

Wisconsin Chapter NECA
2200 Kilgust Rd.
Madison WI 53713



November 2008

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Inside this issue:

Survey Results	2
LED Lighting Growth	2
Attorney Bob Kay's Letter	3
November 2008 Calendar	3
Safety Tips	4
Tom's Code Corner	4
Manpower Statistics	5

2009 Winter Hawaiian Luau

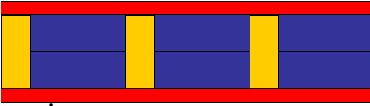
The 2009 Winter Meeting of the Wisconsin Chapter NECA will be held January 23-24 at the Kalahari Resort in Wisconsin Dells. The Kalahari Resort is conveniently located just off Interstate 90/94, and features a 125,000 sq. ft. indoor waterpark, a cinema, spa and arcade. The Tanger Outlet Mall is located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

Our speakers for the Saturday meeting are OSHA Compliance Specialist Leslie Ptak, who will talk about OSHA's VPP program. Many of you have met Leslie before at previous meetings. NJATC's Executive Director Mike Callanan will discuss apprenticeship and training topics, and the new curriculum. Midwest Regional Manager Drew Gibson will give us an update on the activities of the Labor Relations Task Force. Our keynote speaker will be nationally renowned author and speaker, Mark Breslin, whose topic 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 powerful and dynamic—the IBEW needs to change to survive—and his delivery is sure to make an impact.



NECA Student Chapters Grow

During the NECA Convention, the NECA Student Chapters held a summit for interested parties. There are currently 15 active Student Chapters in the U.S., and one of them is the University of Wisconsin (Madison) Chapter, which was established by Professor Awad S. Hanna several years ago. The Student Chapter members are comprised of students majoring in Construction Management and Engineering fields, and the program works to create an interest in the electrical industry, as well as providing electrical contractors with a base of college graduates that are familiar with the industry. Attendees heard from former NECA Student Chapter members who are now working in the electrical contracting industry, and from faculty advisors and NECA members who had hired or mentored student interns, and learned how they benefited from the program.



The construction materials price index rose 0.5% in September after no change in August. September prices were 12.7% above prices a year earlier.

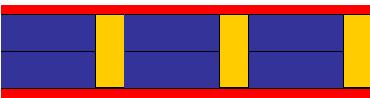
The major increases in September were gains of over 6% for asphalt and asphalt roofing, 1.2% for ready-mix, about 1% for energy based products, about 0.5% for metal products and marginal rises for wood products. The ma-

major declines were 9.2% for nonferrous pipe and tube, 4.4% for structural steel and 1.7% for gypsum products.



Generally it is expected that commodity prices will be weakening into the winter as surplus materials are sold at distress prices and delivery and processing costs decline with fuel costs.

Year to year, construction materials prices are expected to increase 15% in 2008 and 5% in 2009. Overlapping the two years, prices will be declining in late 2008 and early 2009.



The Survey Says...

Thank you to all of you who replied to the NECA Meeting Survey. We received a total of 33 responses, and the majority of you reported being satisfied with the current meeting formats for the Winter and Summer Meetings. Based on this, the schedule of these meetings will remain the same; however, we will definitely make some changes here and there based on comments received.

It appears that the majority of you would prefer to keep the meetings in Wisconsin, and a central location seems to be preferred. The educational content of the meetings has a strong influence on attendance, and we will focus our efforts on providing more educational speakers and possibly expanding the length of the general sessions. As in the past, our 4-hour code class continues to be a favorite, and many of you responded that you would like classes that will allow you to earn CEUs, and business management classes were also suggested. Finally, it was suggested that we hire an entertainer for the closing banquet, rather than using a DJ or band.

Our next meeting is the Winter Meeting, January 23-24, 2009 at the Kalahari Resort in Wisconsin Dells. Although our speakers are already set for this meeting, we will work to try to incorporate some changes into this meeting. We hope to see you there!

