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April 2008

NECA Tackles Labor Relations

The Wisconsin Chapter had seven contractor members of negotiations committees in attendance at NECA's recent Labor Relations Conference. Held in New Orleans, March 26 - 28, the group was quartered at the Royal Sonesta Hotel, located in the French Quarter. The conference began Wednesday afternoon with a session focused on the legal aspects of negotiations, and a review of major legislation which shaped the way unions and employers settle contracts. Day two was a full day of presentations on Strategic Negotiation Skills, Communication Skills & Theory, Negotiation Styles, Negotiation Tools and Psychology of Negotiation. The final half day session covered CIR and proper submission and presentation guides, followed by a crash course on Negotiating Without CIR. The final speaker of the conference was nationally recognized speaker, Mark Breslin, who talked about the need for better leadership and leadership training for the construction industry in general, and prompted members to Go and Get It!

The conference was very well attended, and attendees gave the conference high marks overall for informative content and clear presentation. Of course, the beautiful weather in New Orleans was an added benefit!

Our contractor members came back recharged and ready to negotiate more efficiently. They are: Paul Bohn, Jim Eland and Joel Westphal from the Northeastern Division, Larry Navarrete and Jerry Schulz from the Fox Valley Division, and Tim Morgan and Joe Robertson from the Madison Division. Loyal O'Leary and Shari Brunner also attended.

Seminar Notes

As you know, the Wisconsin Chapter will be hosting the Pre-Construction Planning Seminar, presented by Professor Awad S. Hanna, on April 15, 2008 at the Holiday Inn Madison at the American Center, in Madison. Registration has now closed for that seminar.

The Chapter has also scheduled MEI's Hard-Hat Productivity Seminar, to be held May 15, 2008 at the Paper Valley Hotel in Appleton.

The Chapter Board has made a commitment to hold more education programs for the benefit of member firms. If you have another seminar or idea for a seminar that you would like the Chapter to sponsor, please contact Loyal O'Leary to discuss the possibilities with him.

In February, the Justice Department announced it was increasing the fines imposed on employers who hire undocumented workers. Under the new rule, civil fines are expected to increase by about 25 percent.

The emphasis is being placed on employers and their hiring practices because the Justice Department views these employers as a magnet for illegal immigration. Eliminate the jobs and there is little to attract new immigrants or to encourage those here already to remain.



Now is a good time to be sure your hiring practices are up to date.

Employers should always complete the I-9 Employment Eligibility Verification form for ALL new employees, whether they are citizens or not, and should photocopy the document(s) examined to determine the employee's eligibility.

This form should be kept on file for three years after the date of hire, or up to one year following termination of employment of the individual, whichever is longer.

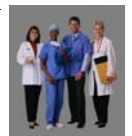
New Methods Needed to Recruit Top Apprentices and Employees

The U.S. is nearing a critical shortage of skilled construction workers as more of the current workforce nears retirement age. The average age of construction workers is currently in the mid-50s and the ideal average age would be mid-30s. There is a need for 225,000 new workers in the construction trades on an annual basis. Additionally, the number of people in the Generation X and Generation Y groups is smaller than the Baby Boomer generation people that are retiring. The Generation Y (also called Millennials) group also has a much different attitude about work in general, and they have much higher expectations as far as what they will gain through employment other than a paycheck. Many of them lack basic career skills, such as being on time, being clean and neat in appearance, and getting along with fellow employees. Apprenticeship and training programs will need to develop training for these "soft training skills" as well as the technical curriculum. Many of the apprentices will also expect e-learning methods rather than the traditional classroom setting. The committees will also need to learn how to attract the quality candidates for apprenticeship programs as these employees will be actively pursued by many different fields as the U.S. workforce overall decreases.



New Health Care Legislation

A bipartisan group of Senators is working to create a better option for small business and self-employed workers to reduce the cost of their health insurance. Senators Richard Durbin (D-IL), Blanche Lincoln (D-AR), Olympia Snowe (R-ME) and Norm Coleman (R-MN) recently introduced the "Small Business Health Options Program (SHOP) bill. The purpose of the legislation is to create small business health care pools, either on a statewide or national level, which would assist small business owners and self-employed persons to provide lower cost health care to employees.



Additionally, small business owners would receive tax credits if they covered at least 60% of the employee health care premiums, and greater credits to pay for family coverage. The self-employed would also receive tax credits of \$1,800 for purchasing their own coverage, or \$3,600 for family coverage.

The only sure thing on health care legislation is there is no easy fix to the problem of rising health care costs and the increasing number of Americans who are uninsured.



From the Desk of Attorney Kay

CAN CONTRACTORS RECOVER ECONOMIC LOSSES FROM ARCHITECTS OR ENGINEERS?

In the October, 2007 edition of this publication I discussed whether contractors who incur economic losses on a construction project because of the errors of the owner's architect or engineer, have a right to recover from the owner for such economic losses. As you may recall, the answer is mixed depending upon the state law that has developed on that subject. The only Wisconsin case denied recovery from the owner, but in that case the bid documents expressly placed a duty upon the contractor to investigate a building site which the contractor had to de-water.

