STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Prevailing Wage
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April 22, 2020

Tim Herbert, Executive Secretary-Treasurer, WSA
Randy Walli, Business Manager, UA Local 598
7030 Tacoma Mall Boulevard, Suite 300
Tacoma, Washington 98409

Re: Valve Actuator Repair at Columbia Generating Station

Messrs. Herbert and Walli,

Thank you for your interest in prevailing wage matters and for your June 18, 2018 request for review of the April 8, 2013 determination regarding control valve actuator repair within the piping system at Columbia Generating Station. After careful review, I have decided to issue a new determination to provide clarification of certain issues you raise in your request. The following analysis is a formal determination as provided by RCW 39.12.015(1).

Work at Issue

Columbia Generating Station is a commercial nuclear energy facility located 10 miles north of Richland, Washington. It is owned and operated by Energy Northwest, a Washington State joint operating agency. This facility uses a complex piping system to convey the heated water and steam created by the reactor to turbines that serve the electrical generator. Control valves regulate the movement, volumes, and pressures of liquids and gasses within piping systems. This piping system provides for efficient generation of electric power, and also for cooling the reactor. In every industrial application, control valves perform important functions. In nuclear power stations, the importance of the proper maintenance and repair of control valves cannot be overstated. Every two years the Station is powered down for refueling, repair, and maintenance purposes. The piping system, and the important control valves in that piping system, are evaluated and refurbished during these biennial shutdowns.

The specific dispute in this instance involves work to remove, disassemble, evaluate, repair, reassemble, and reinstall control valves and their actuators. Actuators are mechanical devices which are attached to or part of the valve assembly and which, in most cases, act on the valve "stem." To use a simple analogy, the actuator portion of an ordinary residential garden hose spigot or hose "bib" (valve) would be the handle we turn to operate the valve and start or stop the flow of water.

Effects of the April 8, 2013 Determination

Former Industrial Statistician L. Ann Selover issued an April 8, 2013 determination addressing what scopes of work applied to valve actuator repair tasks, as well as other work performed during these biennial shutdowns.

Ms. Selover applied a millwright wage to some valve actuator repair tasks, and applied a pipefitter wage to others. Some readers of the April 8, 2013 letter, including myself, drew the conclusion that the pipefitter wage applies to the majority of valve repair hours. On the other hand, Crane Nuclear drew a different interpretation, applying the millwright wage to roughly 90% of the hours. Coincidentally, the millwright prevailing wage was lower than the pipefitter prevailing wage by approximately $45 per hour at that time. Subsequent L&I investigations resulted in the payment of several hundred thousand dollars in additional wages. We are now advised that Crane Nuclear has chosen to pay pipefitter rates for all valve actuator repair work during the most recent biennial shutdown. Conflicting interpretations suggests the Department should take a fresh look and provide clearer guidance.

Review of the April 8, 2013 Determination

The law places a responsibility for these prevailing wage determinations with the Industrial Statistician. "All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries." RCW 39.12.015. Your letter requests a de novo review on the basis that you believe the April 8, 2013 is "plainly erroneous," and you discuss the application of the standards of review that you believe should be applied.[1] In my view, the April 8, 2013 determination was not "plainly erroneous," inconsistent with the regulation, or unreasonable, as you suggest. Before making that determination, L&I gathered input from parties, held meetings and used the scope of work descriptions in arriving at its conclusions and it provided a reasoned approach. But I need not find that Ms. Selover's determination was "plainly erroneous" to initiate a new review. L&I may update its guidance, provide additional clarification, and even change its interpretation if there is some reason to do so. "An administrative agency is not disqualified from changing its mind; and when it does, the courts still sit in review of the administrative decision and should not approach the statutory construction issue de novo and without regard to the administrative understanding of the statutes." *Lockheed Shipbuilding v. Dept. of Labor & Industries*, 56 Wn. App. 421, 783 P.2d 1119 (1989), quoting *NLRB v. Local Union 103, Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers*, 434 U.S. 335, 351, 54 L. Ed. 2d 586, 98 S. Ct. 651 (1978).

I am conducting such a review, but only because the topics raised need further clarification. My reviews consider the entire body of facts and laws. This letter represents the outcome of my new review.

If a party wishes to dispute my decisions in this matter, their next step would be to request that I modify it. See the enclosed Prevailing Wage Determination Request and Review Process.

Additional Materials Submitted for Consideration

Your request included industry practice documents, which you submitted for my review and consideration.

[1] Courts do not generally apply a "reasonableness" standard when determining whether an agency's interpretation is correct instead they look to see if the agency exceeded its statutory authority, or was arbitrary or capricious. *See* RCW 34.05.570(2)(c). "(W)here there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous." *Rios v. Dep't of Labor Indus.*, 145 Wn.2d 483, 501, 39 P.3d 961 (2002), quoting *Hillis*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997).

Determination requests often include documents representing industry practice information. I find such documents informative and useful. In response to your request, I invited the parties to also supply documents and analyses which they would like L&I to consider. The bulk of the substantive new materials in that file were submitted by you and the Millwright union representative.

From the letters of understanding you provided, it appears that Crane Nuclear (the contractor used during the last several biennial shutdowns) has used union pipefitters in the past to perform similar work in another state. From the materials provided by the Millwright union representative it appears union Millwrights have participated in this work on various projects and have entered into at least one agreement with Pipefitter representatives to clarify which union's members perform what work on valve actuators. There is some question as to whether this agreement is still in force. The history of letters of assignment, letters of understanding, agreements of record and decisions of record does not tell a clear and consistent story of which union repairs control valve actuators. Some of those documents are more than sixty years old. Jurisdictional literature can be informative, but also does not control prevailing wage classification decisions.

Local 598 Collective Bargaining Agreement

Since the passage and enactment of Substitute Senate Bill 5493 in 2018 which amended RCW 39.12.015, some industry representatives have expressed a concern that Labor and Management parties may attempt to influence or manipulate prevailing wage administration and enforcement by the insertion of language and figures in collective bargaining agreements (CBAs). The current CBA covering pipefitters in the Benton County area (Local 598) lists the following subclassifications for the first time:

- Valve Technician
- Valve Fitter
- Valve Actuator Technician[2]

Negotiation of this CBA occurred about the same time as the enactment and implementation of Substitute Senate Bill 5493. The previous version of this CBA did not contain these occupations and I do not see similar modifications to the local carpenter CBA which covers Millwrights with an effective date of June 1, 2018. In fact, that CBA contains this passage:

> Craft jurisdiction is neither determined nor awarded by classifications appearing in any labor agreement.

I do not draw any conclusion about the inclusion of the new language in pipefitters' CBA, and it does not play a role in my analysis of the question at hand regarding valve actuator removal, disassembly, inspection, repair, reassembly and reinstallation.

[2] In addition to Surveyor/Total Station, Rigger, Plastic Fusion Fitter (HDPE pipe regardless of size), various "refrigeration" and "HVAC" classifications and others.

Analysis

The above facts, and much of the information in L&I's valve actuator file, are not controlling or dispositive in this matter. They are informative, but not controlling. Rather, courts look to the type and nature of the work performed in applying prevailing wage scope of work descriptions. *See Lockheed Shipbuilding Co. v. Dept. of Labor & Industries*, 56 Wn. App. 421, 783 P.2d 1119 (1989). The administrative rules, in WAC 296-127-013, clarify: "The applicable prevailing wage rates for workers employed on public works projects shall be determined by the scopes of work performed by those workers, and not by their specific job titles." These are the principles that determine which rate applies. L&I uses scope of work descriptions within chapter 296-127 WAC to classify labor hours for prevailing wage purposes. First, we look at the two trades and scopes of work at issue.

Millwright Work Defined By WAC 296-127-01351
Plant millwrights perform a wide variety of tasks. These workers are not engaged in construction but rather, they maintain and repair various systems within an existing plant or other facility. This role is commonly a full-time, year-round job. Where machinery, piping, electrical and other systems require maintenance or repair the plant millwright could perform that maintenance or repair. Typically, the employer is the company operating the plant or facility.

