

**Wisconsin Chapter NECA**  
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## It's a Blue Harbor Summer

The 2007 Summer Meeting will be held July 26 – 28 at the **Blue Harbor Resort** in Sheboygan ([www.blueharborresort.com](http://www.blueharborresort.com)).



Registration will be Thursday from 2:00 to 5:30 p.m. in the Grand Lobby of the resort. As always the meeting will start with a cocktail reception Thursday evening, and dinner is on your own.

Our general meeting sessions will be held Friday, July 27 and Saturday, July 28 from 8:00 a.m. to 12:00 noon. Our speaker on Friday is nationally-recognized motivational speaker, Richard Flint. Richard's upbeat, can-do attitude is contagious and you will find yourself re-charged after listening to him. As has become the tradition, our Saturday morning session will be dedicated to State Electrical Inspector Joe Hertel, and his code update class, which he has approved for 4 CEUs. It's your annual opportunity to hear the code answers from the expert!

The annual golf outing will be held Friday afternoon and we will again be offering prizes to golfers who sink a hole-in-one during the tournament, including a grand prize of \$20,000. The event takes place on **The Bull at Pinehurst Farms Golf Course**, a Jack Nicklaus Signature course ([www.golfthebull.com](http://www.golfthebull.com)). Thank you to our affiliate members who have agreed to sponsor the contest again this year.

Almost before we know it, it will be Saturday evening, and that means time for our closing banquet, awards presentations, and ECPAC raffle.

Registration information will be mailed soon to all member and affiliate member firms. If you have any questions, please contact Jennifer at the Chapter Office (608) 221-4650.

## Plan Now for NECA's Annual Convention

The annual NECA Convention and trade show will be held October 5-8 in San Francisco, California. Registration will open in June, and all members will receive registration information in June, however, for your advance planning, we are reminding you now to save the date. The Wisconsin Chapter has been assigned to the San Francisco Marriott Hotel.

Check the convention site [www.necaconvention.org](http://www.necaconvention.org), for advance information. We hope to see you there!



The quarterly Health & Welfare Trust meeting was held April 25 in Madison. The investments posted moderate gains for the quarter (1.5%), and the Plan remains in good financial condition. The cost of claims was up significantly for the first quarter, however, much of



the cost was for two high dollar claims, and a substantial portion of that will be refunded to the Plan by the "Stop Loss" insurance. The average cost per claim continues to rise, however the number of claims has dropped slightly.

W.E.E.B.F. has a new website with links to the Summary Plan description, and a private access area for members to review their flex benefit accounts and hour banks ([www.weebf.org](http://www.weebf.org)). Overall the Fund is in good shape with ample re-

## Contractors Show They Care

The Milwaukee area has some contractors who really show they care. The President of Hunzinger Construction Co., John Hunzinger, saw the care packages his wife was helping to assemble for Soldiers Angels Care Package program, and knew he had to help. Hunzinger asked his employees if they knew anyone who was serving in the Middle East, and many of them did. The company set up donation boxes for employee donations and began shipping care packages to soldiers overseas.

Since then, Hunzinger Construction has been joined by many of its subcontractors and has shipped nearly two tons of care packages to 14 different military units in the Middle East.



Hunzinger has also helped a Florida-based construction company, Dooley & Mack Construction, begin a similar program.

The contractors participating with Hunzinger in the care package program include two NECA members; **Pieper Electric Inc.** and **Roman Electric Company Inc.**

## Order Your MLU Before July 1

NECA has been compiling a publishing electrical installation labor unit data since 1923, for the **NECA Manual of Labor Units**, a long-standing tradition that has become an industry standard. Every two years, estimating experts review and compare data for updates to the Manual of Labor Units, allowing the publication to remain current with new industry trends and materials.

The new 2007 – 2008 Manual of Labor Units is now complete. NECA members receive a complimentary copy of the publication, either in paper format or electronic (CD), however you **MUST** request your complimentary copy before July 1, 2007. A copy of the order form is enclosed with this newsletter. Don't miss out on your opportunity to receive this \$45 publication free of charge.



