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**January 2009**

## 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.

Our speakers for the Saturday meeting will be OSHA Compliance Specialist Leslie Ptak, who will talk about OSHA's VPP program, the NJATC's Executive Director Mike Callanan who 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.

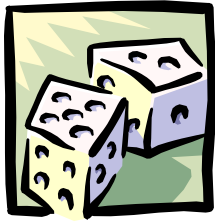
Everyone is sure to have a great time at our Saturday evening closing banquet which will feature a Hawaiian Luau theme. Bring your Hawaiian shirts and flip-flops because it is going to be a great party. It will be a great warm-up for the Spring Conference in Hawaii as well! We'll have a full report on the meeting in next month's issue of Watts News, so be sure to check it out.



## BAS Apprenticeship Conference

The 24<sup>th</sup> Biennial Apprenticeship Conference will be held January 26 and 27 at the KI Convention Center in Green Bay. Sponsored by the State of Wisconsin Bureau of Apprenticeship Standards and the Wisconsin Apprenticeship Advisory Council, NECA is proud to be a sponsor of the event.

The conference will feature keynote speakers Futurist David Zach and Tom Musial of Manitowoc Crane, and provides attendees with many seminar topics relating to apprenticeship issues and training on Monday and Tuesday. The 2009 Apprenticeship Hall of Fame inductees will be honored at a dinner and awards banquet Monday evening. Registration is still open, the fee is \$135 which includes continental breakfasts, awards luncheon, the Hall of Fame banquet, and the Apprenticeship Expo. The conference is an excellent opportunity for apprenticeship committee members to learn about new trends and methods for apprenticeship, as well as refreshing the knowledge they already have.



Las Vegas is experiencing the same economic downturn, unemployment and other financial crises as the rest of the U.S. Their economy had been booming, and construction was at an all-time high before the financial bubble burst. Now the skyline features cranes sitting at projects on hold as the city encounters its first true recession.

With fewer tourists filling fewer hotel rooms, many of the new mega-hotel projects have been put on hold. Boyd Gaming's Echelon project, a \$4.8 billion complex with 5,000 hotel rooms and lush landscaping, was abruptly halted in August, leaving 800 construction workers out of work.

In previous economic dips, the periods were so brief that they were scarcely felt and were largely confined to the tourism industry.

In addition to a depressed tourism season, this downturn has impacted Nevada's other major economic driver – construction and development. Housing is in a complete collapse and unemployment is at a record high, leaving Las Vegas residents worried for the first time in decades.

In short, it is hard times for Lady Luck!

## NFPA 70E Seminar

As we reported last month, the NECA-OSHA Alliance Committee has created an NFPA 70E Seminar to address changes recently made to the code, an overview from OSHA's perspective, and an overview on how to do the calculations to determine the hazard level of a task. The course was held January 15, 2009 at the Wilderness Resort Properties in Wisconsin Dells.

After a slow start to registrations, the response to this seminar was overwhelming and we quickly filled all 30 slots of the seminar and had a waiting list. The course evaluations were very positive and other than running short on time to cover calculations, everyone seemed satisfied with the course. We will likely schedule another seminar in the Dells or Madison area later this spring to accommodate those who were not able to attend the January session. The Indianhead Division also is planning to hold this seminar in the Eau Claire area for the employers in that area.

We will keep you updated on future seminar dates once they become available.

## Private Investigators for Prevailing Rate

Nonunion contractors are protesting the fact that most prevailing wage investigations on Wisconsin public projects are conducted by private investigators rather than state employees. The Department of Workforce Development Equal Rights Division only has three employees in their Prevailing Wage Program. Those employees conduct the annual prevailing rate survey and issue prevailing rate determinations, leaving very limited time to investigate potential violations. The Construction Business Group, founded in 1992 is funded by the contractors and employees covered by the Operating Engineers International Union #139, and their mission is to check prevailing wage compliance for both union and nonunion contractors. The Wisconsin Laborers' District Council also has three inspectors on staff to help ensure compliance. The CBG and WLDC tipped off the DWD to 80 potential prevailing wage violations last year. The groups' investigators admit they file more complaints against nonunion firms because that's where the violations are found. The unions track their own contractors continuously, leaving less potential for violations, investigators say.



DWD staff investigated 100 construction sites and found violations at 37 percent of those jobs, allowing it to collect an additional \$317,990 in wages for 352 construction workers.

## From the Desk of Attorney Kay



### THE NEED FOR INJUNCTIVE RELIEF WHEN CONTESTING AN AWARD OF CONSTRUCTION CONTRACT

In the June, 2007 edition of this publication, I wrote:

When a bidder wishes to challenge a governmental decision not to award a contract to a low bidder, the relief which the aggrieved low bidder must seek is injunctive relief preventing the governmental agency from awarding the contract to anyone other than the low bidder. Once the contract is awarded to someone other than the low bidder, it is too late for the low bidder to seek relief.