Construction millwrights perform a narrower set of tasks. In construction, millwrights generally do not perform electrical or pipe-fitting tasks. Consequently, L&I does not apply the millwright prevailing wage to that (electrical, pipe-fitting, etc.) work which is described in other scope descriptions (electrician, pipefitter, etc.). Generally, and according to WAC 296-127-01351, millwrights on public works construction projects assemble, disassemble, align and fasten (to foundations) machines and equipment. Typically, construction millwrights work on a succession of different construction projects in the employ of one or more construction contractors.

The millwright scope mentions micrometers, which are used to make very fine, high-precision measurements. However, use of micrometers and other devices to make high-precision measurements is not unique to millwrights. This work is performed by many crafts, including pipefitters.

Pipefitter Work Defined By WAC 296-127-01364
Here, I use the term "pipefitter" to include steamfitting and plumbing work though I also know those categories are distinct from one another. These pipefitter occupations construct a wide range of piping systems. By law, potable, waste and gas piping in buildings requires pipe trade workers who meet certain certification criteria. Not all pipe-joining requires this certification however. Pipe-joining is called out in WAC 296-127-01364 and in other scope of work descriptions such as WAC 296-127-01344 and WAC 296-127-01340.

Significantly for our purposes now, WAC 296-127-01364 contains a specific reference to assembling, installing and repairing valves. This means what it says. Repairing valves is required to be paid at the pipefitter wage, on Washington public works.

Principles of Statutory Construction

We also look to the principles of statutory construction, which also applies to how we interpret regulations. You mentioned the legal maxim of *expressio unius est exclusio alterius*—express mention of one thing excludes all others. L&I is familiar with this principle and it can be helpful in applying our scopes of work. For example, the millwright scope says this wage is applied to assembling machines while the elevator constructor scope says this wage is applied to assembling elevators. Elevators are machines. Since elevators are specifically called out in the elevator constructor scope, the elevator constructor wage is applied to elevator assembly, not the millwright wage. Where the assembling of a particular type of machine is specifically called out in a scope, that wage (and not the millwright wage) is applied to that work.

Application of Principles to the Nature of the Work

As mentioned above, valves and valve actuators can be considered to be machines. However, the pipefitter scope applies this wage to the work of "…repairing valves…." Using the principle of *expressio unius est exclusio alterius*, the pipefitter prevailing wage applies to the repairing of valves which are part of a piping system on public works, based on the plain language of the scope description. Given that outcome, we now need only to determine whether a valve actuator is part of the valve. Is it a machine, or is it a part of the valve? This, I think, is the question on which your request, and this determination, turns. Using this legal principle, the millwright prevailing wage can only be applied to valve actuator repair if the actuator is not part of the valve. If the actuator is part of the valve, then the very specific reference within the pipefitter scope to valve repairing requires that wage be applied to actuator repair.

"Valves control the flow of fluids in piping systems." This statement is untrue if valves do not include actuators. Valves without actuators cannot control anything. The essence of a valve is that it regulates the flow of fluids in piping systems. A device which cannot perform this function would not be a valve. Automobiles move under their own power, which is reflected in the etymology of the word "automobile." Moving under its own power is the essence of an automobile. Without the engine, it would be an automotive chassis, but not an automobile. Valves are similar. Without an actuator, the device cannot control the flow of fluids, and would not meet the definition of "valve." The common dictionary definition for valve confirms this understanding:

> "**:** any of numerous mechanical devices by which the flow of liquid, gas, or loose material in bulk may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more ports or passageways
>
> *also* **:** the movable part of such a device."[3]

From the training materials you forwarded with your request, I notice that in some sections the valve is considered to be a separate item from the actuator. In other portions of the training materials you forwarded, we see actuators discussed as a component of the valve, not a separate item. I find the same in readily-available literature. For example, when we use an internet search term for "control valve" and click on Images we most often see that a "control valve" is comprised of various parts, including the actuator.

[3] https://www.merriam-webster.com/dictionary/valve

Significantly, we might see “seat,” “body,” “disk,” “plug,” “stem,” and “packing” components with nothing labeled as the “valve.” The entire diagram, inclusive of actuator components, is entitled “control valve.” In these illustrations, there is no “valve” which is either part of, or separate from, the “control valve.” In these illustrations, the valve is the entire assembly inclusive of the actuator portion of the assembly.

It seems very clear to me that a valve actuator is part of a control valve and that a control valve is a valve. All of those are fixtures and equipment within a piping system (which are also called out in the pipefitter scope, separate from the reference to repairing valves). Though I did not write the “repair valves” phrase in WAC 296-127-01364, I am confident the drafter intended to apply the pipefitter wage to all the repair activities necessary to make a valve function properly. This is how I apply that scope description. On public works, control valves are repaired, assembled and installed at the pipefitter prevailing wage, including the actuator portions of those valves. Payment of less than the pipefitter prevailing wage for this work is not permitted under chapter 39.12 RCW, Washington prevailing wage law.

I affirm the analysis and conclusion, in the April 8, 2013 determination, regarding application of the inside wireman electrician prevailing wage to any and all electrical work on these projects. De-energizing, disconnecting, reconnecting and re-energizing of valves and their actuators requires the payment of the electrician prevailing wage.

Thank you for your interest in prevailing wage matters. Please do not hesitate to contact me with questions or concerns, or for any other purpose.

Sincerely,

Jim P. Christensen

Jim Christensen
Industrial Statistician/Prevailing Wage Program Manager
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WASHINGTON STATE ASSOCIATION OF
United Association of Plumbing & Pipefitting Industry of the U.S. and Canada

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June 18, 2018

Jim Christensen, Industrial Statistician
Prevailing Wage Program Manager
WA Department of Labor & Industries
PO Box 44540
Olympia, WA 98504-4540

Dear Mr. Christensen:

Re: Request for a De Novo Review and Formal Determination
Valve Actuators, Installation, Repair, Maintenance & Disassembly

On behalf of the affiliates of the Washington State Association of Plumbers, Pipefitters, and Steamfitters, this letter constitutes a formal request for a *de novo* review of the original April 8, 2013 Scope of Work Determination written by former Industrial Statistician, Ann Selover, in response to a September 17, 2012 letter addressed to Ms. Reasa Pearson. [Exhibit A(1) & A(2)]. The letter from Crane Nuclear, presented through their attorney, James Zissler, from Littler, Mendelson P.C., argues that, for the Valve Actuator Maintenance Project performed at the Columbia Generation Station, rather than the Plumber/Pipefitter Scope of Work, which Ms. Pearson had advised them to use, the Millwright Scope of Work and related prevailing wage rates were, in fact, the most appropriate for the specific work being performed. [Exhibits B(1) & B(2)]

This letter also requests a *de novo* review of Ms. Selover's July 15, 2013 letter to Mr. Zissler, which denies his May 8, 2013 Request for Modification to her original Determination, which affirms and upholds all of the elements of her original Determination. [Exhibit C(1) & (2)]

While under normal circumstances, the next step after a formal Denial of a Request for Modification would be to move the dispute through the appeal process established in WAC 296-127-060(3), it is our position that, so erroneous and ill-conceived was the Scope of Work interpretation and analysis provided by Ms. Selover in both letters, that a *de novo* review is justified prior to even considering the arbitration process.

The Columbia Generation Station project in question has already been completed and we are not requesting that any action be taken by the department to collect any lost wages or to issue any citations. Rather, our aim is to gain a prospective Determination that will overturn Ms. Selover's prior Scope Determinations and prevent against their use on any future projects involving the installation, repair, maintenance and disassembly of Piping Systems, Valves and Valve Actuators, as they are related to piping systems.

Legal Principles and Standards of Review

Our request for a *de novo* review and determination is based on two legal principles. These are:

1) whether Ann Selover's formal Determination was plainly erroneous, and

2) whether it was inconsistent with the regulation.

There is a long-standing doctrine, traditionally associated with the 1945 US Supreme Court Decision in *Bowles v. Seminole Rock & Sand Co*, that governs applicable standards for a court to grant deference to an administrative agency in the interpretation of its own rules and regulations. In *Bowles*, that doctrine essentially states that a court must accept an agency's interpretation of its own regulations unless the interpretation is "**plainly erroneous or inconsistent with the regulation**."[1] [emphasis added.]