A separate but interesting question follows, i.e., does the contractor who suffers economic damage as a result of the negligence of the architect or engineer have a right to recover the economic loss from the architect or engineer?

It has long been held that a third party who has not contracted with an architect or engineer may nonetheless recover for personal injury or damage to property arising as a result of the negligent conduct of an architect or engineer. Consequently, an innocent bystander may recover from an architect if the architect's design causes a building collapse. In other words, the third party need not be in privity of contract with the architect or engineer in order to recover for personal injury or property damage. Contractors who are not in privity of contract with the architect or engineer similarly desire to recover economic losses from an architect or engineer who has caused them.

From time to time a contractor advances an argument in a case against an architect or engineer that the contract between the owner and the architect was for the benefit of the contractor. That argument has almost uniformly failed. It is called a third-party beneficiary contract argument and courts have generally held that the contractor is not a third-party beneficiary of the contract between the owner and its architect or engineer. The far better theory for recovery is a tort theory where the contractor alleges that the architect or engineer has a contract duty under the contract with the owner and can reasonably foresee that a failure to properly perform that duty will result in an economic loss to a contractor working on the project.

Professional designers anticipate that contractors may assert such claims. The American Institute of Architects has drafted a variety of standard forms which are intended to prevent such liability from being established by the inclusion of language that the contract documents create no duty toward the contractor and that the contractor is solely responsible for construction means, methods, techniques or procedures. These forms often require the contractor to also indemnify the architect or engineer for the contractor's negligent acts and then state that such indemnification will not extend to the liability of the architect or engineer arising out of the preparation of defective plans and designs or the giving of negligent instructions, even when the architect's negligence is the cause of injury or damage.

While most design professionals have professional liability insurance, such

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April 2

Madison Membership
Janesville-Beloit Membership

April 10

La Crosse Membership
Indianhead Membership

April 14

Kenosha Racine Membership

April 15

Pre-Construction Planning

April 16

Fox Valley/Northeast Memb.

April 17

Wisconsin Valley Membership

Upcoming Meetings

July 24-26, 2008

Summer Meeting
Eagle Ridge Resort, Galena, IL

October 4-7, 2008

NECA Convention
Chicago, IL

January 23-24, 2009

Winter Meeting
Wisconsin Dells

July 30-August 1, 2009

Summer Meeting

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Home prices continued to plunge in many cities as many sellers reduced their asking prices to avoid foreclosures. Las Vegas and Miami were the two worst-hit cities, with 19.3% drops in prices, but Phoenix, San Diego and Detroit also faced record lows. The spring selling season normally gives the housing market a boost, however, some analysts are predicting a slower season this year. Wisconsin fared better than most states, however, the number of foreclosures in the state have also climbed and unless prices begin to rise, there may be even higher numbers to come.

The majority of U.S. homeowners are safe from the threat of foreclosure, but a poor housing market may mean that a recession is on the way as consumers tighten spending and banks tighten lending requirements.



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

Electrical Safety Questions OSHA Will Ask

No one wants OSHA to inspect their jobsite, however, it is helpful to know some of the typical questions an inspector will ask, and things they will look for. OSHA's most recent emphasis has been on arc flash safety, meaning employers should analyze the potential hazards on a site, establish safety boundaries for these hazards, and ensure that the proper PPE is worn within the boundaries.

Some typical questions are asked in the event of an electrical safety incident. They include:

Is there a description of the circuit or equipment at the job location? The employer should be able to provide a written description or drawing of the circuit or equipment, meaning that they have done an analysis.

Is there a detailed job description of planned work? The worker must be provided with a description of the task to enable them to know which safety procedures to use. OSHA 29 CFR 1910 states that the employer shall train workers to use safe work practices that are designed to avoid injury.

Can you justify why equipment cannot be de-energized or the job deferred until the next scheduled outage? OSHA 1910.333(a)(1) requires that the employer must be able to demonstrate that de-energizing introduces additional or increased hazards, or is not feasible due to equipment design or operational limitations. Once that is done, OSHA 1910.333(a)(2) requires safety-related work practices to be used and NFPA 70E Article 110.8(B)(1) requires an Electrical Hazard Analysis before work is performed on live equipment operating at 50 volts and higher.

Other questions that typically come up:

What about safe work procedures?

Are the workers performing the tasks qualified to do so?

Has a detailed work procedure been established?

Are there detailed descriptions of work practices to be employed?

Tom's Code Corner

Question: What are the acceptable methods for grounding (bonding) flexible gas line?

Answer: The CSST installer must follow the bonding instructions of the CSST manufacturer.

Check out www.csstsettlement.com. There are links to all of the CSST manufacturers' websites. You can download bonding instruction as well as technical support information.