The Manual of Labor Units also features an Electronic Data Download add-on, which will automatically send updates to subscribers mailboxes. Information on that feature is also enclosed.

## Town Hall Session Coming to Convention

The 2007 NECA Convention in San Francisco will feature a "Town Hall" type session on Labor Relations. The session is in response to NECA members who have requested a forum devoted to labor relations, and will feature a panel of speakers including NECA's John Grau, and the IBEW's Ed Hill. The session will be moderated by negotiator, arbitration specialist and contractor advocate, Mark Breslin. Mr. Breslin is well-known for his candid and uncompromising style, and has worked with nearly every major international union and dozens of employer associations.

The format will allow interaction with the audience as well as between the IBEW and NECA.

"Watch your thoughts, for they become words. Choose your words, for they become actions. Understand your actions, for they become habits. Study your habits, they will become your character. Develop your character for it becomes your destiny."

-John MacArthur

## From the Desk of Attorney Kay



I have witnessed for many years the need of electrical contractors to have good quality sales employees. While perhaps the smaller electrical contractor sells its services primarily through the owner's efforts, larger electrical contractors place significant emphasis on having quality sales representatives who may not necessarily perform project management work. Recently, a Wisconsin Court of Appeals decision reviewed the question of whether compensation promises made to a valued sales employee were enforceable even in the absence of any employment or remuneration contract. The Court of Appeals enforced a mere promise to pay that was never reduced to a specific contract agreement.

In Skebba v. Kasch, the Wisconsin Court of Appeals in an opinion filed in October, 2006, awarded a former vice president of sales the sum of \$250,000.00 after the jury found that the former vice president had relied upon the owner's promise to pay him \$250,000.00 if the business was ever sold, or the vice president of sales was lawfully terminated or if he retired. The facts in the case demonstrate the basis for the court's decision to enforce a promise even in the absence of a signed contract.



Skebba, the salesman, had worked for the Kasch Company for many years and the Kasch Company experienced serious financial problems in 1993. Skebba was solicited by another company to work for them, but Kasch asked that Skebba stay, noting that Skebba's leaving would be viewed very negatively within the industry. Skebba then told Kasch that Skebba needed security for his retirement and family and would stay if Kasch agreed to pay him \$250,000.00 if the company were sold or Skebba was lawfully terminated or Skebba retired. Skebba turned down the job opportunity and stayed with Kasch until 1999 when the company was sold. When Kasch sold the business he received \$5.1 million for his 51% share, but rejected Skebba's request that Kasch pay Skebba the \$250,000.00 previously promised.

In the circuit court, the jury found that there was no contract but that Kasch had made a promise upon which Skebba relied to his detriment, and that the reliance was foreseeable and that Skebba was damaged in the amount of \$250,000.00. The trial court, however, concluded that based on its reading of applicable law it could not specifically enforce the promise the jury found Kasch had made to Skebba. The circuit court concluded that Skebba did not prove what he would have earned had he taken the job with the other company and that he could not establish what he had lost by relying upon Kasch's promise, and therefore had not proved his damages.

### June 2007

#### **June 6**

Janesville-Beloit Membership

#### **June 7**

La Crosse Membership

#### **June 11**

Racine-Kenosha Membership

#### **June 13**

Fox Valley Membership  
Madison Golf Outing—Nakoma

#### **June 14**

Indianhead Membership

#### **June 20**

Northeastern Membership

#### **June 21**

Wisconsin Valley Membership

### Upcoming Meetings

#### **July 26 - 28, 2007**

Summer Meeting  
Sheboygan, WI

#### **October 5 - 8, 2007**

NECA Convention  
San Francisco, CA

#### **January 25 - 26, 2008**

Winter Meeting  
Bloomington, MN

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## Essential PPE

NECA has long stressed the importance of proper PPE for electrical workers, and provides contractors with many tools to help them decide which equipment is appropriate. It is equally important that the equipment be kept in good condition. The Lowe's website for professional contractors has a new article discussing PPE, and features an interview with NECA's Brooke Stauffer, Executive Director of Standards and Safety.



For example, equipment should not be used for non-electrical work, as a tear could jeopardize its fire-retardant quality. Washing fire-retardant clothing with bleach or fabric softener will also diminish the protective properties.