As we will demonstrate, it is our firm belief, that the Determination of Ann Selover was, in fact, "plainly erroneous and inconsistent" with the Scopes of Work, as established in the Administrative Code.

In *Decker v. Northwest Environmental Defense Center*;[2] the US Supreme Court clarified its position, stating that the standard to which an Agency should be held is one of whether the Agency's interpretation of its own rules is "**reasonable**."

Hence, when read holistically, it advised that a court should defer to an agency's "**reasonable**" interpretation of its rules and regulations, not if those interpretations are "**plainly erroneous or inconsistent with the [rules] and regulation[s]**."

Therefore, the justification for requesting a *de novo* review and new formal Determination, which would serve to overturn the prior Determinations written by former Industrial Statistician Ann Selover, would be that, not only not was her interpretation of the law **plainly erroneous and inconsistent** with the governing Statutes and WACs, it did not represent a "**reasonable**" interpretation of the law, thus rendering it invalid in terms of the standards set by the courts.

Finally, as noted by the WA Supreme Court in the Everett Concrete Decision[3]:

To determine the scope of Washington's prevailing wage law, we look first to the relevant statutory language. *Service Employees, Local 6 v. Superintendent of Public Instruction, 104 Wn.2d 344, 348, 705 P.2d 776 (1985)*. **If a statute is unambiguous, its meaning must be**

[1] Bowles v. Seminole Rock & Sand Co. 325 U.S. 410 (1945)

[2] 133 S. Ct. 1326 (2013) [No. 11–338. Argued December 3, 2012—Decided March 20, 2013]

[3] Everett Concrete v. Labor & Industries 109 Wn.2d 819, 748 P.2d 1112

derived from its language alone.... If the statute is ambiguous, resort may be had to other sources to determine its meaning. *PUD 1 v. WPPSS, 104 Wn.2d 353, 369, 705 P.2d 1195, 713 P.2d 1009 (1985)*. [Emphasis added]

Unambiguity of Governing Statutes and WACs

Our first level of review is whether the governing statute is ambiguous in any way.

RCW 39.12.010(1) Definitions, defines the "**prevailing rate of wage" as the "rate of hourly wage, usual benefits, and overtime paid... to the majority of workers... in the same trade or occupation.**" WAC 296-127-015 further clarifies this by stating that the applicability of prevailing wages to workers is "**based on the scope of work performed by the individuals, rather than by the title of their occupations**." [Emphasis Added

We interpret this to mean that, irrespective of a worker's trade and occupation, the prevailing wage rate that must be paid to them is based on the actual tasks that they perform, irrespective of their learned trades and occupations. We find no ambiguity in either the Statute or the WAC. A "plain reading" of the law should stand as a valid, defensible basis for its interpretation; and the State has consistently utilized this interpretation to determine which Scope of Work and the related, established prevailing wage rates that workers should be paid. Therefore, if a worker who is a Millwright by Trade, is performing work that falls under the Scope established for Plumbers and Pipefitters, that worker must be paid the prevailing wage rate established for Plumbers and Pipefitters.

Introduction

It is our contention, that the April 8, 2013 Determination by former Industrial Statistician, Ann Selover, as well as her July 15, 2018 Denial of a Request for Modification, both of which allowed for certain elements of the work involved in Valve Actuator Maintenance to be performed under the Scope of Work for established for Millwrights was, as noted by the courts, plainly erroneous, and inconsistent with the [rules] and regulations.

We strongly believe that, in fact, the Millwright Scope, as written and as practiced, is entirely inappropriate for any of this work, and it should not have been contemplated at all.

We do not believe that the principles and standards established by the courts, and herein noted, as well as the clear language of Chapter 39.12 RCW and its related WACs, were those that established the foundation for Ms. Selover's Determination. Rather, to come to her conclusion, we believe that she may have relied too much on the Scopes of Work for "Valve Actuator Technicians," which Crane Nuclear's Attorney, James Zissler, presented to her in his September 12, 2018 letter. These trade presentations were, in fact, fully plagiarized representations of the Millwright Scope of Work. They were not valid representations of the actual work performed and, even if they were, the State has no Scope of Work for Valve

Actuator Technicians. Therefore, its determination should have been based on the nature and purpose of the work, as it relates to the existing Scopes.

Had this been done, it is our contention that the Millwright Scope of Work, because of its exclusivity to work on Machines, and because Valve Actuators are not machines, the Millwright Scope of Work, would have been ruled out at the outset.

But Ms. Zissler's apparent influence over the focus of Ms. Selover's review, resulted in a complete, perhaps inadvertent, misinterpretation of the Scopes. This resulted in the erroneous establishment of Millwright Scope and its significantly lower prevailing wage rate, as one among those that could be used to perform various elements of the work involved in Valve Actuator Maintenance.

In *Everette Concrete*, the Court, which based its review of the applicability of Chapter 39.12 RCW upon the Davis-Bacon Act, made a clear and important statement regarding the applicability of the Scopes of Work. It stated that the law was intended:

> … to protect the employees of government contractors from substandard earnings and to preserve local wage standards…. **The employees, not the contractor or its assignee, are the beneficiaries of the Act**. [Emphasis added]

Here, it would not be outlandish to interpret the Court's words to mean that, in disputes, where there may be some ambiguity (although we do not believe there is any this case) it would be best, with respect to prevailing wage rates, to err on the side of caution, with the overarching goal of preserving local wage standards, and protecting the employees of government contractors from substandard earnings; however, based on the language of the Scopes in question, the Crane Nuclear Determination is, with great certainty, one which clearly benefitted the Contractor, and not the workers, who are supposed to be the beneficiaries of the Act.

Examples of Piping Systems in WA

It is difficult to imagine any commercial piping system that does not contain valves and, unless the elements passing through those systems require no control whatsoever, in terms of where they go or how they are released, everything from gravity drains flowing into reservoirs to dam seepage control, to actual water management facilities, to waste treatment plants, to power plants, such as the Columbia Generation Station, requires a method of control. That control is provided by Valves, and the control of the valves is provided by Actuators.

To provide a sense of the breadth and scope of the work that may be affected by this determination, the following are just of a few examples of the types of piping systems in Washington which the proper function and maintenance of valves and valve actuators could be critical.

The WA State Department of Heath states that there are:

1,143 Publicly Owned Water Management Facilities [Exhibit D(1)]

The WA State Department of Ecology states that there are: 1,197 Dams – Publicly Owned [Exhibit D(2)]

321 Waste Treatment Facilities, and
105 Hazardous Waste Management Facilities → [Exhibit D(3)]

93 Pipelines Governed by the UTC [Exhibit D(4)]

All Water/Sewer Systems in WA per MRSC [Exhibit D(5)]

Add to these, the 5 major Oil Refineries in WA, as identified by the Dept of Ecology:

- BP Cherry Point, Blaine, Wash.
- Phillips 66 in Ferndale, Wash.
- Shell Oil, Anacortes, Wash.
- Tesoro, Anacortes, Wash.
- U.S. Oil, Tacoma, Wash.

Along with Irrigation Projects, Water Conservation Projects, and myriads of other industrial projects, for which complex piping systems carrying regulated contents are required, and all of them will have valves that will require actuators to control the flow of the contents, in order to ensure the proper functioning of these critical piping systems.

It should be clear from this evidence, that many of the facilities where the specialized work of Valve Actuator Maintenance is performed are public works; therefore, it is imperative that Ms. Selover's erroneous interpretation of the Scopes of Work, be removed from the record, and corrected as quickly as possible.