LED to the Future

LED lighting is quickly becoming a practical alternative to incandescent or fluorescent lighting for both commercial and residential applications. Although the technology has been growing slowly the last several years, there have been some new breakthroughs in technology, and costs have come down, meaning that LEDs have started to become mainstream. There are already some good applications for LED including task lighting and accent lighting. Museums are expected to begin switching to LED lighting for displays, as they do not emit infrared or ultraviolet light that can damage fabrics and artwork. They perform very well in the cold and are becoming more accepted for lighting in refrigeration cases and cold storage facilities. This also makes them more adaptable for outdoor lighting. Finally, because LEDs are programmable, they are expected to be used more in retail space where a store could change the light level and color of displays as they change.



The LED technology continues to evolve; some of the newest offerings are high-output LED fixtures that produce up to 60 lumens per watt, compared with 12 to 15 for incandescent bulbs. And the U.S. Department of Energy estimates that a new generation of LED lamp comes to the market every four to six months. The organic light-emitting diode (OLED) lighting market is expected to be a \$4.5 billion dollar industry by 2013.

If you have not yet become acquainted with LED lighting systems, you may want to start. It appears to be the lighting of the future, and the future is now.

From the Desk of Attorney Kay



UNPAID SUBCONTRACTOR MAY BE ENTITLED TO TREBLE DAMAGES FROM PRIME CONTRACTOR

Last month in this publication I reviewed the Wisconsin Supreme Court decision in State v. Keyes, holding that a prime contractor *or* subcontractor who received construction monies in payment for real estate improvements was receiving trust monies from which subcontractors were entitled to full payment, or to proportionate payment, in cases of a deficiency. A failure of the prime contractor or subcontractor to honor the construction monies as a trust fund to pay all construction claims constitutes theft by contractor under § 779.02(5) of the Wisconsin Statutes. However, it is up to the district attorney of the county where the offense occurs to determine whether the offending prime contractor or subcontractor should be prosecuted for the criminal offense of theft by contractor. An unpaid subcontractor will not receive any economic recovery in a criminal case unless the court orders restitution as a part of sentencing the offending prime contractor or subcontractor. Therefore, it is important to review the civil damage rights of recovery which an unpaid subcontractor has when such construction monies have been misappropriated.

In discussing the subject of the recovery of civil damages, it should not be forgotten that the criminal provisions of theft by contractor entitle the subcontractor to full *or* proportional payment, i.e., full payment when construction monies are sufficient to pay all subcontractors, or proportional payment if there is a deficiency. Under either scenario, the offending prime or subcontractor who fails to distribute the monies properly is susceptible to a criminal action for theft by contractor.

The theft by contractor statute expressly provides that a violation of § 779.02(5), Stats., is punishable under § 943.20 of the statutes. Section 943.20 is a subchapter of the Wisconsin Criminal Code relating to misappropriation. The statute provides for various levels of penalties depending upon the value of the property misappropriated. If the amount does not exceed \$2,500, the wrongdoer is guilty of a Class A misdemeanor. If the value of the property exceeds \$2,500 but does not exceed \$5,000, the wrongdoer is guilty of a Class I felony. If the value of the property exceeds \$5,000 but does not exceed \$10,000 the wrongdoer is guilty of a Class H felony. If the value of the property exceeds \$10,000 the wrongdoer is guilty of a Class G felony. The penalties for a Class A misdemeanor is a fine not to exceed \$10,000 or imprisonment not to exceed 9 months. The penalty for a Class I felony is a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both. The penalty for a Class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both. The penalty for a Class G felony is a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both.

