

Wisconsin Chapter NECA
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Inside this issue:

NFPA 70E Seminar	2
Wisconsin Exports Strong	2
Attorney Bob Kay's Letter	3
January 2009 Calendar	3
Health Care Reform	4
Tom's Code Corner	4
Manpower Statistics	5



December 2008

2009 Winter Hawaiian Luau

The 2009 Winter Meeting of the Wisconsin Chapter NECA will be held January 23-24 at the Kalahari Resort in Wisconsin Dells. The African-themed Kalahari Resort is conveniently located just off Interstate 90/94, and features a 125,000 sq. ft. indoor waterpark, a 100,000 sq. ft. indoor theme park, a cinema, spa and arcade. For added entertainment, the Tanger Outlet Mall and Ho Chunk Casino are nearby.

Our first speaker for the Saturday meeting is OSHA Compliance Specialist Leslie Ptak, who will talk about OSHA's VPP program. NJATC's Executive Director Mike Callanan will discuss apprenticeship and training topics, and the new curriculum. Our keynote speaker will be nationally renowned author and speaker, Mark Breslin. His presentation entitled Alpha Dog emphasizes the need for our industry to create stronger leadership to help us restore the union electrical contracting industry to prominence. Mark will also be speaking to the apprentices statewide in a special session on Friday in the Dells. His message is dynamic—the IBEW needs to change to survive—and that means contractors must change as well. His delivery is sure to make an impact.

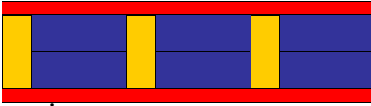
Everyone is sure to have a great time at our Saturday evening closing banquet which will feature a Hawaiian Luau theme. Bring your Hawaiian shirts and flip-flops because it is going to be a great party. It will be a great warm-up for the Spring Conference in Hawaii as well!



Registration information was mailed to all members, and the registration form can be found on the Chapter website, www.wisneca.com. Please call Rachel at the Chapter Office if you have any questions, and be sure to register by Friday, January 2, 2009. We hope to see all of you there!

Lien & Right to Cure Cards Enclosed

The last few issues of Attorney Kay's letter have focused on legal requirements for subcontractor payments. Enclosed with this issue of Watts News are copies of the newly revised Wisconsin Construction Lien Law Card, and the Wisconsin Right to Cure Act Provisions, as amended by our Chapter expert, Attorney Robert J. Kay.

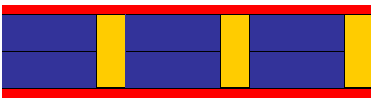


The American Sub-contractors Association attended the October meeting of the Chapter Board of Directors to request NECA's support for "risk transfer" legislation they are pursuing.

Following that discussion, one of our NECA members, **Dan Williams of Cap Electric**, appeared to discuss the need for change to the state's lien law, to create greater protections for subcontractors.

As a result of this meeting, NECA and the ASA are going to work together on both issues, risk transfer and lien law changes. At this point, both parties are waiting for the proposed new language and will utilize the services of a lobbyist to help get the legislation introduced and hopefully passed.

We will keep you updated on the progress as this legislation is actively pursued.



NECA-OSHA Alliance Seminar

The NECA-OSHA Alliance Committee has scheduled its first safety seminar. The seminar will be on the recently-revised **NFPA 70E**, and it will be designed to help attendees present the seminar to employees in their firms.

Learn about the new requirements in the recently revised NFPA 70E - 2009 standard. This "train-the-trainer" course will help you implement an NFPA 70E program to prevent injuries, reduce accident and insurance costs, and comply with OSHA regulations.

What you will learn:

- Electrical Hazard Awareness: Shocks, arcs, blasts
- Employee training and qualification requirements
- How to achieve an electrically safe work condition - lockout/tagout
- Electrical safe work practices
- Hazard risk category tables
- Selection and use of PPE
- Calculations for incident energy and arc flash boundaries
- Use of current limiting overcurrent protective devices to reduce incident energy
- Software programs to conduct analysis
- Flash hazard equipment marking requirements



The seminar is open to NECA member firms and is limited to 30 attendees. The cost is \$80 per person, which includes a copy of the new NFPA 70E Standard for Electrical Safety in the Workplace, continental breakfast and lunch. We are seeking CEU approval from the State for this course. A registration form is enclosed.

Wisconsin Exports Are Strong

Here's some economic good news for a change. Governor Doyle announced earlier this month that Wisconsin's agricultural exports increased by 7 percent to a record \$1.5 billion in the first nine months of 2008.

Led by dairy products, the state also exported more baking and brewing ingredients, foods and food preparations, beverages and hides. Wisconsin ranks first for the export of dairy cattle, semen and embryos.



- Dairy exports were up by 39% to \$176 million, driven by a healthy demand for cheese and butter
- Dairy genetic exports were up 28% to \$46 million, primarily to Mexico, United Kingdom and Brazil
- Dried distiller grains and solubles (DDGS) exports grew by 93% to \$25 million

Overall, agricultural exports account for about 20 percent of Wisconsin farm income and the agriculture industry generates \$51 billion annually in the state.

