



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
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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 Technician²

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>

Tim Herbert
Randy Walli
April 22, 2020
Page 6 of 6

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,



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