there is no voice for the apprentices themselves. They are at the whim of their employer—who also happens to be the entity that will provide their apprenticeship training. The difference in this single employer versus joint labor-management training is also shown in the admission requirements between the JATC and the proposed Pole Line Contractors' Program. Whereas the JATC has a multifaceted application process, Pole Line Contractors is proposed admission of only its current employees who have worked for it for at least one year.

Finally, the joint labor-management committee training ensures adequate supply of workers for the future needs of the industry because it allows multiple employers and employee representatives to discuss what they know, examine additional evidence, and understand how much work will be available for apprentices graduating through their program. The single employer program does not allow for this same type of examination and preparation.

This factor, which the Legislature has dictated the NSAC to review, weighs in favor of denying approval to the Pole Line Contractors' Program. The joint labor-management training method of the JATC is preferable to the single employer sponsor training by Pole Line Contractors.

D. The Labor Commissioner's Job Descriptions and Prevailing Wage Determinations Demonstrate the Pole Line Contractors' Program Should not be Approved.

The Labor Commissioner surveys annually in recognized work classifications. Those classifications, the skills and tasks required of those classifications, and the applicable prevailing wage rate are published by the Labor Commissioner, which makes them a public record of which the NSAC can take notice. Moreover, under NRS 338.030, when a union wage rate prevails, the collective bargaining agreement rules are subsumed within the prevailing wage determination. The skills necessarily taught within the JATC's programs are within the recognized classifications of the Labor Commissioner in setting the applicable prevailing wage rates.

The rates for the area in which the Pole Line Contractors will operate its program are surveyed for and the Labor Commissioner uses the union rate to set those wages under Nevada's prevailing wage laws. The union rate for journeyman linemen for the northern Nevada rural region is currently \$81.13

per hour. This is a matter of public record, which is published by the Labor Commissioner. The \$81.13 rate is much greater than the \$32 per hour rate that Pole Line Contractors says it will pay to its journeypersons.

Training skilled journeypersons at such low rates will harm the industry. It will also harm the workers themselves. Especially when the market will clearly bear out higher rates as shown by the applicable prevailing wage determination.

E. Approval of the Pole Line Contractors' Program Will Lead to an Oversupply of Workers and the JATC is Willing to Provide Apprentices to Pole Line Contractors from its Already Approved Program.

The proposed Program from Pole Line Contractors significantly overlaps with the skills and competencies taught by the JATC in the JATC's already approved existing program. Should the Pole Line Contractors' Program be approved, it will result in overtraining of the occupations within an already existing and approved program. This will result in an oversupply of skilled workers in this occupation, which is a specific matter to be avoided under NRS Chapter 610.

The JATC surveys the entire construction industry and its need for electrical line work in determining the need and number of apprentices to bring into its program. The JATC's review of upcoming, expected, and projected work within the construction industry includes a review of such work across the entire State of Nevada. In fact, the Program includes a regional component to the need for such work because of the inclusion of the State of California within the jurisdiction of the JATC.

The review of those upcoming and expected projects specifically has included an understanding that expansion of large-scale regional energy projects will occur with recently enacted state and federal laws. It also includes an understanding that growth in Nevada's mining industry may occur that will also require additional labor supply for electrical line construction and buildout. The knowledge and skills trained within the JATC program will meet the supply of labor needed across the State for this type of work.

Furthermore, the JATC is able and willing to provide apprentices to Pole Line Contractors upon the acceptance and completion of a participation or similar agreement defining the terms between Pole Line Contractors and the JATC for the training of apprentices and their use by Pole Line Contractors in its work. The JATC has done this in the past with non-signatory employers and continues to do so today with others. Pole Line Contractors would be treated no differently.

F. If the NSAC is Inclined to Grant the Pole Line Contractors' Program, it Should Condition Approval on Wages Matched to the JATC.

In addition to the required NSAC analysis of the subsections within NRS 610.144(3)(a)-(h), the Legislature also specifically permitted the NSAC to "condition approval of the proposed program on the payment of compensation to apprentices that is equal to or greater than the compensation provided by the approved and registered apprenticeship program." NRS 610.144(3). The wage rates presented within the Pole Line Contractors' Program are considerably below those for the JATC apprentices registered in their programs.

