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# Watts News

**October 2007**

## We Left Our Hearts...

Well, you know the rest of that lyric. The Wisconsin Chapter had 31 people registered to attend the annual NECA Convention in San Francisco, California, and it was one of the best ever!

The opening reception was held at the Marriott hotel (headquarters for the Wisconsin Chapter) and featured great food, and lively music. The opening General Session was held Saturday morning with NECA updates and a report on action taken at the Board of Governors meeting. The keynote speaker was Steve Young, former San Francisco 49ers quarterback, who convinced attendees that football is the best game ever, and in times of crisis, just huddle up! His lively talk was concluded as he quizzed the audience on trivia and five lucky attendees caught a pass! A new feature this year was the Labor Relations Town Hall meeting, a forum designed to answer questions from attendees relating to current labor relations issues, new language and other related topics. John Grau, Geary Higgins (NECA), Ed Hill (IBEW) and Jon Walters (IBEW) were on the panel and answered questions regarding



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## Organizing and Industry Event Held

Wisconsin Chapter representatives, Larry Navarrete, Excellence Electric and Shari Brunner, Assistant Chapter Manager, recently attended an "Industry Night" in Jacksonville, FL. The evening employee recruitment event was the culmination of the weeklong "Organizing Blitz" in which 200 organizers from other states traveled to Florida and visited non-union job sites to solicit employees. The employees who participated were greeted and led through the process of completing a job application and interviewing with various NECA employers who had set up booths for the event. There was food and beverages for all, and many of the employees who turned out brought families with them for the evening.



The Organizing Blitz was necessary because the Florida Initiative has meant a dramatic increase in the amount of residential and commercial projects that contractors are working on, and there is a manpower short-

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Just in case there wasn't enough to worry about these days with air travel, the latest issue is whether the air traffic control system is flawed. Last month in Memphis, air traffic controllers had to use cell phones to communicate with other centers to track their planes when their system crashed. The FAA blames the failure on a failure of a major AT&T phone line, but FAA technicians say there is a problem with the new telecommunication system upgrades and that more failures are likely. AT&T has not commented on the situation, citing an ongoing investigation into the failure. During the failure, Memphis controllers were able to redirect planes to other centers and air traffic was suspended within a 250 mile radius of Memphis, causing disruptions in Nashville, St. Louis, Pittsburg and Miami. The glitch comes in the midst of intense pressure on the FAA to reduce the number and duration of flight delays across the country.



## NECA Convention (continued)

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various labor relations topics as portability, referral, NEBF and the CW/CE program. The keynote speaker on Monday was Nando Parado, former Uruguayan soccer player, who along with 15 other teammates survived 72 days in the Andes Mountains after their plane crashed. His was an emotional message to make sure to treasure your loved ones. The closing gala featured a special performance by comedian Dana Carvey.

Packer fans from Wisconsin and Milwaukee Chapters attended the special Packer party to watch the Packers as they hosted the Chicago Bears on Sunday night football. The party was a success even though the game's outcome was not.

Next year the convention will be held in Chicago October 4-7, so mark your calendars now! You won't want to miss it.

## New Code of Excellence

The IBEW has recently unveiled its new "Code of Excellence" program for all IBEW local unions to adopt and promote. The Code of Excellence program has been adopted by many local unions already, but is now going to become Category I Language, which means every NECA and IBEW agreement must contain the enabling language and each of the areas must meet and adopt their own specific code. The three main goals of the code are:

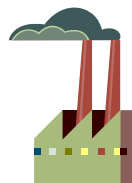
- 1 A project built on time and under budget
- 2 Restoration of a sense of pride in craftsmanship
- 3 Strong recommendation by customers



While these are all goals that every contractor has long strived for, the IBEW recognizes that there was a need to restate these simple ideas to the membership body, and to ensure that all IBEW members are working toward maintaining a strong work ethic and reputation.

