

Wisconsin Chapter NECA
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Hard Hat Productivity Seminar

The Wisconsin Chapter is pleased to announce the scheduling of a new MEI seminar, Hard Hat Productivity. This new program is designed to walk participants through the steps to increasing jobsite productivity by recognizing 9 critical factors of a highly productive project and utilizing those factors for maximum productivity on every project.

The course will be held October 30, 2007 at the Ho Chunk Hotel, Wisconsin Dells. The cost of the seminar is \$150, which includes continental breakfast, lunch, and course materials. Registration is open now and is limited to 25 participants. A registration form for the seminar is included with this issue of Watts News. The registration form can also be downloaded from the Chapter website: http://www.wisneca.com/training_seminars.htm, if you prefer.

For more information, contact Jennifer at the Chapter Office (608-221-4650). Hotel rooms are available at Ho Chunk Hotel at a discounted rate of \$70 per night.



San Francisco Update

The Wisconsin Chapter has 31 people registered to attend the annual NECA Convention in San Francisco, California. The convention dates are Friday, October 5 through Monday October 8, and this year the event promises to be bigger and better than ever!

A new feature this year is 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) and Ed Hill (IBEW) will be on the panel which will be moderated by Mark Breslin, a noted labor-management speaker and author. Speakers at the general sessions include Nando Parrado, former Uruguayan soccer player, and Steve Young, former NFL quarterback. The closing gala will feature a special performance by comedian Dana Carvey.

Packer fans will want to attend the special Packer party to watch the Packers as they host the Chicago Bears on Sunday night football. The party kicks off at 4:45 p.m and the game kicks off at 5:15 p.m.

It's sure to be another great NECA Convention and Trade Show.



The Milken Institute of Santa Monica, California, a nonprofit economic think tank, has ranked Wisconsin 23rd in an index of states according to the cost of doing business in the state. Minnesota came in at 13th, Illinois was 18th and Michigan was listed at 20th this year.

The index measures average costs of wages, electricity, commercial rents and tax burdens. Wisconsin was above the national average in taxes and rents but was below the national average in electricity costs and wages.

Hawaii, New York and Alaska remained the most expensive states to conduct business, while South Dakota was the least expensive of all.



The difference between a problem and a challenge is the emotions you use to define what is happening.

— Richard Flint

Baldwin Signs on to Withholding Repeal

When Tim Morgan, Staff Electric, Mark Hady, Hady Electric, and Loyal O'Leary met with Congresswoman Tammy Baldwin in August, they had no idea what the outcome of the meeting would be. The provision they wanted to discuss is in Section 511 of the Tax Reconciliation Act of 2005, which was signed into law in 2006. The 3% Withholding language was inserted into the bill by committee, and there was no public hearing ever held on the language itself.

The withholding provision takes cash from law-abiding taxpaying companies in an effort to catch those who are not paying proper taxes. That cash could be used to run daily operations or fund new jobs for the contractor, and therefore, is far too restrictive. Additionally, the profit margin for the construction industry is typically less than the 3% that is withheld from payments.

Once Tim stated the case for repeal of the 3% Withholding provision of the Tax Reconciliation Act of 2005, the congresswoman listened and became convinced. A phone call from Congresswoman Tammy Baldwin later that afternoon confirmed that she will join the effort to repeal the mandatory withholding provision as requested.

Thank you to Tim Morgan, Staff Electric and Mark Hady, Hady Electric for their successful meeting on this important legislation, and we hope the repeal action will also be successful.



Left to Right, Tim Morgan, Congresswoman Baldwin, Mark Hady, Loyal O'Leary

Free OSHA 500 Class

The OSHA Alliance with NECA has been signed and activities are already taking place as local OSHA Compliance Specialists have been meeting with NECA members at the monthly meetings. The goal is to increase awareness among members of the services that are available to them, and to open communications between NECA members and OSHA on pertinent safety topics.

The NECA Office hopes to be able to provide lower-cost training opportunities to member firms, better understanding of safety programs and practices, and increase compliance with OSHA regulations on jobsites. The Alliance has already produced fruit in the form of a free OSHA 500 class. This week-long train-the-trainer course is financed by a grant, and participants will be authorized to teach both OSHA 10-hour and 30-hour classes. Information on the seminar was sent to all members, however, if you would like additional information, please contact Jennifer at the Chapter Office (608) 221-4650. A registration form for the class is included with this newsletter.