There has never been a dispute, of which we are aware, regarding the Scope of Work for Actuator Maintenance, until the Crane Nuclear dispute was raised over the Actuator Maintenance at the Columbia Generation Station. The work has always been performed by Plumber/Pipefitters who are specifically trained in this area of specialization, either as 5th year Apprentices, or as part of post journey-level training programs. [Exhibit E(1) – (7) see below]

1. Work Processes Schedule and Related Training – Pipefitter/Steamfitter
2. Introduction to Pipefittings, Valves… for Journey-workers and Apprentices
   (Includes Table of Contents; Chap. 4 - pp. 119-131, Intro to Actuators, p. 129)
3. Valve Repair Program for Journey-workers and Apprentices
   (Includes Table of Contents; Chap 12 – pp 111-124 (Control Valves & Actuators)
4. Advanced Valve Repair – Optional for Journey-works & 5th Year Apprentices

(Includes Table of Contents; Chap 3 – pp. 21-25 Precision Measuring Instruments
Chap 4 – pp 27-61 – Pneumatic Control Valves
5. Valve Technician Certification Program – Instructor Training Manual – Course 462
(Includes Sections of Maintenance Procedures for Fisher Control Valves & Actuators
6. Fisher EDR and ETR easy-e Valves/Actuators Instruction Manual – by Fisher.
(These are the specific valves and actuators used at the Columbia Generation Project)
7. **United Association Valve Actuator Repair Training – Student Manual**

History of Dispute

On or about September 17, 2012, James G. Zissler, Attorney for Crane Nuclear, from the firm of Littler, Mendelson, P.C., was contacted by L&I IRA-4, Reasa Pearson, to discuss the denial of approval for an Affidavit of Wages Paid submitted by Crane Nuclear for the Valve Acutator Maintenance work performed at the Columbia Generation Station in Benton County.[4]

According to L&I, the only Scope listed on the Affidavit of Wages Paid (#385892) was Electrical Fixture Maintenance Worker. [Exhibit F(1)] We have been unable to obtain a copy of the original Affidavit because it was removed and replaced by a corrected version, and is no longer in the system. The Affidavit; however, was sent back to Crane Nuclear for Correction three times; twice in 2012, and once in 2014. [Exhibit F(2)] For reasons unknown to us, when the original Affidavit was not approved, it was forwarded to Ms. Reasa Pearson, L&I's Central Office, for review. On April 18, 2012, L&I sent an email to Crane Nuclear advising that the correct Scope of Work for the Valve Actuator Maintenance work being performed at the Columbia Generation Station, was that of Plumbers, Pipefitters, and Steamfitters. However, Attorney Zissler and Crane Nuclear did not agree.

Crane Nuclear's Letter (by Attorney James Zissler) to L&I:

In a letter dated September 17, 2012 addressed to Ms. Pearson, Mr. Zissler recapped of all the acts of due diligence performed by Crane to determine the correct Scope of Work for the tasks involved in Actuator Maintenance Work. From Mr. Zissler's perspective, the Scope error resulted from the incorrect information Crane Nuclear received from everyone with whom they spoke prior to commencing work. It would appear that this history was Mr. Zissler's attempt to absolve Crane's misclassifications, in the event that it would be it cited for any potential violations or obligations to pay back wages.

Attorney Zisser's 9/17/2012 letter sets out Crane's efforts to pay the correct wages as follows:

1. The Union Representative, Mr. Thomas McMahon, from IBEW Local 77 told Crane that he would be in compliance with PW Requirements if he paid the Local 77 hourly wage. Mr. McMahon acknowledges their discussions, but denies providing any advice on prevailing wage.

[4] Contract No. 330757

2. Energy Northwest, the Awarding Agency, failed to provide the correct prevailing wage rates in their contract; therefore, Crane could not be held responsible for any errors in Scope, or any of the back wages that might be due. The department later advised Mr. Zissler that its policy is to consider awarding agencies in compliance with the law, if their contracts contained information that prevailing wages applied and referred them to the PW Website. L&I provided, in its response, proof that Awarding Agencies are so advised.

   Crane, unfortunately, failed to perform the one element of due diligence required by law. Since, all of its conversations regarding Scopes and wages were with sources who could not be considered authoritative, and especially since it was provided with differing answers from these non-authoritative sources, Crane should have thought to contact the Department of Labor & Industries for a definitive Scope Determination prior to starting work.[5] If they had, it is likely that they would have been advised, from the outset, to utilize the Scopes and established wages for Plumber/Pipefitter and, when appropriate, Inside Wireman.

   In fact, as a matter of practice, Crane Nuclear has performed the identical actuator maintenance work at other Nuclear Power Plants, such as the Point Beach Nuclear Power Plant and, in those cases, has entered into Letters of Understanding [LOU] with the UA Plumbers and Steamfitters Union to utilize their Journey-level Pipefitters, as Valve Actuator Technicians to perform Valve Actuator Maintenance Work. [Exhibit G(1)-(6)]

1. 2/21/2001 Signed LOU between Crane Nuclear and UA Local 400
2. 4/15/2002 letter from Crane Nuclear to UA Local 400 – Re: 4/15/2002 LOU
3. 8/13/2002 Signed LOU between Crane Nuclear and UA Local 400
4. 2/6/2010 Signed LOU between Crane Nuclear and UA Local 400
5. 2/10/2011 Signed LOU between Crane Nuclear and UA Local 400
6. 9/1/2011 Signed LOU between Crane Nuclear and UA Local 400

   Despite this error, Crane claims that their discussions with others provided them with the firm understanding that the Millwright Scope, which had been approved by L&I on prior projects, was the correct Scope and wage to apply to the work. They had, apparently decided not to try to continue to argue in favor of their original Scope submission of Electrical Fixture Maintenance Workers, which was prevailed at a static wage rate of $34.23. The Millwright wage was an even lower static wage of $29.22. Thus, it was financially advantageous, in terms of Labor Costs, to argue in favor of the Millwright Scope.

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[5] *SILVERSTREAK, INC.; T-Max Construction; Stowe Construction; Gary McCann Trucking; and Buckley Recycling, Respondents, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Petitioner*. 154 P.3d 891 (2007) 159 Wash.2d 868 (4) In preparing their bid, Suppliers relied upon a 1992 department policy memorandum [which advised that the work in question was not covered under prevailing wage law...."Suppliers also... relied upon oral representations made by the head of the prevailing wage section...." [Therefore, they were not required to pay any back wages to the workers.]

3. Attorney Zissler then submitted his own Scope analysis, which stood as his argument in favor of the application of the Millwright Scope of Work and wage. His analysis reviewed the specific duties and tasks of the three specific job titles listed below:

    a. **Diagnostic Test Technician/Actuator Technician;**
    b. **Valve Technician; and,**
    c. **O&C Technicians/AOV Diagnostic Tech.**

    However, the duties he quoted under each of the three titles were identical, and they were, in fact, simply copied and pasted, fully **plagiarized** versions of duties set forth in the Millwright Scope, put into paragraph form. **They were not descriptions of the actual work that was being performed at the Columbia Generation Station.**

    To believe the information provided in Mr. Zissler's letter, besides allowing for the excuses about why Crane should not be held responsible for using the wrong Scope and Wage, even after being advised of the correct Scope by L&I, one would have to conclude that:

    1. The fact of the plagiarized Millwright duties escaped the attention of L&I,
    2. All three listed job classifications listed supra perform identical work, and
    3. All three job classifications listed supra, are actually trained as Millwrights.

    Thus, this entire section of Mr. Zissler's letter is clearly intended to be misleading.

4. Mr. Zissler then names certain specific tasks from the Scope for Plumber/Pipefitter to show that the work did not include any of the specific tasks he selects.[6] His task list; selects specific duties out of the context of the whole Scope, to facilitate his argument that none of the selected tasks were performed as part of the Valve Actuator Maintenance work. He presents this argument as if the Plumber/Pipefitter Scope contains no other language that would cover the work. Again, his effort would appear to be an attempt to mislead.

5. Attorney Zissler also argues that L&I previously approved the Millwright Classification and for Actuator Maintenance work. This may well be true since the department doesn't know what precise work is being performed under any given contract. There is; however, a Disclaimer Advisement Screen for online filing of Intents and Affidavits. It specifically states that [form approval] "does not signify… approval of the classifications of labor used by the contractor. [Exhibit H]

    Any contractor who comes to the Disclaimer Screen, who is uncertain as to whether the correct Scope is being used, should not complete the form or accept the Disclaimer prior to contacting L&I for a verification of Scopes.