## Gulf Coast Needs You

The Quality Coastal Initiative (QCI), a partnership between NECA and the IBEW is working on encouraging NECA contractors from other parts of the country to bid on industrial projects along the Gulf Coast. The areas through Mississippi, Louisiana and Texas have seen so much growth in industrial projects that the shortage of skilled craftsmen and workers is jeopardizing projects, a trend that is expected to continue in 2008. QCI is working to increase the use of union electrical contractors on these projects. If you are interested, contact Tim Overmier (225) 931-9270 or Dale Wortham at (281) 840-2857 for more information or access the QCI's website:



[www.qualitycoastalinitiative.com](http://www.qualitycoastalinitiative.com).

## From the Desk of Attorney Kay



### WHO PAYS WHEN DESIGN PLANS ARE INSUFFICIENT?

Design professionals and contractors have often asked themselves whether errors, omissions and conflicts in construction design documents furnished to bidders by the owner can safely be ignored by the contractor, or, if resolved by the contractor, whether the contractor is entitled to additional compensation for the economic costs associated with delays.

The answer depends upon who you ask and exactly how you frame your question. In 1918, when George B. Spearin was under contract with the U.S. Department of Navy to build a dry dock in accordance with government plans and specifications, the U.S. Supreme Court in U.S. v. Spearin (1918), 248 U.S. 132, in an opinion written by Justice Brandeis held that when Spearin encountered a flooded and unworkable work site because of the breakup of an underground sewer system which contained a dam which was not shown on the government's plans, Spearin was relieved of any responsibility for proceeding without extra compensation. The Department of Navy concluded that Spearin was wrong and terminated him. The U.S. Supreme Court held that the character, dimensions and location of the sewer in the plans and specifications imported a warranty that if the specifications were complied with, the sewer would be adequate. The Court held that the implied warranty was not overcome by the general clauses contained in the contract between Spearin and the Navy requiring Spearin to examine the site, check the plans and assume responsibility for the work until completion and acceptance.

In April of 2007, the Ohio Supreme Court refused to apply the Spearin doctrine in a case where a general contractor agreed to build three buildings to be part of the Ohio State University College of Business but found that the State's architects had provided plans and specifications containing numerous omissions, inaccuracies and conflicts, requiring a large number of requests for information and change orders. In Dugan & Meyers Construction Company, Inc. v. Ohio Department of Administrative Services, the Ohio Supreme Court reversed the Ohio Court of Claims which had held that the numerous omissions, inaccuracies and conflicts in the design documents were discovered by the contractors before proceeding with their work requiring a determination as to what was intended or required which caused Dugan & Meyers delay, and that the underlying cause of the delay was the inadequacy of the design documents. The Court of Claims awarded damages to Dugan & Meyers and held that it was not responsible to Ohio State University for liquidated damages. The Ohio Court of Appeals affirmed in part and reversed in part.

The Ohio Supreme Court reversed because it concluded that the Spearin doctrine did not invalidate express contractual provisions contained in the contract between Dugan & Meyers and the Ohio Department of Administrative Services. Those express provisions stated that: "Time is of the essence", provided a specific procedure to be followed in the event of project delay and contained a no damage for delay clause, expressly providing that the contractor was not entitled to additional compensation or mitigation of liquidated damages for delay. The contract also provided that the contrac-

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### November 2007

#### **November 1**

La Crosse Membership

#### **November 7**

Madison Membership  
Janesville-Beloit Membership

#### **November 8**

Indianhead Membership

#### **November 12**

Kenosha-Racine Membership

#### **November 14**

Northeast-Fox Valley Memb.

#### **November 22-23**

Thanksgiving Day-NECA Office Closed

### Upcoming Meetings

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

Winter Meeting  
Bloomington, MN

#### **April 6 - 9, 2008**

Midwestern Region Spring Conf.  
Key Largo, FL

#### **July 24-26, 2008**

Summer Meeting  
Eagle Ridge Resort, Galena, IL

#### **October 4-7, 2008**

NECA Convention  
Chicago, IL

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Back in 1920, landscape architect John Nolen envisioned Janesville to feature parkland along the Rock River. He saw the river as an asset to the city, and felt the land should be used for parks and open spaces, rather than the industrial corridor it was. The city is closer to achieving that goal today, after a recent agreement to purchase of property from Westphal & Company and Energetics, and an aggressive purchase of land over the last decade. Westphal & Company (a NECA member) will continue to lease space in its building for the next couple of years, but eventual plans call for the demolition of the buildings and much of it will be used as parkland, but will also be redeveloped into a marina and restaurants. When polled last year, 62 percent of Janesville residents approved the plan.