From the Desk of Attorney Kay



THE STATUS OF INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACTS

Recently, I participated in a discussion with NECA Board members and a representative of the American Subcontractors Association, Inc. (ASA) on the subject of the meaning of § 895.49 of the Wisconsin Statutes (renumbered § 895.447 by 2005 Act 155, § 49, effective April 5, 2006) which provides:

895.447 Certain agreements to limit or eliminate tort liability void.

- (1) Any provision to limit or eliminate tort liability as a part of or in connection with any contract, covenant or agreement relating to the construction, alteration, repair or maintenance of a building, structure, or other work related to construction, including any moving, demolition or excavation, is against public policy and void.
- (2) This section does not apply to any insurance contract or worker's compensation plan.
- (3) This section shall not apply to any provision of any contract, covenant or agreement entered into prior to July 1, 1978.

The representative of the ASA expressed the opinion that the statute was misinterpreted by the Court of Appeals in Gerdmann v. U.S. Fire Insurance Co., decided in 1984. In Gerdmann, the Court of Appeals held that § 895.49, Wis. Stats., did not void indemnity agreements contained in construction contracts for a project. The Court held that indemnity clauses were not mentioned in the statute and that it would be unreasonable to conclude that the legislature intended to apply it to indemnity agreements. The effect of the decision was to permit owners and all contractors on a construction project to enter into construction agreements that contained indemnity provisions notwithstanding § 895.49 (now § 895.447), Wis. Stats. ASA is interested in getting the legislature to amend the statute and void indemnity provisions in construction contracts.

The decision in the Gerdmann case was not particularly surprising in view of the fact that in 1981, three years before the Gerdmann decision, the Wisconsin Supreme Court in Dykstra v. Arthur G. McKee & Co. held that indemnity agreements were not contrary to public policy even if the indemnitee was 100 percent responsible for an injury. In Dykstra, the Wisconsin Supreme Court cited an article written by Dean Robert F. Boden of the Marquette Law School noting that the Wisconsin Supreme Court had previously ruled that indemnity contracts are not void as against public policy on the theory that they encourage negligent conduct by relieving the actor of personal liability. Dean Boden wrote:

[I]t is felt by this writer that if a case comes to the

(Continued on page 6)

January 2009

January 7

Madison Membership
Janesville-Beloit Membership

January 8

La Crosse Membership

January 12

Kenosha-Racine Membership

January 14

Northeast and Fox Valley
Membership

January 15

Indianhead Membership

January 22

Wisconsin Valley Membership

January 23-24

NECA Winter Meeting
Kalahari Resort, Wisconsin Dells

Upcoming Meetings

March 22-25, 2009

Midwest Regional Spring Conf.
Kauai, Hawaii

July 29-August 2, 2009

NECA Summer Meeting
Lake Lawn Resort, Delavan

September 12-15, 2009

NECA Convention
Seattle, WA

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The U.S. Commerce Department announced recently that construction spending fell by 1.2 percent in October, a much larger drop than the predicted .9 percent.

Nonresidential construction fell by .7 percent in October, while the residential construction sector dropped by nearly 3.5 percent.

Economists believe the construction industry will continue to face problems at least until the middle of 2009, when they expect an economic recovery should be firmly launched.

Meanwhile, none of this is “news” to most of you who are dealing with jobs being postponed or cancelled due to economic uncertainty, but hopefully things will improve in the months to come.



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

Health Care Reform Proposal

America's Health Insurance Plans, an association for health insurers, recently unveiled its health care reform proposal to help achieve universal coverage, slow the growth of health care costs and improve the quality of care.

Controlling Costs: the AHIP is urging Congress to set a target of reducing future growth of health care costs by 30% over the next five years. The current projected growth rate is 6.6% per year. The plans advocate the implementation of a public-private advisory board to specify policy on reducing costs.

Portable Health Care: The plans propose that a new portable health plan, “essential benefits plan” be created to provide affordable coverage to employees for prevention, wellness, acute and chronic care. The plan would be available to individuals, small businesses, and workers who are changing jobs or otherwise eligible for COBRA, to ensure that they maintain their coverage.

Universal Coverage: AHIP calls for a mandate for individual health care coverage combined with guaranteed coverage for those with pre-existing medical conditions, and tax credits to help working families afford the coverage they need.

Adding Value: the AHIP calls for streamlining the administrative processes, adjusting the industry focus to keeping people healthy, and investing in research to help determine which treatments and therapies are most effective.



Tom's Code Corner

Question: We are wiring a new retail shopping center. We plan on using unit equipment to provide egress lighting. On the last job we had to add 12 more units and many remote heads to the outside of exit doors in order to satisfy the inspector. We also used metal halide for the normal lighting on the outside of the building and this created another problem. How can I avoid this on this job?

Answer: Emergency egress illumination is required by the International Building Code and installed to meet Article 700 of the National Electric Code. The starting point should be a photometric study. The fixture manufacturer should be able to provide you with the photometrics for that fixture. IBC 1006.4 requires an illumination level of an average of 1 foot-candle along the egress path. The minimum at any point is 0.1 foot-candle with a maximum to minimum ratio of 40 to 1.