Electrical Workers should avoid placing reflective stickers on hard hats, as they can reduce the insulating qualities of the hats.

For more, check out the Lowe's website and the interview with Brooke Stauffer. The article, "Keep Up with Employee Safety Education", can be found at: <http://forpros.lowes.com/Electricians>.



Have you got a code question for Tom? Let us know and we'll ask him to answer it in a future newsletter.

## Tallest Tower is Proposed for Chicago

The Chicago City Council has approved a zoning change that clears the way for construction on a 2,000-foot, twisting Chicago Spire. The 150-story lakefront tower would become the nation's tallest building. Designed by Santiago Calatrava, who also designed Milwaukee's Art Museum, the spire would have a unique twist-style as it rises 2,000 feet above the intersection of the Chicago River and Lake Michigan. The building would feature a four-story glass lobby area, and would house 1,200 "exceptional" lakefront residences, and would be the tallest residential building in the world. Currently, the tallest building in Chicago is the Sears Tower, which reaches 1,451 feet. The world's tallest building is the Taipei 101 tower in Taiwan. It measures 1,671 feet and 101 floors.



New York's Freedom Tower (formerly the site of the World Trade Center) will be 1,776 feet upon completion.

There are some hurdles yet to be cleared before the vision becomes a reality, such as financing the approximately \$2 billion project. If completed as planned, it is expected to become a tourist attraction drawing thousands of visitors to Chicago.

## Tom's Code Corner

**Question:** We always get questions of why do we have to leave so many emergency lights on in places of assembly. The owner would like to turn them off when the building is not occupied. I am planning on using the LVS EPC-A switch in conjunction with an occupancy sensor to control the emergency lighting. This will allow the fixtures to be fed with both normal power and emergency power, and to allow switching of the lighting when on normal power and fail to emergency when there is a power fail. The literature indicates it is UL 924 listed. Can we use this device to switch required emergency lighting?

**Answer:** Yes. 700.20 and Comm 16.18

We agree that the UL 924 device is appropriate for use to perform any allowable switching of emergency lighting. Occupancy sensors that fail safe are permitted by other Codes such as NFPA 5000 and 101 to switch required emergency lighting.

700.20 requires the switch to be available only to authorized persons. The usual interpretation of this requirement is locating the switch in a restricted area or using something like a key switch to restrict access.

*E-mail your code questions to Shari Brunner (shari@wisneca.com) and she will forward them to Tom and print the response in an upcoming newsletter. You may even remain anonymous if you wish!*

## MANPOWER STATISTICS

For the Month of -- **March 2007**

Local Union #	14	127	158	159	388	430	577	890	TOTAL
	=====	=====	=====	=====	=====	=====	=====	=====	=====
Local Contractors: NECA	9	4	3	19	5	5	3	6	54
Non-NECA	35	12	16	21	14	13	10	19	140
<b>Total Local Contractors:</b>	<b>44</b>	<b>16</b>	<b>19</b>	<b>40</b>	<b>19</b>	<b>18</b>	<b>13</b>	<b>25</b>	<b>194</b>
Traveling Contractors: NECA	7	5	6	4	5	4	3	4	38
Non-NECA	4	12	4	4	1	4	0	0	29
<b>Total Traveling Contractors:</b>	<b>11</b>	<b>17</b>	<b>10</b>	<b>8</b>	<b>6</b>	<b>8</b>	<b>3</b>	<b>4</b>	<b>67</b>
<b>TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:</b>	<b>55</b>	<b>33</b>	<b>29</b>	<b>48</b>	<b>25</b>	<b>26</b>	<b>16</b>	<b>29</b>	<b>261</b>
Contractors More Than Two Months Delinquent in N.E.B.F.	2	1	1	1	1	3	0	1	10
Total Number of Contributing Contractors in Area:	57	34	30	49	26	29	16	30	271
Employees: NECA	243	53	221	747	297	67	153	205	1986
Non-NECA	234	146	190	113	50	63	70	68	934
<b>TOTAL EMPLOYED:</b>	<b>477</b>	<b>199</b>	<b>411</b>	<b>860</b>	<b>347</b>	<b>130</b>	<b>223</b>	<b>273</b>	<b>2920</b>

<u>Union #</u>	<u>NECA Division Name</u>
127	Kenosha Division
158	Northeastern Division
159	Madison Division
388	Wisconsin Valley Division
430	Racine Division
577	Fox Valley Division
890	Janesville-Beloit Division
14	Indianhead/La Crosse Division

NOTE: These figures only reflect employees of contractors not more than 2 months delinquent in their N.E.B.F. payments.