From the Desk of Attorney Kay



EMPLOYEE TERMINATED FOR CAUSE STILL ENTITLED TO WORKER'S COMPENSATION BENEFITS

While I seldom write articles for this publication that deal with worker's compensation decisions, a recent one is worthy of note by electrical contractors because it awards temporary total disability benefits after an employee is terminated for violating plant safety rules. In *Emmpak Foods v. L.I.R.C.*, decided by the Court of Appeals in June of 2007, the employer, Emmpak, and its insurer, National Union Fire Insurance Company of Pittsburgh, sought judicial review of a Labor and Industry Review Commission's decision that a terminated employee of Emmpak was entitled to temporary total disability benefits after he was terminated by Emmpak for violating plant safety rules. Following the standard route of judicial review, the case was first heard by the Circuit Court for Waukesha County, which affirmed the L.I.R.C.'s decision. Emmpak and its insurer then appealed to the Court of Appeals.

The Court of Appeals discussed the degree of deference that it owed to the L.I.R.C. interpretations of worker's compensation statutes governing temporary total disability and held that it would grant the agency deference to its legal conclusions. The court noted that the courts are often required to interpret agency-administered statutes, and while the agencies are required to abide by the statutory constructions approved by the court, when a new case comes before an agency it properly looks to the court cases that have gone before it and analyzes and applies them. The Court of Appeals decided that it would defer to the agency's decision on the availability of temporary total disability benefits as being the most reasonable under previous court decisions. The Commission interpreted the law to provide no exception to liability for temporary total disability benefits where an injured employee is terminated for cause, even when the employee has continued to work post injury under restricted duty.

The court noted that the that liability for worker's compensation benefits exist where: (1) the employee sustains an injury; (2) at the time of the injury, both employee and employer are subject to the worker's compensation statute; (3) at the time of the injury the employee performing services growing out of or incidental to his or her employment; (4) the injury is not intentionally self-inflicted; and (5) the accident or disease causing injury arises out of employment. In the Emmpak case, the parties agreed that each of those conditions existed. The court also noted that as the employee continued employment on a restricted basis, he was receiving a wage and was not therefore entitled to disability payments. However, when he was terminated, the employee did suffer a wage loss which would ordinarily entitle him to temporary total disability payments. The issue in the case was therefore whether the employee's entitlement to temporary total disability benefits is affected by the fact that his wage loss came after he was terminated for cause.

In holding for the employee, the Court of Appeals cited a 1997 case, *Brakebush Brothers, Inc. v. L.I.R.C.*, involving an employee who had in-



Wisconsin statutes provide compensation benefits exist where:

injury; (2) at the time of the injury, both employee and employer are subject to the worker's compensation statute;



October 2007

October 3

Janesville-Beloit Membership

October 5 - 8, 2007

NECA Convention
San Francisco, CA

October 10

Fox Valley & Northeast Memb.

October 11

Indianhead Membership

October 15

Kenosha & Racine Membership

October 18

Wisconsin Valley Membership

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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The torrential rains in southwest Wisconsin caused massive flooding in some areas that are still feeling the after-effects. FEMA and the Wisconsin Emergency Management Agency have scheduled briefings for officials in Sauk and Richland counties to provide information on applying for FEMA public assistance grants for repairs to public facilities. In addition, Crawford, La Crosse and Vernon counties are also eligible to receive public assistance funds, and meetings will be scheduled there this fall. These funds are granted separately from those given to individuals and families who have suffered damages. Local governments in those counties including state, county, city, town, and village governments are eligible to apply for federal assistance to fund 75 percent of the cost of emergency or permanent work done to damaged facilities. The state provides 12.5 percent, and the local community is then responsible for the remaining 12.5 percent.



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

Hand Tool Safety Checklist

Review this 12-point checklist with all workers who use hand tools - and with their supervisors. How does your facility rate?

1. Are all tools and equipment (both company and employee-owned) used by employees at their workplace in good condition?
2. Are hand tools such as chisels, punches, etc. which develop mushroomed heads during use, reconditioned or replaced as necessary?
3. Are broken or fractured handles on hammers, axes and similar equipment replaced promptly?
4. Are worn or bent wrenches replaced regularly?
5. Are appropriate handles used on files and similar tools?
6. Are employees made aware of the hazards caused by faulty or improperly used hand tools?
7. Are appropriate safety glasses, face shields, etc. used while using hand tools or equipment which might produce flying materials or be subject to breakage?
8. Are jacks checked periodically to assure they are in good operating condition?
9. Are tool handles wedged tightly in the head of all tools?
10. Are tool cutting edges kept sharp so the tool will move smoothly without binding or skipping?
11. Are tools stored in dry, secure location where they won't be tampered with?
12. Is the proper eye and face protection used when driving hardened or tempered nails?