[6] His 9/17/2012 letter notes that the work performed by Crane involves does "not conform to the work performed by Crane's employees. For example, the Crane employees did not cut, thread or bend pipe; did not join pipes by use of screws, bolts, fittings, solder, welding or caulking or in [sic.] other methods; did not test the piping system; did not install and repair plumbing fixtures, did not work on distribution lines; and did not weld pipes [sic.] joints."

6. Finally, Mr. Zissler notes that Crane has, at times, paid its employees hourly rates that were higher than Benton County Millwright's wage rate of $29.22 per hour. I am not sure why this is relevant, especially if the Millwright Scope is not the one that should be applied to Valve Actuator Maintenance work in the first place.

   It would appear to be an effort to establish a foundation to argue that Crane is a good and responsible employer. This whole line of reasoning; however, begs the question of whether the Millwright Scope is correct.

Peripheral Issues Raised by Attorney Zissler's Letter:

1. The higher wages cited in Mr. Zissler's letter: $36.95 and $38.74, do not match any of the wages provided on any of Crane's Affidavits. The only wages other than the $29.22 established prevailing wage for Millwrights listed on the Affidavits are $38.28 and $38.06, and $36.95. If Mr. Zissler's statement regarding the higher wages that were paid is true, it would be a prevailing wage violation for filing a false document.

2. Mr. Zissler further advises that any wages lower than the Millwright's established $29.22 (which is what Crane Nuclear paid on most projects,) were for **Laborers or Apprentices**. Somehow, this sentence seemed to have escaped L&I's notice, and they did not appear to have further researched it. L&I's correspondence does not respond to it; however, it most assuredly required further review.

   In actuality, the prevailing wage rates for Laborers in Benton County on the 5/4/2012, which we believe to be the bid due date of the project, is a CBA rate. It ranges from $31.31 for Clean-up to $34.23 for work with Drills and Dual Masts. **[Exhibit I]** Therefore**,** the payment of wages lower than the Millwright rate of $29.22 for Laborers would be another prevailing wage violation, which would, at the least, include a wage claim for Laborers.

3. Crane's Affidavits list no Laborers or Apprentices; another false document PW Violation**.**

4. We can find no information showing Crane Nuclear to have even been a Training Agent for any Apprenticeship Program registered in WA State. This would be yet another PW Violation + journey-level wages would be due those named or utilized as Apprentices**.**

   Then Industrial Statistician, Ann Selover replied to Mr. Zissler's letter on April 8, 2013.

   During the interim, as she states in her letter, she performed further research into the work involved. She advises that she met with Labor Representatives, including Dave Rube (PNW Regional Carpenters - Millwrights); Randi Walli, UA Plumbers & Pipefitters, Local 598; Pete Marsh, IBEW 112; and Thomas McMahon, IBEW 77 – all of whom had some familiarity with the Valve Actuator Maintenance work performed at the Columbia Generation Station. Her letter does not state when these meetings occurred, what information she received, or how it affected her Scope of Work Determination.

On December 4, 2012, Ms. Selover held a meeting with the interested parties from business, to listen to their positions and their descriptions of the precise type and nature of the work at issue. In attendance were Attorney James Zissler, representatives from Energy Northwest, and Kirk Kelhofer from Crane Nuclear. Based on the April 8, 2013 Determination by Ms. Selover, it seems clear that the intent of those in attendance was to convince Ms. Selover that the Millwright Scope applied with specificity to all of the Valve Actuator Maintenance work.

To be successful in this endeavor, they must have been able to convince Ms. Selover, at least in part, that a Valve Actuator is, in and of itself, a "Machine," rather than an intrinsic, integral part of a Piping System. We draw this conclusion because the Millwright Scope is specific to work on "Machines" and their related equipment. For the Millwright Scope to apply, the Valve Actuator would have to be a "Machine." *It is not.*

The Department has, in prior determinations, been more concerned with the differences between the Millwright Scope, and its work with "equipment," and the Ironworker Scope. This potential conflict is much more in line with the overarching Scope and trade descriptions. L&I has looked at projects involving Prison Doors, Reconditioning of Hydroelectric Gates, Wheel Settings on that these Gates, and Baggage Conveyor Systems. [Exhibits J(1), (2), (3)]:

1. (9/26/1995 Memo from Jim Christensen, Industrial Statistician, to Greg Mowat, Employment Standards Manager, Re: Spillway Gate Rehabilitation – Rock Island Dam, Scope of Work Determination (Ironworkers v Millwrights.)

2. 9/6/1996 Formal Determination, Ironworkers v Millwrights – Rock Island Dam

3. 8/28/2006 Formal Determination – Baggage Conveying Systems – Testing

The applications of the Millwright Scope of Work, as presented in these letters, because of their work on heavy machinery and related equipment installations, are far more in keeping with the Scope's own examples of machinery and related equipment, which provides that it is to be applied when workers "[a]ssemble and install equipment, such as "**shafting, conveyors, and tram rails....**"

Put simplistically, when attempting to determine whether the Millwright Scope is appropriate for application to the work on Valve Actuators, one need only determine whether or not the Actuators can be classified as machines, and/or operational extensions of them, such as conveyors and tram rails, in the manner intended by the Millwright Scope of Work, which deals, for the most part, with heavy machines.

The question of whether Valve Actuators can be held in the same category as the machines to which the Millwright Scope refers, should not even be taken up as a part of this discussion. As a fully an integrated part of a piping system, that question would hardly even be raised and might only, in rare instances, be considered as falling into a conversation regarding the

use of the Millwright Scope. To view Actuators as Machines, or Machine equipment, would be to misconstrue the entire concept of the Millwright Scope, and to establish that Actuators are not inherent parts of piping systems.

It appears; however, that by focusing Ms. Selover's attention on the Millwright Scope, and the specific words within it, Mr. Zissler was, at least to some degree, successfully able to do this.

The 12/4/2012 meeting with business interests, along with her related research, culminated in Ms. Selover's April 8, 2013 Determination letter to Attorney James Zissler. The letter, broke down the precise, individual, specific, step by step tasks involved in Valve Actuator Maintenance. We do not know from whence this list of duties came, or how it was derived but, after the meeting, it seems that Ms. Selover, at least in part, sought out specific tasks, words, and terms, in the Millwright Scope, that could be "fit" into the words of the Millwright Scope.

This effort, and resulting Determination, is a perfect example of not seeing the forest for the trees. Put simply, Millwrights do not work on Piping Systems and their related equipment, and they certainly do not work on the maintenance of attached equipment that are integral parts of the piping systems, and without which, the entire piping system would not work.

Is A Valve Actuator A Machine?

Valve Actuators are physically attached to the Valves they control, and to the piping systems in which the Valves are installed. The actions of the valves, which respond to signals from the Actuators, occur within the pipe itself, where the valves are installed. Because Valves are actually inert entities, they must be operated from outside the piping system. Hence, they are attached to the Actuators which control their movements so that they can perform the functions for which they were designed and installed… to facilitate the smooth operation of the piping system such that it carries and transports its contents with the correct load and speed, as needed.

This critical function, the control of the Valves by the Actuators, is an integral element of the successful operation of the Piping System. It is an intrinsic part of the whole. The Actuator serves as an intermediary and controller. It receives power from a given source (generally hydraulic, pneumatic, or electric,) and converts that power into the force and direction necessary to cause the Valve to perform the functions for which they were installed and intended.

Put simply, without Actuators, the Valves would not work and, if the valves do not work, the Piping System would fail. As such, there is simply no rationale for separating the work on Valve Actuators from the Valves to which they are attached, or the work on the Piping System as a whole.

Maintenance on Valve Actuators requires that they be physically separated from the Valves and the Piping System. There is simply no other way that their maintenance can be performed. This separation, however, does not magically transform the Actuators from Plumbing Equipment to Machine Equipment. Only the Plumber/Pipefitter Scope, which provides for: "Assembling, installing, and repairing valves, pipe fittings, and pumps" can be applied for this work. The Actuator's physical attachment to the Valve and the Piping System, as an integral part of the Valve's function, places any work on it squarely within the Plumber/Pipefitter Scope.