In fact, the Pole Line Contractors journeyperson rate is below that of the JATC's first step apprentice. Pole Line Contractors is proposing rates of \$16.00 per hour in the apprentice's first step and only \$32.00 per hour as a journeyperson. The steps of the JATC's apprentices are as follows:

- 1st: \$33.46;
- 2nd: \$36.25;
- 3rd: \$39.04;
- 4th: \$41.83;
- 5th: \$44.62;
- 6th: \$47.40;
- 7th: \$50.19;
- Journeyperson: \$55.77

This wage discrepancy should not be permitted should the Pole Line Contractors' Program be approved by the NSAC despite all of the other issues noted with the Pole Line Contractors proposed program. If the Pole Line Contractors' Program is to be approved, it must be strictly conditioned upon matching the wage rates in the JATC program.

After consideration of the pertinent factors within NRS 610.144(2), the NSAC should deny the Pole Line Contractors' Program. The proposed Pole Line Contractors' Program fails to meet the examination required of it under NRS 610.144(1) and (2).

II. THE PROPOSED POLE LINE CONTRACTORS' PROGRAM FAILS TO MEET IMPORTANT SAFETY STANDARDS REQUIRED BY THE NRS, NAC AND PREVIOUS NSAC DECISIONS AND NSAC POLICIES.

It is impossible to understate the importance of workplace safety, especially in the construction industry and more particularly in the electrical trade. This especially true in work as dangerous as that of electrical line work. The proposed Pole Line Program fails to meet requisite safety standards in three major ways that each standing alone would require rejection of their program. Standing together, all three failures fully demonstrate the critical importance of rejecting this application and the inability of Pole Line Contractors to provide a safe program as stated in their written application.

The three ways in which this proposed occupation by Pole Line Contractors lacks proper safety precautions and protections is (1) improper journeyperson to apprentice ratios; (2) imprecise description of hours needed to complete the apprenticeship program; and (3) lack of a listing of any qualified instructors, journeypersons or explanation of the equipment to be used in the provision of the Program.

A. The Pole Line Contractor's Program Does Not Include Adequate Apprentice to Journeyperson Ratios to Ensure Worker Safety.

Ensuring an adequate ratio of journeypersons to apprentices is directly within the purview of the NSAC. Pole Line Contractors' Program does not meet the standards typically observed in the construction industry or more specifically the electrical line industry. *See* NRS 610.144(1)(e)(7). The Legislature specifically delegated the responsibility for setting safe journeyperson to apprentice ratios to the NSAC. This is based upon the expertise of the members of the NSAC in knowing what is and is not safe on a work site.

The Legislature has also committed to the NSAC responsibility over the “working conditions for apprentices.” NRS 610.140(a). The regulations adopted by the NSAC pursuant to NRS Chapter 610 and placed within NAC 610 require construction programs to use a ratio of “not more than one apprentice for the first journeyman at the jobsite and not more than one apprentice for every three additional journeymen.” NAC 610.438(1)(a). In order to amend or change this ratio up or down from the stated regulatory limits, the NSAC must “determine[] that a different ratio is consistent with the proper supervision, training, safety and continuity of employment of an apprentice, and, if applicable, with any provisions of a collective bargaining agreement.” NAC 610.438(3).

The standards proposed by Pole Line Contractors states their ratio of apprentices to journeyman will be one apprentice for each journeyman employed. *See Appendix A, Work Process Schedule, of the Pole Line Contractors’ Program Standards.* That ratio fails to meet the bare minimum requirements set out in NAC 610.438(1)(a). Standing alone that is enough reason for the NSAC to deny approval of the program. The Pole Line Contractors’ Program does not state in any terms why the Program should be permitted to stray away from the ratios as set in the Nevada Administrative Code. If the Program could prove why this deviation is necessary and that they, as a new program, can keep their apprentices properly supervised, trained, and safe (*See NRS 610.348(3)*), then the NSAC could approve it. However, the Pole Line Contractors’ Program does not indicate this information in any way. The program also does not indicate that the ratio they seek is pursuant to the provisions of a collective bargaining agreement.