One of Governor Doyle's key budget proposals would extend healthcare programs to increase the number of Wisconsin residents who are insured. The Governor's office notes that currently nearly 90 percent of all residents have health insurance. He would like to expand the BadgerCare program (which covers poor families with children) to all Wisconsin families with incomes at or below 200 percent of the federal poverty level. A family of four would need to earn \$41,300 or less to qualify. He also has proposed increasing Medicaid to cover all childless adults with incomes at or below 200 percent of the federal poverty level, or \$27,300 or less for a couple.



The changes to the programs would increase the number of Wisconsin citizens who have health insurance to a whopping 98 percent. The increases would be paid for with a new Hospital tax equal to 1 percent of gross revenues, and a significantly increased cigarette tax.

## From the Desk of Attorney Kay

*(Continued from page 3)*

On motions after verdict the trial court struck the jury’s answer on damages.

Skebba appealed to the Court of Appeals. The Court of Appeals noted that Kasch did promise to pay Skebba more than Skebba would have earned at the job Skebba turned down and that Kasch did not promise that total income to Skebba would be greater than in the turned down job. The court noted that Kasch only promised that if Skebba stayed, Kasch would pay Skebba \$250,000.00 at the earliest of (1) Kasch selling the business, (2) Skebba retiring, or (3) Skebba being lawfully terminated.

The court relied upon the doctrine of promissory estoppel which empowers the court to enforce promises where the failure to do so is unjust. The court, relying upon an earlier decision involving Red Owl Food Stores, concluded that Wisconsin recognized a legal cause of action based upon promissory estoppel if the promise was (1) one which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, (2) one that induced such action or forbearance, and (3) one that caused an injustice which could be avoided only by enforcement of the promise.

The court noted that under prior law the first of these two requirements involved facts to be found by a jury, while the third is a policy decision to be made by the court. The Court of Appeals noted that a circuit court in fashioning a remedy in a promissory estoppel case, the amount awarded need not necessarily be the amount promised or the amount determined to be compensatory damages for breach of the promise or the amount of the plaintiff’s expenditures or change of position in reliance upon the promise. Rather, the Court of Appeals noted that in determining what justice requires, the court must remember all of its powers and its remedy should be molded accordingly.



The court noted that Skebba performed and remained at the Kasch Company in reliance upon Kasch’s promise to pay \$250,000.00 if one of three conditions occurred. The court further noted that Kasch had enjoyed the fruits of Skebba’s reliance, keeping a top sales person helped the company through tough financial times and avoided the damage that Skebba’s leaving would cause the Kasch Company. Accordingly, the Court of Appeals concluded that to prevent injustice the equitable remedy for Skebba is to receive the specific performance promised, i.e., the payment of the \$250,000.00. Accordingly, the Court of Appeals reversed the circuit court and remanded it for the entry of judgment in the sum of \$250,000.00 in Skebba’s favor.

This case is a dramatic example of how in business, a promise made which the promisor reasonably expects will be relied upon to produce action or inaction of a definite nature, and which does induce such action on the part of the promisee will be enforced even in the absence of a contract if a substantial injustice can only be avoided by enforcement of the promise. In my 48 years of law practice I have seen such promises made, particularly under stressful financial conditions which for one reason or another are not honored. Company management may wrongfully believe that the promises will float into the atmosphere and if not documented and reduced to writing in the form of a contract will never be enforced by a court. As one can see from the decision in Skebba v. Kasch, under circumstances where a substantial injustice will occur if a promise is not enforced, the court will enforce it under the doctrine of promissory estoppel.



*An early-morning walk is a blessing for the whole day.*

*- Henry David Thoreau*