MANPOWER STATISTICS

For the Month of -- January 2007

Local Union #	14	127	158	159	388	430	577	890	TOTAL
	=====	=====	=====	=====	=====	=====	=====	=====	=====
Local Contractors: NECA	8	4	2	18	5	5	3	6	51
Non-NECA	40	9	14	19	14	16	7	19	138
Total Local Contractors:	48	13	16	37	19	21	10	25	189
Traveling Contractors: NECA	8	6	6	3	4	5	4	5	41
Non-NECA	6	15	5	5	1	3	1	4	40
Total Traveling Contractors:	14	21	11	8	5	8	5	9	81
TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:	62	34	27	45	24	29	15	34	270
Contractors More Than Two Months Delinquent in N.E.B.F.	1	2	0	3	2	2	0	1	11
Total Number of Contributing Contractors in Area:	63	36	27	48	26	31	15	35	281
Employees: NECA	256	44	187	722	226	54	160	199	1848
Non-NECA	218	84	190	92	47	63	49	81	824
TOTAL EMPLOYED:	474	128	377	814	273	117	209	280	2672

<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.

Win Packer Tickets!

As you know, 2008 is a major election year and that means NECA needs your contributions to the ECPAC Fund now more than ever, as our Government Affairs Committee works to identify and contact potential legislators who will be friendly toward union electrical contracting. The Wisconsin Chapter goal for the year is \$11,400, and we believe that goal is attainable.

This year we will be trying a new tactic to get you involved. The Chapter plans to hold an online auction of **4 club seat tickets to the Packer home game of your choice!** That's right, the winning bidder will be allowed to select the game they will attend. Watch your mailbox for details on the auction and don't forget to check the Chapter website, www.wisneca.com for more details once the Packers schedule is available. Remember bid often, bid high! Proceeds will go to ECPAC.

From the Desk of Attorney Kay (continued)

insurance will generally not extend to the design professional who indemnifies the owner or contractor on the theory that such an assumption of liability is not normally covered by professional liability insurance. Usually only the design professional's errors, omissions or negligent acts are covered by professional liability insurance...not the obligations arising out of a contractual indemnification agreement.

Many states have held that the negligent conduct of an architect or engineer which results in economic damages to a project contractor subjects the architect or engineer to liability to the contractor. For example, in a case entitled, E.C. Ernst, Inc. v. Manhattan Const. Co., (CA5 Ala) 551 F.2d 1026, (CA5 Ala) 559 F.2d 268, the court held that an electrical subcontractor was entitled to recover damages from an owner's architect for delays caused by the architect's refusal to approve an emergency generator system where such refusal evidenced a willing breach of the architect's duties under the contract with the owner to arbitrate various phases of work to enable construction to continue. That case also raised the issue of whether the design professional has an obligation to neutrally arbitrate disputes between the contractor and the owner as well as to avoid negligent conduct which might cause the contractor economic losses. Whether resting on the theory of a contractual duty or on the theory of foreseeability, many state courts have held the architect or engineer liable to the contractor for the contractor's economic losses arising out of the architect's or engineer's negligent acts or omissions.



On the other hand, other states have held that the architect's or engineer's duties were owed solely to the owner and not to the contractors with whom the architect has no contract and therefore negligent conduct by the architect or engineer does not expose them to liability to the contractor who suffers economic losses as a result. Such decisions are reported whether the alleged negligence of the architect or engineer relates to negligent design or negligent inspection. The only reported case in Wisconsin, Vonasek v. Hirsch and Stevens, Inc., 65 Wis.2d 1, 221 N.W.2d 815 (1974), raised the question of whether or not an architect was liable to a general contractor who suffered economic losses allegedly caused by the architect's failure to use appropriate designs or to check the contractor's work in connection with the construction of a school gymnasium. However, the Wisconsin Supreme Court in that case did not reach the question of whether the architect was liable to the contractor for the architect's negligent conduct because the court found that the evidence absolved the architect from the claim of negligence. In other words, the court found that the architect was not negligent.

It therefore remains an open question in Wisconsin whether or not a contractor having no contract with the architect or engineer has a right of action against the architect or engineer for negligent conduct causing the contractor's economic losses. The success that a contractor with such a claim may have in Wisconsin will depend upon the seriousness of the alleged negligent conduct of the architect or engineer. It is not likely that the Wisconsin Supreme Court will ultimately rule that the architect or engineer has no liability to the project contractor simply because the project contractor has no contract with the architect or engineer. Our decisional law has advanced far beyond that sort of argument. Serious public policy questions are raised in such a case and it will be up to the Wisconsin Supreme Court to determine how far it wishes to extend legal protection to project contractors who are economically harmed by the negligent acts of design professionals.

Labor Negotiations Update

Labor Negotiations are in full swing for the year with Locals #158 (Green Bay), #159 (Madison) and #577 (Appleton) all meeting to settle their open agreements in advance of the anniversary dates. Local #14 (Eau Claire & La Crosse) conducted negotiations last fall and have completed their settlement which becomes effective June 1, 2008.

On behalf of the Chapter, thank you to the negotiations committee members for their efforts and the long hours they have put in.