Emergency illumination is also required at “exit discharge”. This is the exterior side of exit doors. Since the normal lighting outside of the building is metal halide, the emergency lighting must remain on once power is restored at least until the normal lighting is at full brightness. This is required by 700.16.

MANPOWER STATISTICS

For the Month of -- October 2008

Local Union #	14	127	158	159	388	430	577	890	TOTAL
	=====	=====	=====	=====	=====	=====	=====	=====	=====
Local Contractors: NECA	7	4	4	17	5	5	2	6	50
Non-NECA	34	10	15	19	10	15	9	15	127
Total Local Contractors:	41	14	19	36	15	20	11	21	177
Traveling Contractors: NECA	8	4	6	0	5	5	6	8	42
Non-NECA	4	12	7	4	2	3	1	4	37
Total Traveling Contractors:	12	16	13	4	7	8	7	12	79
TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:	53	30	32	40	22	28	18	33	256
Contractors More Than Two Months Delinquent in N.E.B.F.	1	2	0	1	4	0	1	0	9
Total Number of Contributing Contractors in Area:	54	32	32	41	26	28	19	33	265
Employees: NECA	259	57	140	556	207	46	197	232	1694
Non-NECA	211	103	216	69	45	61	76	77	858
TOTAL EMPLOYED:	470	160	356	625	252	107	273	309	2552

<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 Divisions

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

The National Safety Council offers these suggestions to make your holiday season safer.

Decorations – Wear gloves when decorating with spun glass “angel hair”, and remember it can irritate eyes and skin. When spraying artificial snow onto windows or other surfaces, follow the directions to avoid inhaling the spray.

Fireplaces – Don’t burn evergreens or wreaths in a fireplace or wood stove, as they can flare out of control. Also do not burn gift wrap as it often contains metallic materials which can be toxic if burned.

Candles – Never use them near trees, boughs, curtains or other flammable items.

Plants – Many holiday plants are bright and look edible to children and pets. Keep mistletoe, holly berries, Jerusalem cherry and amaryllis out of reach.

Stress – The holidays can be stressful with additional shopping and other errands to run. Be sure to make time for yourself to relax and enjoy the beauty of the season.

From the Desk of Attorney Kay (continued)

(Continued from page 3)

Court, it will be inclined to adopt the majority rule and give validity to the contract. Any other result, it is submitted, necessarily is based upon the proposition that it is against public policy to insure against one's own negligence. Such a proposition is today untenable. . . .

Electrical contractors are often subjected to the consequences of indemnity agreements. The owner of a construction project often requires an indemnity agreement from the prime contractor and the prime contractor often requires an indemnity agreement from the subcontractors. As a subcontractor, the electrical contractor will often find the indemnity agreement in his contract with the prime contractor and the question of whether it should be accepted or rejected by the electrical contractor requires evaluation.

If the indemnity agreement by its very terms requires the electrical subcontractor to indemnify the prime contractor against the prime contractor's own negligence, the electrical contractor should reject it. On the other hand, if the indemnity agreement only requires the electrical subcontractor to indemnify the prime contractor against the electrical subcontractor's own negligence, it should not be objectionable.



In those instances where the electrical subcontractor finds that the indemnity agreement proposed by the prime contractor calls for the electrical subcontractor to indemnify the prime contractor against the prime contractor's own negligence, even then the electrical subcontractor might find it acceptable if it has contractual liability coverage in its commercial general liability policy. That coverage is not always a part of the standard policy and therefore the electrical subcontractor should contact his or her insurance agent and if necessary, seek an endorsement insuring the electrical subcontractor against liability undertaken as a result of the indemnity agreement.

The devil is always in the details and often an electrical subcontractor in the rush of business pays insufficient attention to the details. That may prove to be expensive. I also recognize that the electrical subcontractor may not be in a strong enough economic position to negotiate successfully with the prime contractor to eliminate any language which requires the electrical subcontractor to indemnify the prime contractor for the prime contractor's own negligence. However, in my experience in representing many subcontractors in various trades, the unreasonableness of asking the subcontractor to indemnify the prime contractor against the prime contractor's own negligence, particularly when contractual liability insurance is not available to the subcontractor, is seldom debated. I don't recall experiencing a subcontractor client who lost a subcontract merely because the subcontractor refused to accept an indemnity agreement which required the subcontractor to indemnify the prime contractor for the prime contractor's own negligence.

NECA's Board of Directors will undoubtedly advise the membership of the Board's interest in pursuing legislative changes that might be recommended by ASA.



As many of you know, former Chapter Manager, Ron Steiner, passed away unexpectedly on December 2, 2008. We are saddened by this loss and our hearts go out to his wife Donna O'Leary and the family.

The NECA Office will be closed in the afternoon on December 24 and all day December 25 in observance of Christmas. We will also be closed after 3:00 p.m. on December 31 and all day January 1, 2009 for the New Year's Day. Happy Holidays to all of you.