The Pole Line Contractors’ Program does not meet the minimum NAC requirements for the journeyman to apprentice ratio and does not state within its terms why their ratio should deviate from the requirement. For this reason, the NSAC should deny the Pole Line Contractors’ Program as it has been submitted to the NSAC.

B. The Pole Line Contractors’ Program Is Imprecise In The Number Of Hours Required For Completion And For That Reason It Is Unclear Whether It Meets The Minimum Standards For Apprenticeship.

Page 8 of the Standard submitted by Pole Line Contractors for their Program states the full term of apprenticeship “is expected to occur within approximately 8,000 hours of OJT.” It also states that the apprentices must attain a minimum of 2,000 on the job hours each year. Thus, their Program standing alone is inconsistent. If an apprentice is required to complete at a minimum 2,000 hours each year of on-the-job training, how will that person be able to attend the necessary in classroom instruction to learn the skills of their trade? The issue with this requirement of hours is it also doesn’t take into consideration any personal matters that may come up in an apprentice’s life to which they must attend and be away from their program.

The Pole Line Contractors’ Program lacks clarity in what it is proposing or what the total number of hours required of an apprentice will be to reach journey person status. A statement of an “approximate” number of hours in a time-based approach to training is inappropriate and will lead to a far less than regimented process.

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C. The Pole Line Contractors' Program Does Not Include Information on Who Their Qualified Instructors Will Be, How They Will Obtain Qualified Instructors, and Demonstrates the Company Does Not Have Any Journeypersons Currently.

NRS Chapter 610 makes it the responsibility of the State Apprenticeship Director to ensure the public interest is protected within the fields of apprenticeship. *See* NRS 610.110(2)(d)(2). Nevada law also requires that instruction of apprentices be completed with trained teachers that have the requisite job experience to teach apprentices the skills under the proposed occupation. *See* NRS 610.120(2). Furthermore, standards for apprenticeship must include “[p]rovisions for adequate and safe equipment and facilities for training and supervision and for the training of apprentices in safety on the job and in related instruction.” NRS 610.144(1)(e)(9). Qualified instructors are required before a program may be approved by the NSAC. *See* NRS 610.144(1)(e)(14).

The Pole Line Contractors' Proposed Program Standards demonstrate in Appendix C of *Work Process Schedule, of the Pole Line Contractors' Program Standards* that the sponsor currently has no journeypersons employed. *See Appendix C, at Page C-6*. The proposed standards do not state that Pole Line Contractors currently has any trained instructors and does not provide how the Sponsor plans to locate or hire those instructors. The proposed standards do not identify any such persons. Additionally, the proposed standards do not provide the experiential background of instructors because they do not have such instructors, which is also consistent with not having any journeypersons in the occupation.

The Pole Line Contractors' Program's inability to identify their instructors by name reveals the lack of ability to properly provide and administer their program. The environment for apprentices should be as safe as possible while they learn the trade. Obviously, construction sites cannot be made accident or harm free but qualified instructors can go a long way in protecting apprentices and those working with them from harm.

The Pole Line Contractors' Program must be denied by the NSAC. Without qualified instructors, no program should be approved under Nevada law. The NSAC has a duty to ensure workplace safety is maintained through examining the experiential history or background of instructors in a proposed occupation. A promise of providing adequate instructors at a later date is insufficient for purposes of meeting the applicable NRS sections. This is abundantly clear when the Sponsor's Standards demonstrate that it does not employ any journeyperson in the field currently. Therefore, the NSAC must deny the Pole Line Contractors' Proposed Program.

III. THE JATC REQUESTS RECOGNITION FROM THE NSAC AND A DESIGNATION AS A PARTY OF RECORD IN THIS MATTER.

The JATC requests that the NSAC designate them as a party of record in this matter as a contested administrative matter, case, or hearing. The JATC has the right to submit comments to the Council in this matter under NAC 610.355. The JATC is also a similar program and received notice of the filing of the Pole Line Contractors' Program from the NSAC.