With the new purchase, Janesville will own 75 percent of its 18 miles of shoreline along the Rock River.



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

## Organizing and Industry Event

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age as a result. The Florida Initiative includes the Construction Wireman/Construction Electrician (CW/CE) classification, unlimited portability, employers ability to hire employees without referral, and job-specific terms such as requiring workmen to be at their work site (not job site) at starting time. The initiative was created as a result of the area's extremely low market share, so even though they have gained work, there is still a long way to go. We hope to be able to use some of these tools in the Wisconsin Chapter, and some of the items will be discussed during upcoming labor negotiations.

In addition to NECA representative, the Wisconsin IBEW Conference had a few organizers attending events in the area as well.

## Volunteers Not Covered by W.C.

Individuals who volunteer their time to work on projects for non-profit organizations are not covered by the State Workers' Compensation Act. The law has no jurisdiction over any volunteer activity, and therefore, the employee who volunteers their time can not be covered.

In order to qualify as a volunteer on a project, however, there is some criteria that must be met. First, the person is providing their services of their own free will and has not been directed to work on the project. Second, they must not be receiving compensation or other items of value for their efforts, that would be valued at \$10 or more per week.



This includes electricians who volunteer their time on "Habitat for Humanity" projects even when their involvement stems from a union effort to be involved.

## Tom's Code Corner

*Tom has promised us some new code questions for next month, but here's one that was originally printed in the March 2006 issue of Watts News:*

**Question:** A typical nonmetallic device box is supplied with Type NM cables. Some cables are No. 12's on 20-ampere branch circuits. Some are No. 14 on 15-ampere branch circuits. No isolated equipment grounding conductors are present. Does 250.148 require all of the equipment grounding conductors present in that box to be spliced together?

**Answer:** Yes. Section 250.148 of the NEC says "any separate equipment grounding conductors associated with the circuit conductors shall be spliced or joined within the box or to the box." The exception covers isolated receptacles. If it were a metal box both circuits would be bonded to the box. Section 250.148(B) says one or more equipment grounding conductors brought into a nonmetallic outlet box shall be arranged so that a connection can be made to any fitting or device in that box requiring grounding.

## MANPOWER STATISTICS

For the Month of -- **August 2007**

Local Union #	14	127	158	159	388	430	577	890	TOTAL
	=====	=====	=====	=====	=====	=====	=====	=====	=====
Local Contractors: NECA	8	4	3	17	5	5	4	6	52
Non-NECA	36	11	16	21	16	15	11	18	144
<b>Total Local Contractors:</b>	<b>44</b>	<b>15</b>	<b>19</b>	<b>38</b>	<b>21</b>	<b>20</b>	<b>15</b>	<b>24</b>	<b>196</b>
Traveling Contractors: NECA	10	4	7	6	8	5	6	6	52
Non-NECA	6	11	4	1	2	5	3	1	33
<b>Total Traveling Contractors:</b>	<b>16</b>	<b>15</b>	<b>11</b>	<b>7</b>	<b>10</b>	<b>10</b>	<b>9</b>	<b>7</b>	<b>85</b>
<b>TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:</b>	<b>60</b>	<b>30</b>	<b>30</b>	<b>45</b>	<b>31</b>	<b>30</b>	<b>24</b>	<b>31</b>	<b>281</b>
Contractors More Than Two Months Delinquent in N.E.B.F.	0	1	1	0	2	2	0	1	7
Total Number of Contributing Contractors in Area:	60	31	31	45	33	32	24	32	288
Employees: NECA	274	64	141	581	275	57	199	199	1790
Non-NECA	252	76	219	96	54	72	68	86	923
<b>TOTAL EMPLOYED:</b>	<b>526</b>	<b>140</b>	<b>360</b>	<b>677</b>	<b>329</b>	<b>129</b>	<b>267</b>	<b>285</b>	<b>2713</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.