Preliminary, General Scope Comparison:

The Plumber/Pipefitter Scope begins by stating that workers in this this trade "assemble, install, and maintain piping systems, fixtures and equipment for the transportation of water, steam, gas, air, sewage, oil, fuels, liquids, gases, or similar substances." The Scope states that the work "includes, but is not limited to...." We interpret this to mean that if there is a part of a Piping System that is not noted with specificity in the Scope, it would still fall under the Scope.

This includes elements like transducers, pressure switches, pressure transmitters, and gear boxes, etc. These would all be considered Piping Equipment, as contemplated in the Scope.

Because of their attachment to the Valves and their symbiotic operational relationship, as well the fact that both the Valves and the Actuators are attached to the piping system, Valves and Actuators might well be viewed as a single element of the piping system. When they are separated, as they are during maintenance, the Valves become inert objects, as do the Actuators. Hence, like the Valves themselves, Actuators should be viewed as piping equipment. The Valves and the piping system will not work until the Actuators are reinstalled and reattached directly to the Valves and the Piping System when the maintenance is complete.

All of the tasks involving work on valves falls, with specificity, under the Plumber/Pipefitter Scope. It is under this Scope that workers "**assemble, install, and maintain piping systems, fixtures and equipment for the transportation of water, steam, gas, air, sewage, oil, fuels, liquids, gases, or similar substances.**" For the purposes of working on these piping systems, the Scope provides that workers are responsible for "**[a]ssembling, installing, and repairing valves, pipe fittings, and pumps.**" [All emphases added]

The Millwright Scope does not even contemplate the tasks that are involved in Valve Actuator Maintenance on Industrial Piping Systems. The Millwright Scope is specific to work on Machines. As stated in the Scope, it contemplates work on such systems as **shafting, conveyors, and tram rails**. The Scope, in its entirety, makes no mention whatsoever, of anything related to Piping, Valves, or Piping Equipment, whereas the Plumber/Pipefitter Scope clearly does. This is a perfect example of the legal principle *expressio unius est exclusio alterius*[7] [Emphasis Added]

Evolution of Millwright and Plumber/Pipefitter Trades

Perhaps the easiest way to see the differences in the trades, is by looking at the derivation and evolution of the trades in dispute:

Millwright:

The word "Millwright" is derived from 1350-1400; Middle English as two words. "mill" and "wright."[8] It is defined as a person who designs, builds, or repairs grain mills or mill machinery. Essentially, this work involved the construction of Mills. These might have included flour mills, sawmills, paper mills and fulling mills which were, at that time, and even now, powered by water or wind. The Mills were mostly constructed of wood with a limited number of metal parts, which would explain their later association with the Carpenter Trade.

As time went on, and advancements were made in construction materials and technologies, it was natural for the Millwrights to evolve into a Trade that engages in the erection of machinery and its related equipment. This work would include the types of tasks listed in the Millwright Scope, such as leveling, aligning and installing machinery on foundations or base plates, as well as leveling and aligning power sources with machine related equipment.

Looking at it from this perspective, it is easy to see that the work of Millwrights has not evolved into the work of a Plumber/Pipefitter. Rather, they have evolved into two distinct, separate Trades and separate Scopes of Work, requiring different skills and training.

Plumber/Pipefitter:

[7] Legal Principle applied to Statutory Construction derived from the Latin and means 'expressing one thing excludes another'. It is not necessary to add other words to the list in order to make sense of the provision. This rule is said to mean that the mention of one thing excludes another.

[8] Random House Unabridged Dictionary, © Random House, Inc. 2018

The word "Plumber," actually comes the Roman era and is derived from the Latin word, *plumbum*[9], which means "lead." This is because the Romans used lead pipe to construct their piping systems. The work of this trade always involved the transport of liquid. In fact, Greek, Roman, Persian, Indian and Chinese cities all developed public baths, and later used the developed the technology to install potable water systems, aqueducts, irrigation systems, and sewage systems.

The Pipefitter Trade evolved as separate from the Plumbing Trade as the technology improved and the need for more specialized piping systems came about during the 1800s. The job title was first recorded between 1895 and 1890.[10] Fitters installed and maintained pipe systems, pipe supports, and all related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, and industrial production and processing systems. Moreover, Pipefitters are specifically trained and qualified to work in nuclear power plants.

From this perspective, the Valve Actuator, its installation, disassembly, maintenance, especially considering the wide variety of present day elements and materials that are carried within the Piping Systems to which they are attached, can only be performed under the Pipefitter Scope.

It is, therefore our contention that the Millwright Scope was misinterpreted by Ms. Selover, and misapplied to the work of Valve Actuator Maintenance at the Columbia Generation Station.

Review of Determination by Ann Selover:

This section reviews and comments on Ms. Selover's Determination [Exhibit A(1)], based on her applications of specific words in the Scopes, to the specific tasks described. The following is taken directly from her first, April 8, 2013 Determination. We do not know from whence the list of specific tasks that she uses was derived.

For clarification purposes only, each of the Task Descriptions and Conclusions are numbered:

Selover Determination

"Let's look, in a roughly sequential order, at some examples of the wage rates applicable to this work to repair valves and valve actuators at Columbia Generating Station. The use of trade names here describes the prevailing wage rate required for the work:"

[9] The word plumber, from the Latin *plumbarius*, originally meant "person who works with lead." In the past water pipes often made of lead. The plumbers who put in these pipes and took care of them were "lead workers." https://www.merriam-webster.com/dictionary/plumber

[10] http://www.dictionary.com/browse/pipe-fitter

1. Inspecting and performing precision measurements that **evaluate the condition of a valve** is correctly compensated at the Millwrights prevailing wage rate.

   We completely disagree with this conclusion. Clearly, **the purpose of the work** in this task, as described in Ms. Selover's Determination, is to **evaluate the condition of the valve**. Among the ways that this is accomplished is by taking precision measurements.

   Rather than look at the task itself, and apply the Scopes as they relate to the task, Ms. Selover, as noted in her letter, focuses on the work of taking "precision measurements." All work on Piping and Valves would fall squarely under the Plumber/Pipefitter Scope, but Ms. Selover found, in the Millwright Scope, the words: "Align machines and equipment, using … micrometers[11], and plumb bobs." Therefore, she reasoned, the work of evaluating the condition of the valves could be performed under the Millwright Scope. She fails to explain how a Scope that makes no mention of Valves, or any other element of a Piping System could be applied to this work.

   In fact, given the entire framework of the Millwright Scope, with its focus on Machines and their related equipment, the Scope simply does not apply.

   For the work described in this task, it is the Valves, themselves, and the evaluation of their condition, that are the objects of the work. The Plumber/Pipefitter Scope specifically provides for: "Assembling, installing, and repairing valves, pipe fittings, and pumps." One cannot repair a Valve, or any other part of a piping system, without first evaluating its condition. Clearly, taking precision measurements would be a standard aspect of performing this function.[12]

2. Wiring and using certain line voltage test equipment that evaluates the valve and actuator

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[11] A device for measuring very small distances, angles, or objects, especially one based on the rotation of a finely threaded screw, as in relation to a microscope. A unit of length in the metric system equal to one millionth (10^{-6}) of a meter. It should be noted that micrometers are used for a variety of purposes. The precision provided by a micrometer is necessary in several trades.

Even in music, micrometers are often used to finely tune string and percussion instruments to perfect pitch.

[12] It should be noted, at this point, that all skilled trades are required to make "precision measurements." While those precise words may not appear with specificity in all Scopes, the accomplishment of the vast majority tasks involved in construction, alteration, repair, improvement and maintenance, necessitates the taking of precision measurements.

- Boilermakers: Align… structures or plate sections, using plumb bobs, levels, wedges, dogs or turnbuckles;
- Brick Masons: Determine vertical and horizontal alignment… using plumb bob, gaugeline and level.
- Construction Site Surveyors, certainly take precision measurements using specialized tool;
- Elevator Constructors: verify alignments with plumb bobs and level and levels.
- Piping Systems, Sprinkler Systems, HVAC Systems, Refrigeration Mechanics, etc.: Lay out reference points… using tape, transit, plumb bob, level, and square, and although not so noted, must take precision measurements. Additionally, the training manuals included in the **Exhibits show training in the specific use of precision measuring tools, including, as with Millwrights, calipers and micrometers**.