In addition, in 2007, the NSAC adopted temporary rules adding two subsections to NAC 610.355. Those sections read:

3. Any registered sponsor who elects to comment may request in its written comments that it be allowed to become a party of record to the application for the

proposed program of apprenticeship. If the registered program demonstrates to the Council that it has a direct and substantial interest in the application for the program of apprenticeship, the Council shall make the registered sponsor a party of record to the application and shall provide written notice to the registered sponsor and the applicant of such action. Once the Council has made a registered sponsor a party of record, the registered sponsor shall receive notice of any matter on the application, including any final action taken on the application by the Council.

4. The registered sponsor, as a party of record, may appeal the Council's final action on the application to the Labor Commissioner. If the registered [sponsor] does not appeal the Council's final action to the Labor Commissioner, but the applicant for the proposed program does, the registered sponsor shall be given notice of the appeal and shall have a right to participate, as a party of record in the appeal so taken.

The JATC is a joint committee sponsor of an approved and already registered program that will be negatively affected should the NSAC approve the proposed Pole Line Contractors' Program. As an existing registered program that teaches the necessary skills and occupation, which the proposed Pole Line Contractors' Program also seeks to teach, the JATC requests that it be recognized by the NSAC as a party of record in this matter.

Recognition as a party of record will allow the JATC to further pursue its interests should appeal of any decision made by the NSAC on this matter become necessary following the meeting on February 23, 2023. Furthermore, the JATC, its registered apprentices and journeypersons will be injured if the Pole Line Contractors' Program is approved. Therefore, the JATC also requests being designated as an "aggrieved party" before the NSAC, the Labor Commissioner and Nevada courts holding jurisdiction should the program be approved by the NSAC. Though, the JATC fully requests that the Program by Pole Line Contractors be denied outright as presented.

IV. CONDUCT OF HEARING ON MATTER

The controlling statute here is NRS 610.144 and in particular subsection (2) of that statute. That statute calls for a "hearing." The statute goes further to explain that the NSAC can consider "Opinions of experts provided by interested parties, including, without limitation, organized labor, licensed contractors and associations of contractors." NRS 610.144(2)(e).

Traditionally, those speaking in opposition to an agenda item have had to request to speak outside of the traditional public comment periods at the beginning of the NSAC's meeting. Under the controlling statute, which requires a hearing in these circumstances, we do not believe that merely allowing a party opposing a proposed program to speak for only two minutes in public comment and not directly within and in opposition to the agenda item. It is simply not a hearing if merely the presenting party speaks during the agenda item and the opposing party can only present for two minutes during public comment. It also makes it impossible for an interested party to present opinions of experts if there is simply only two minutes in which an expert may provide their opinion. The process runs counter to the intention of the statute.

It is our position that a hearing under NRS 610.144(2) requires more than merely public comment and should permit for the presentation of witnesses in a cohesive presentation—just as the proposing party is permitted when presenting their proposed program within the designated agenda

item. We believe it is probably appropriate for the NSAC and the Office of Labor Commissioner to examine creating regulations to allow for these hearings to take place within the meaning and intent of the statute as passed by the Legislature. The creation of these regulations is necessary to enact recent statutory changes within NRS Chapter 610.

Our client asks that the Nevada State Apprenticeship Council deny the Pole Line Contractors' Program currently proposed to be heard by the Council on Wednesday, February 23, 2023. Our client also requests that the NSAC grant its request to be deemed an interested party strictly for purposes of this matter.

Should the NSAC have any questions concerning these written comments, I will be in attendance at the February 23, 2023 NSAC meeting via Teams to answer questions and provide additional comment.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Nate Ring", with a stylized flourish at the end.

Nate Ring, Esq.¹
BRANSTETTER, STRANCH & JENNINGS, PLLC

cc: Don Jamison, California-Nevada Line JATC, Director

¹ Licensed in the States of Nevada, Oregon (inactive), and Washington.