In a July 3, 2002 decision of the Wisconsin Supreme Court, Tri-Tech Corporation of America v. Americomp Services, Inc., the court held that treble damages are available to an unpaid subcontractor who is not paid

(Continued on page 6)

November 2008

December 3

Madison Membership
Janesville-Beloit Membership

December 4

La Crosse Membership

December 6

Kenosha-Racine Holiday Party

December 10

Northeast and Fox Valley
Holiday Party

December 11

Indianhead Membership

December 18

Wisconsin Valley Membership

Upcoming Meetings

January 23-24, 2009

Winter Meeting
Kalahari Resort, Wisconsin Dells

March 22-25, 2009

Midwest Regional Spring Conf.
Kauai, Hawaii

July 29-August 2, 2009

Summer Meeting
Lake Lawn Resort, Delavan

September 12-15, 2009

NECA Convention
Seattle, WA

Attorney Robert J. Kay can be reached at

Kay & Andersen, S.C.
One Point Place, Suite 201
Madison, Wisconsin 53719

Phone: 608-833-0077

Fax: 608-833-3901

www.kayandandersen.com

Fall Electrical Safety Tips

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:

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



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

Recession Proof?

A recent Business Week article listed the best cities in the U.S. for riding out a recession, and Madison, Wisconsin was listed at #4.

Citing the fact that the economy is largely dependent on two strong employers: the University of Wisconsin at Madison and the state government, it noted that the cost of living is reasonable and home prices have been stable. The city's economy has remained strong despite the economic downturn. Many of the city's other employees are involved in biotech and the medical fields: two industries that will likely bear up well in a recession.

The complete list of "recession proof cities is:

- #1 - Arlington, VA
- #2 - District of Columbia
- #3 - Durham, NC
- #4 - Madison**
- #5 - Boston
- #6 - Pittsburgh
- #7 - Baltimore
- #8 - Baton Rouge, LA
- #9 - New Orleans
- #10 - Philadelphia



Please note - the Chapter Office will be closed Thursday, November 27 and Friday, November 28 in observance of Thanksgiving.

Tom's Code Corner

Question: I have a 10' long 1200 ampere 480/277 volt switchboard installed in an electrical equipment room. One end of the switchboard is against the wall on the far end of the room from the door. There is 45" from the front of the switchboard to a concrete block wall. The inspector says that I need a door at each end of the working space; however I feel we have a clear unobstructed path from the front of the switchboard to the door. Who is right?

Answer: The inspector is correct. NEC 110.26(C)(2) applies to equipment 1200 amperes or more and over 6' wide. The general requirement for this installation is that there is one entrance not less than 24" wide 6.5' high at each end of the working space.

The single unobstructed exit in 110.26(C)(2)(a) or (C)(2)(b) would not apply to this installation. "Unobstructed exit" means that the electrical worker can exit the work space without a need to travel along the entire length of the equipment in order to reach the exit. A new rule modifies the requirements for door hardware. Any door meant for entrance or egress within 25' shall to open in the direction of egress and has "panic-type" hardware.

MANPOWER STATISTICS

For the Month of -- **September 2008**

Local Union #	14	127	158	159	388	430	577	890	TOTAL
	=====	=====	=====	=====	=====	=====	=====	=====	=====
Local Contractors: NECA	8	4	4	17	5	5	2	6	51
Non-NECA	34	9	14	19	11	15	9	16	127
Total Local Contractors:	42	13	18	36	16	20	11	22	178
Traveling Contractors: NECA	8	4	5	0	5	5	5	9	41
Non-NECA	5	12	7	3	2	4	0	3	36
Total Traveling Contractors:	13	16	12	3	7	9	5	12	77
TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:	55	29	30	39	23	29	16	34	255
Contractors More Than Two Months Delinquent in N.E.B.F.	1	2	0	1	3	0	1	0	8
Total Number of Contributing Contractors in Area:	56	31	30	40	26	29	17	34	263
Employees: NECA	231	54	115	577	216	46	189	238	1666
Non-NECA	209	89	188	81	54	61	57	88	827
TOTAL EMPLOYED:	440	143	303	658	270	107	246	326	2493

<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.

What Electrical Engineers Look for in an Employer

Looking to hire and keep the most qualified engineers for your firm? According to a recent survey of new graduates, here is what they are looking for.