When Denver-based Tanesay Development was seeking a site for brownfield redevelopment, Mark Geall never realized that the perfect property was in his hometown. The company has purchased the former MI drilling property in Appleton on the Fox River for the project. Kaukauna had previously reached an agreement with an international liability aggregator, which will assume all responsibility of site cleanup. Additionally, the property was attractive to Tanesay because of its proximity to 27-acre Telulah Park in Appleton. The completed project will be comprised of 300 condominiums, restaurants, and other retail space. Phase one of the project is expected to start in the summer of 2008, and will be comprised of a 60-unit condo building. It has been selected as a pilot project for the U.S. Green Building Council's program for developing green neighborhoods, something Geall feels good about. The entire 15-acre site of the project named RiverHealth, will be LEED-ND certified, and the buildings will be powered by hydroelectric power.



## From the Desk of Attorney Kay

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tor must request an extension of time in writing within ten days after the occurrence of the condition necessitating an extension of time, or waive any claim for extension or mitigation of liquidated damages.

The Ohio Supreme Court noted that even if the plans had required more changes than originally contemplated, the contract established a detailed procedure to be followed for all changes and that in order to hold in favor of Dugan & Meyers the Court would “need, first, to find that the State had implicitly warranted that its plans were buildable, accurate and complete, and second, to hold that the implied warranty prevails over express contractual provisions. To do so would contravene established precedent, which we will not do,” said the Court.

The Ohio Supreme Court cited its own previous decisions which recognize the Spearin doctrine in cases involving unexpected site conditions but refused to extend Spearin to cover errors in plans and specifications. The Court found its decision to be in accordance with numerous decisions throughout the country citing Illinois and Washington Supreme Court decisions holding that a contractor’s claim for damages due to delay was precluded by a no damages for delay clause and that a contractor was nonetheless responsible for liquidated damages for delay despite the existence of multiple errors and omissions in the plans that had been supplied by the owner.

Practically every contractor association in the State of Ohio filed *amicus curiae* briefs urging reversal, including AGC of Ohio, MCA of Ohio, NECA of Ohio, and SMACNA of Ohio. The Ohio Municipal League, Ohio School Boards Association, Buckeye Association of School Administrators and Ohio Association of School Business Officials urged affirmance.



The Spearin doctrine has only been cited in one reported decision in Wisconsin, that being Thomsen-Abbott Construction Company v. City of Wausau, a 1960 decision, holding that a contractor was not entitled to additional compensation for de-watering a building site when the bid documents expressly placed a duty of investigation of the site upon the contractor. The Wisconsin Supreme Court’s decision in Thomsen-Abbott v. City of Wausau did not expressly accept or reject the application of the Spearin doctrine in Wisconsin.

So whose responsibility is it if the architectural or engineering plans and specifications contain numerous errors or omissions? The Ohio Supreme Court held that it depended upon what provisions are contained in the contract between the owner and the prime contractor, and whether those provisions trump the implied warranty that the plans and specifications are suitable for the purpose intended. The dissent in Dugan & Meyers noted:

“As it turns out, the State could have saved a lot of money on blueprints and just submitted some sketches on the backs of a few cocktail napkins”... “Spearin sets forth the general rule of law that the contractor usually assumes the risk of work-site conditions.”... “But when the contractor’s difficulties are a result of faulty specifications by the government, the burden changes.”... “Justice Brandeis recorded the obvious assumption that the contractor’s responsibility for contract completion begins where the owner’s detail design ends. In essence, the Court recognized that the contractor’s right to recover for the owner’s breach of its implied warranty of the adequacy of design was conditioned upon the contractor’s reasonable reliance upon the owner’s defective design in preparing its bid and in doing its work.”

It is not easy to predict which way the Wisconsin Supreme Court would go on this issue. Obviously, the reasons for the contractor’s delay and the terms of the contract between the contractor and the owner could make the difference.

## Audio Recordings From Convention Are Available

As has been the practice, NECA offers attendees and non-attendees the opportunity to purchase audio recordings from the seminars conducted at the NECA Convention. A list of the CDs available for purchase is attached to this newsletter. These recordings are an excellent way to share what you learned at the convention with your employees and coworkers, or to “attend” sessions you may have missed.