Other skilled trades, for which adopted Scopes do not include specific words, terms, or sentences that would indicate "precision measurement" as included in the tasks of the job, must still require them to be successfully accomplished. Trades like Ironwork, any type of hard or soft Flooring System, Mechanical Installation, Construction Site Surveyors, and even Painters – think Tacoma Dome – cannot be accomplished without skillfully taking precision measurements.

performance by measuring thrust and torque is correctly compensated at the Inside Wireman Electrician prevailing wage rate.

We Concur.

3. Removing the actuator from the valve after any electrical wires are disconnected is correctly compensated at the Inside Wireman Electrician; Plumbers, Pipefitters and Steamfitters; or the Millwrights prevailing wage rate.

   We do not concur that this work can be performed under the Scopes of either Inside Wiremen or Millwrights. Again, Actuators and not machines and, therefore, work performed on them, does not fit within the parameters of the Millwright Scope at all.

   We should also note that, once disconnected from their power source, Actuators do not become pieces of electrical equipment.[13] Therefore, removing the Actuators from the Valves and the Piping System, which requires specialized skill, would not fall under the Wireman Scope.

   We recognize that there are often electrical circuit boards installed within the valves which receive power and direction from the power source, but the removal of the Actuator as a whole, does not affect these circuit boards. Wireman may be required, during maintenance, to remove the circuit boards, once they are exposed, evaluate their condition, and repair or replace them if necessary. [Exhibit K] But the task noted here, only involves the removal of the entire actuator… not its disassembly. This is further discussed under Task #6.

4. Removing, replacing, or repairing a valve in a piping system is correctly compensated at the Plumbers, Pipefitters and Steamfitters prevailing wage rate.

   We Concur.

5. Constructing, changing, repairing, and connecting and disconnecting conduit and wiring to control devices in the nuclear power plant is correctly compensated at the Inside Wireman Electrician prevailing wage rate.

   We concur.

6. Performing repairs on the internal components of mechanical, electric, pneumatic, or hydraulic valve actuators is correctly compensated at the Millwrights prevailing wage rate.

[13] There are instances when working on disconnected electrical materials and equipment are still considered to fall within the Scope of Work for Wiremen. These usually occur when the disconnected wire may become live again, or work is being performed in an electrical substation generator, even if it is taken off-line, or the work involves the moving of electrical equipment. None of those types of situations apply in this case.

We strongly disagree with this determination on two grounds. First, it conflicts with the use of the Wireman Scope, as noted under Task #3, except with respect to the internal electrical components in the Actuator – should they require testing, evaluation, removal, and/or repair.

Looking at it sequentially, after the Actuators are disconnected from the power source by the Wiremen, they are removed from the Valve and disassembled. While the Wireman Scope may be used to take the Actuators offline, and to remove the internal circuit board from the assembly, test, evaluate it, and replace the circuit board when ready, when these specific tasks are completed, the Wireman Scope would not be used again until the piping system and Valve Actuators need to be brought back online. The remaining evaluations, tests, and repairs on the Valves, and the Actuator's internal components, irrespective of their power source (electrical, mechanical, pneumatic or hydraulic) can only be done under the Plumber/Pipefitter Scope.

Once again, the Millwright Scope of Work contains no reference Valves of any kind, whether connected or disconnected. Nor does it contain any references to Piping Systems and their related equipment and devices. Again, we must stress that the Actuators, themselves, are not Machines. They have no inherent power or direction of their own. Their function is to transform power into the force and direction necessary to directly operate Valves, as part of a piping system.

7. Performing electrical repairs on electric valve actuators is correctly compensated at the Inside Wireman Electrician prevailing wage rate.

   We concur – See Response to Task #6.

8. Performing repairs on pneumatic systems internal or external to the valve actuators is correctly compensated at the Plumbers, Pipefitters, and Steamfitters prevailing wage rate.

   We concur.

9. Precision alignment of parts is correctly compensated at the Millwrights prevailing wage rate.

   We must again disagree based on the fundamental premise that the work, itself, is specific to Valve Actuators – not the Machines that are contemplated under the Millwright Scope. Here, Ms. Selover, once again, becomes more focused on terminology than on purpose and function.

   It seems clear that her conversations and correspondence with Mr. Zissler, Crane Nuclear, and Energy Northwest, specifically directed Ms. Selover's focus and attention toward finding ways in which the Millwright Scope could be applied to various individual tasks involved in Actuator Maintenance. This conclusion is fairly well supported by the fact that descriptions of the duties of the Valve Actuator Technicians' classifications presented to her were, as previously noted, fully plagiarized from Millwright Scope of Work. Put simply, the work was deliberately presented to match, as closely as possible, the terminology found in the Millwright Scope.

We do not know whether Ms. Selover was aware of the plagiarism, but we do know that her thought process in classifying duties was successfully focused on the Millwright Scope. It is unfortunate that she provides no real, substantive explanation or analyses for each of her Scope assignments. It would have been interesting to follow her thought process in allowing the Millwright Scope to be used. But, absent any of those explanations and analyses, we can only advise that the Determination was, except in those areas where we concurred, entirely erroneous.

Request for Modification

In a letter dated May 8, 2013 [Exhibit C(1)] Attorney Zissler requested a modification of Ms. Selover's Determination, as it related to four specific elements of Ms. Selover's Scope assignments. Coincidentally, these were all of the tasks that were determined to not fall under the Millwright Scope.

1. Removing, replacing, or repairing a valve in a piping system is correctly compensated at the Plumbers, Pipefitters and Steamfitters prevailing wage rate.

   Although not mentioned in his original Determination Request, Mr. Zissler argues that, because this element of the work also involves "component level repair, component measurement, in body machining, and component inspection" the Millwright Scope would cover those parts of this task that contain this work, and the Plumber/Pipefitter Scope could be used for the disassembly and re-assembly of the Valve.

   Ms. Selover denies this request noting that the Plumber/Pipefitter Scope specifically provides for the repairing of Valves and concludes that, therefore, Valve or "component" repair must use the prevailing rate of pay for Plumber/Pipefitter.

   We concur; however, we still take issue with her advisement that Millwrights may evaluate the condition of the valves as well as ensure their precision alignments. As the Scopes are written, again, the Plumber/Pipefitter Scope is specific to all Valve work, while the Millwright Scope contains no references to any work that would conform to Valves as used in Piping Systems.

2. Performing electrical repairs on electric valve actuators is correctly compensated at the Inside Wireman Electrician prevailing wage rate.

   Attorney Zissler does not dispute the Determination that any external or internal disconnection repair or replacement of permanent plant or component wiring, including installation of jumpers would fall under the Wireman Scope; however, brings into the discussion a series of tasks not included in his original letter, which he believes should be allowed under the Millwright Scope. These include any internal or external replacement of parts, disassembly, reassembly, lubrication, or mechanical preventative maintenance that involves the mechanical operation of the actuator.

Mr. Zissler argues that the allowance of the Electrician Scope for this work is incorrect. We concur. However, he once again argues that the work falls under the Millwright Scope.

Ms. Selover responds by reminding Mr. Zissler that, in her April 9, 2013 Determination, she found some overlap between the Plumber/Pipefitter Scope and the Millwright Scope, resulting in her determination that a good part of the work, such as the removal of the Actuator from the Valve and repairs on the internal components of Mechanical, Electrical, Pneumatic, or Hydraulic Valve Actuators, could be performed under the Millwright Scope.

We completely disagree with this reasoning and, absent taking words out of context from the Millwright Scope, there is no overlap between that and the Plumber/Pipefitter Scope.

3. Performing repairs of pneumatic systems internal or external to the valve actuators is correctly compensated at the Plumbers, Pipefitters, and Steam Fitters prevailing wage rate.