- **Potential for Growth.** They want to have the opportunity to progress as quickly as they are able, and they seek a clearly defined career path for themselves.
- **Diversity of Projects.** They do not want to be restricted to a particular type of project, but seek new challenges and interactions with diverse groups.
- **High Compensation with Work/Life Balance.** They want to earn a competitive salary, but today's worker is also looking for benefits and reasonable work hours.

From the Desk of Attorney Kay (continued)

(Continued from page 3)

from the trust fund proceeds in accordance with the provisions of § 779.02(5) of the Wisconsin Statutes. The treble damage statute involved in Tri-Tech Corporation was found at that time in § 895.80 of the Wisconsin Statutes, which has now been renumbered as § 895.446. Under that statute, any person who suffers a property damage or economic loss caused by crime as a result of intentional conduct has a claim against the person who caused the loss. The burden of proof in this civil action is by a preponderance of the credible evidence, which is a lesser burden of proof standard than required in a criminal proceeding, which is proof beyond a reasonable doubt. A conviction under § 943.20 is not required to bring a civil action under § 895.446. A subcontractor bringing such an action may recover actual damages including the value of the lost funds, all costs of investigation and litigation which were reasonably incurred, including the value of the time spent by any employee or agent of the victim, and exemplary damages of not more than three times the amount awarded as damages. No additional proof is required under the treble damage section other than the theft by contract was a result of intentional conduct on the part of the nonpaying prime contractor.



In Tri-Tech Corporation of America v. Americomp Services, Inc., the Wisconsin Supreme Court noted the elements of theft by contractor. They are: (1) the defendant acted as a prime contractor, (2) the defendant received money for the improvement of land from the owner or mortgagee, (3) the defendant intentionally used the money for purposes other than the payment of bona fide claims for labor and materials prior to the payment of such claims, (4) the use was without the owner or mortgagee's consent and contrary to the contractor's authority, (5) the contractor defendant knew the use was without consent and contrary to his authority, and (6) the defendant contractor used the money with the intent to convert it to his own use or the use of another.

In addition to the damage recovery rights which the unpaid subcontractor has under the statutes just reviewed, the unpaid subcontractor has the lien rights that are provided under the provisions of Chapter 779. In a recent bulletin I reviewed the limitations that the legislature has placed upon the insertion of contract provisions requiring a waiver of construction liens, requiring out-of-state laws to apply to disputes and requiring subcontractors to wait until the prime contractor has been fully paid before being entitled to payment. Contract provisions ignoring these statutory requirements are void, even if the subcontractor signs the contract. However, as I have previously stated, any subcontractor who provides a prepayment lien waiver voluntarily rather than asserting the illegality of such a contract provision will find that a court will honor the voluntarily given lien waiver. Therefore, it should simply not be given.

It may be that additional legislation would reasonably and equitably assist electrical contractors and other subcontractors in dealing with prime contractors and owners who insist on prepayment lien waivers. However, that subject is beyond the purview of this article.

NECA recently announced new and revised versions of publications designed to help contractors meet safety requirements to comply with NFPA 70E.

NECA's new Lockout/Tagout (LOTO) Guide is designed to provide a quick reference for contractors working in the field, and references OSHA regulations associated with LOTO. The publication (Index #5400) is available for \$20.00 each.

NECA's Tables of Arc-Flash Energy Levels has recently been revised, and is intended as a guide to help contractors comply with the NFPA 70E standard. The publication lists arc-flash incident energy levels for many types of energized electrical equipment. It is available (Index #5300) for \$30.00 each.

NECA's Personal Protective Equipment (PPE) Selector is a handy reference to help contractors and personnel select the appropriate PPE based on incident energy levels and hazard risk categories and is based on NFPA 70E-2004, Tables C-9, C-10 and C-11. The publication (Index #5024) is available for \$20.00 each.

OR

Purchase all three publications (Index #5025S-08) for \$60.00, a savings of \$10.00.