Tom's Code Corner

Question: We are in the process of installing some AV equipment on the ceilings of our building. I am suggesting to the installers that we need outlets on the ceiling to plug the projector in. They would like to run the power cord and class 2 wiring through the projector base pipe mount and have everything plugged into a power strip above ceiling. Is this OK?

Answer: No. 400.8(5).

The receptacle could go above the ceiling. Some equipment are supplied with a plug in transformer. The secondary wiring method may be a listed Class 2 cable. This type of installation may be OK.

400.8 covers prohibited uses for flexible cords. 400.8(5) prohibits flexible cord from being used within the cavity created by the suspended ceiling.

MANPOWER STATISTICS

For the Month of -- **July 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	35	12	16	21	16	15	11	18	144
Total Local Contractors:	43	16	19	38	21	20	15	24	196
Traveling Contractors: NECA	9	5	7	6	8	5	6	6	52
Non-NECA	5	12	4	1	2	5	3	1	33
Total Traveling Contractors:	14	17	11	7	10	10	9	7	85
TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:	57	33	30	45	31	30	24	31	281
Contractors More Than Two Months Delinquent in N.E.B.F.	1	1	1	0	1	2	0	1	7
Total Number of Contributing Contractors in Area:	58	34	31	45	32	32	24	32	288
Employees: NECA	276	62	141	581	275	57	199	199	1790
Non-NECA	246	70	219	96	54	72	68	86	911
TOTAL EMPLOYED:	522	132	360	677	329	129	267	285	2701

<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.

New Recycled Material Resource Center

The University of Wisconsin – Madison, College of Engineering, has created a Recycled Materials Resource Center (RMRC) to develop ways to reuse recycled materials in construction. The new RMRC will operate using a four-year \$6.2 million grant from the Federal Highway Administration and will work in connection with the University of New Hampshire, which had a similar center until their funding ran out. The research strengths at both schools will be tapped to study environmental aspects of recycled materials and search for new ways to utilize this resource. The waste products to be studied include foundry sand, coal-combustion byproducts, asphalt shingles and textile scraps from automobile interiors, all items that would typically be sent to landfills.

From the Desk of Attorney Kay

jured his back on the job and was temporarily unable to work, but while he was absent from work, his employer conducted an investigation and discovered that he had been bow hunting and playing pool. The employer then discharged the employee for misrepresentation of facts or giving false or misleading information regarding a work injury. The court approved the Commission’s award of temporary total disability benefits to the employee, quoting the Commission:

“While the employer appears to have had sound reasons for terminating the applicant, this does not relieve the employer/insurance carrier from the obligation to pay temporary total disability benefits for the period in question.... To the employer and its insurance carrier, it may seem inequitable that the applicant is able to receive temporary disability benefits after having been discharged for good cause. However, worker’s compensation is a statutory program and there is no provision in Chapter 102 which would allow the cutoff of temporary disability benefits as long as the work injury continues to cause disability.”



The Court of Appeals in *Emmpak* decided to apply the *Brakebush* rule, even though Emmpak’s employee had no wage loss following his injury as did the employee in *Brakebush*. The court held that although Emmpak’s employee continued at his old job, and therefore had no wage loss until he was terminated, it was his termination that triggered the availability of temporary total disability benefits rather than the injury on the job. The court rejected the question of whether the termination was meritorious, holding that public policy does not favor drawing a distinction between a “good” termination for a safety violation and a “bad” termination for some other reason, and that the statute does not make a distinction. The court noted that as recently as March, 2006 the state legislature enacted several changes in the statutory scheme for worker’s compensation and did not alter the decision of the court in *Brakebush*.

It should be noted, however, that under new legislation, three exceptions to the right to receive temporary disability benefits were inserted: (1) the employer is not liable if it offers suitable work and the employee unreasonably refuses it, (2) the employer is not liable if the employee is charged with a crime and the termination is connection with the alleged crime, (3) the employer is not liable if the employee is terminated for violating an employer’s drug policy that is written and regularly enforced.

The court in *Emmpak* observed that, “notably missing from the exceptions is a general ‘for-cause termination’ or ‘safety-rule termination’ policy, like the one claimed by Emmpak in the case.



Electrical distribution systems are the third leading cause of home structure fires. These fires caused the most property damage, are the second leading cause of death, and the third leading cause of home fire injuries, according to statistics from the U.S. Consumer Product Safety Commission (CPSC). The Electrical Safety Foundation International (ESFI) recommends that homeowners to have their homes electrically inspected, particularly if they fall into one of the following categories:

- Owner of a home 40 or more years old;
- Owner of a home 10 or more years old that has had major renovation, addition or major new appliance; or
- New owner of a previously owned home.



Freedom is the oxygen of the soul. Moshe Dayan