Attorney Zissler objects to this Scope assignment, arguing that the "repair and replacement on pneumatic systems internal or external to a valve actuator requires specific specialized training and work that is not within the Plumber/Pipefitter classification, nor within any plumbing/pipefitting training and apprentice programs."

Nothing could be further from the truth, as demonstrated by manuals included in [Exhibit (E)] which provide exhaustive training specifically dedicated to Actuator Installation, Maintenance and Repair.

Ms. Selover, ultimately, declined to modify her original determination but, unfortunately, this meant that she was still making the mistake of interchanging the concepts of Millwrights, and their work on Machines, with the work of the Plumber/Pipefitter, and their work on Piping Systems.

Mr. Zissler's Request for Modification would have provided Ms. Selover with an opportunity to correct her original Determination by, not only rejecting Mr. Zissler's arguments regarding the use of the Millwright Scope, but also by reestablishing the work as correctly falling under the Scope for Plumbers and Pipefitters, and establishing that all work on Valves, Valve Actuators, and related mechanical equipment, falls under this scope as well.

Scope of Work Analysis and Review

We believe that all work involved in valve actuator installation, repair, maintenance, and disassembly, with the exception of any necessary electrical work, is clearly established in the Plumbers and Pipefitters Scope of Work, WAC 296-127-01364. We do not believe that,

when properly interpreted, there is even a conflict or question with respect to the performance of this work under the Millwright Scope of Work. The Millwright Scope simply does not apply to *any* of the work involved in Piping Systems. This includes Valves, Actuators, and any other equipment that becomes an integral part of the Piping System as a whole.

The exhibits and evidence we have appended to this request fully support this conclusion.

Plumbers, Pipefitters, and Steamfitters – Scope of Work:

WAC 296-127-01364 clearly states that, among of the purposes of the Pipefitter Scope are to:

… assemble, install, and maintain **piping systems, fixtures and equipment** for the transportation of water, **steam**, gas, air, sewage, oil, fuels, liquids, gases, or similar substances.

The work includes, **but is not limited to**:
(a) The **handling and moving of any** plumbing, **pipefitting** and steamfitting **materials, supplies, and equipment on the job site**;
(d) Assembling, installing, and repairing **valves, pipe fittings, and pumps**.
(e) Testing the **piping system**. [All emphases added]

Maintenance is, clearly, a critical element of the proper functioning of all Piping Systems, but no Piping System actually functions without a variety of other related equipment; hence, the related equipment, is included in the Plumber/Pipefitter Scope of Work. No other established Scope contains any language that is consistent with work on Valves and their connected Actuators. The proper function of Valves and Actuators which, as previously noted, might well be viewed as a single unit in terms of their attachment and operative functions, is critical to the operation of a wide variety of facilities and types of Piping Systems.

It is difficult to imagine an Industrial Piping System that does not utilize valves, unless its contents are simple, uncontrolled liquids flowing downward by gravity, with no limit to the amount of liquid that is moved through the pipe and emptied.

Absent this sheer simple function, the control of pipe contents requires valves and, for the valves to operate as intended, there must be actuators, whether manual, hydraulic, pneumatic, electric, or computer generated. Ultimately, however, as the valves and the actuators, are both pieces of equipment that are inanimate objects without any power of their own, there must be some source of power or force that causes them to operate so that they can communicate with the valves and "tell" them what to do. Absent that originating power, force, or energy, the pipes, valves and actuators, become one inanimate unit, connected to the piping system, becoming a part of it.

The question then, in considering Scopes, becomes one of whether the Actuator is a machine. Meeting the definition of a "machine," would provide the fundamental premise necessary to argue that the Millwright Scope might be appropriate for work on Valve Actuators. Crane Nuclear, Attorney Zissler, and Energy Northwest failed to even raise this question at all.

Millwright Scope of Work:

WAC 296-127-01351 clearly establishes that the Millwright Scope of Work is intended to apply specifically to **machines and [machine related] equipment and foundations**.

Taken in its most simple, clearest terms, as edited here, the Millwright Scope of Work states that:

… [M]illwrights **install machinery and equipment**

The work includes, but is not limited to:

- **Dismantle machines**….
- **Move machinery and equipment**….
- **Assemble and install equipment, such as shafting, conveyors, and tram rails**….
- **Construct foundation for machines**… [using] materials, such as wood, cement, and & steel.
- **Align machines and equipment**, using… micrometers, and plumb bobs.
- **Assemble machines** and… fasten them to foundation or other structures….

There is, simply put, nothing in the contents of this Scope that would even remotely apply to any work involving the installation, repair and maintenance of Piping Systems, Valves, Valve Actuators, or any other element of a Plumbing or Piping System.

Despite the fact that the Millwright Scope states that the work "is not limited to," such statements in Scopes do not, and are not intended to, extend their terminology to systems and tasks that do not fall within the descriptive opening sentence (machinery and equipment,) especially when the work involved is covered with specificity under another Scope. The "equipment" to which this scope refers, is not intended to mean Plumbing equipment. That is a long stretch from the Scope's description of work on machines, even in industrial environments.

We believe that Ms. Selover, in developing her Determination, either did not understand the basic premise of the Millwright Scope, as a Machinery-centric Scope, or that she came to believe (or was convinced) that Valve Actuators are, in and of themselves, Machines that can be maintained by Millwrights, rather than integral, necessary attached parts of Piping Systems.

Had maintenance work been performed on the Machines (and their related equipment) that provide the power that energizes the Actuators been the work in question, assuming they were not electric, and depending on the circumstances, the Millwright Scope of Work might have applied but, since this was not the work in question, and there is an existing Scope that covers

Valve Maintenance and related equipment with specificity, the work on Valves and their related equipment, the Acutators, is fully covered under the Plumber/Pipefitter Scope.

Ms. Selover's Determination is the unfortunate result of somehow being convinced to select individual words from Scopes without looking at the Scope's overall meaning. Put simply, Plumbers and Pipefitters work on Piping Systems and all related equipment, and Millwrights work on Machines, and their related equipment.

Somehow, this simple element of a Scope review was lost in the process of attempting to determine under which scopes the most minute elements of the project's tasks could be performed.

To interate, the legal principle of *expressio unius est exclusio alterius*, when viewed in terms of this disputes, directs us to ask the question of whether one of the two Scopes in question contains language that is more specifically inclusive of the thing, or task (Valves, Valve Actuators, Piping Systems) in question. Hence, even if another Scope included more general references to the work when its words are taken out-of-context, the principle provides that the more specific will prevail, even to the exclusion of the more general. Here, the Plumber/Pipefitter Scope contains language that is specific, but not limited to: the assembly, installation, and repair of valves, pipe fittings, and pumps, as well as testing the piping system. The Scope also notes that the piping system may be used to carry a variety of materials, one of which is steam – which was the element involved this piping system.

Certainly, the Plumber/Pipefitter Scope is far more akin to the work on Actuators, which are attached to both the piping system and the valves, than any language in the Millwright Scope.

As written, compared to the work performed, the Plumber/Pipefitter Scope is the only Scope that should be applied to work involving Piping Systems, Valves, and Valve Actuator Maintenance.

Conclusion

The Department must overturn the erroneous Determination and Denial of a Request for Modification written by Ann Selover, and perform a *de novo* review of the work performed on the piping system by Crane Nuclear at the Columbia Generation Station, as it applies to the established Scopes of Work, and related prevailing wage rates. After a thorough review of all of the facts in this case, we ask that you issue a new Determination that properly assigns all of the work on Valves, Valve Actuators, and Piping Systems, as whole, as falling within the Scope of Work for Plumbers and Pipefitters.

We also ask that, once this new Determination is issued, the writings of Ann Selover on this subject be removed from L&I's public Determinations Website, and noted as not to be used.

Thank you in advance for your consideration in this matter. If you have any questions or if we may be of further assistance, please do not hesitate to contact us.

Sincerely,

Tim Herbert
Executive Secretary-Treasurer, WSA

Randy Walli
Business Manager, UA Local 598

cc: David Ciprut, Director of Prevailing Wage Compliance & Outreach, WSA
Jason Lee, Organizer, UA Local 598
Mark Mokler, Business Agent, UA Local 598