In a Court of Appeals decision of June 18, 2008, the Wisconsin Court Appeals rejected the contest of award of construction contract to an unsuccessful bidder. In PRN Associates, LLC and PGN Associates, LLC v. Wisconsin Department of Administration, the Court of Appeals dismissed the action brought by the unsuccessful bidder because the unsuccessful bidder had failed to seek an injunction preventing DOA from awarding the contract to anyone else. Instead, the bidder sued for damages following the award of a state university construction contract to another bidder.

PRN and PGN (collectively referred to as Prism) submitted a proposal to renovate the Kenilworth Building located on a University of Wisconsin, Milwaukee campus. However, the State Building Commission refused to approve an awarding of a contract to Prism and ordered a second request for proposal on the project. Prism submitted a bid but WEAS Development submitted the low bid. The University of Wisconsin system and the State Building Commission approved the WEAS bid. Subsequently, DOA sent a letter to Prism advising that the contract was going to be awarded to WEAS. Instead of immediately commencing an action seeking injunctive relief, preventing the State from awarding the contract to anyone other than Prism, Prism appealed the matter through the administrative offices of DOA. When DOA denied the appeal, Prism commenced an action in the circuit court for Ozaukee County seeking damages. The Wisconsin attorney general filed a motion to dismiss, arguing that Prism had failed to obtain an injunction preventing the award of contract to WEAS and therefore the case was moot. The circuit court agreed and dismissed Prism's action. Prism appealed to the Wisconsin Court of Appeals.

The Court of Appeals stated:

Here, the contract has been awarded and no injunction was filed to prevent this. The circuit court relied on the reasoning of four cases and holding the matter to be moot under these circumstances... Our review of the case law supports our agreement with the circuit court in holding that once the contract is awarded, the matter is moot in terms of challenging the award or challenging

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### February 2009

#### **February 4**

Madison Membership  
Janesville-Beloit Membership

#### **February 9**

Kenosha-Racine Membership

#### **February 11**

Northeast and Fox Valley  
Joint Membership

#### **February 12**

La Crosse and Indianhead Joint  
Membership

#### **February 19**

Wisconsin Valley Membership

### 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

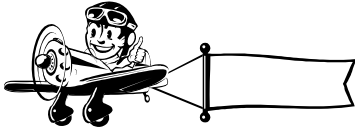
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Experts say the best time to advertise is during a recession, because you will get the most bang for your buck. Recessions occur every 4 – 5 years, and typically last somewhere between 8 – 16 months. While it is difficult to predict when any recession will end, sooner or later they all do, and at that point, everyone else will be advertising once again. Also, odd though it may be, consumer spending tends to pick up during the last quarter of a recession, after an initial period of belt-tightening.

Work now on maintaining your existing customers and relationships so that when the work picture starts to pick up again, you are foremost on their minds.



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

## New– Letter of Assent C

The IBEW has created a new form, the Letter of Assent C, to be used to help them organize new union contractors. Recognizing that many nonunion firms are reluctant to sign a long-term commitment, the Letter of Assent C is for use by first-time new contractors to sign them for a “trial period” as a union contractor. After 180 days, and prior to 12 months from the date of signing, the Letter of Assent C contractor can terminate their assent with just 30 days notice. After 12 months, the contractor automatically becomes bound to subsequently approved NECA-IBEW agreements, and the Letter of Assent B 100-day termination language applies.

The Letter of Assent C also includes a provision for recognition of the union after the 12-month period.

Contractors who sign the Letter of Assent C are obligated to follow all other terms of the labor agreement as long as they remain signatory.

The IBEW has stressed that these forms are to be used only in circumstances where a contractor is unwilling to sign the standard Letter of Assent form, and it may only be used to sign contractors who have never been signatory in the past.



“We face the arduous days that lie before us in the warm courage of the national unity; with the clear consciousness of seeking old and precious moral values; with the clean satisfaction that comes from the stern performance of duty by old and young alike. We aim at the assurance of a rounded and permanent national life.” - President Franklin Delano Roosevelt at his first inauguration, March 4, 1933.

## Tom’s Code Corner

**Question:** I just roughed-in a new 12 family condominium building. A 100-ampere panelboard is located in each unit. A separate 200 amp panel supplies public loads. I bundled the home run cables as they run up the wall, through the top plate for some distance through the attic. I am being told it is a commercial building and thus bundled cables require “derating”. Is this correct?

**Answer:** Based on the information provided you will have to derate or change your cable layout. NEC 310.15(B)(2)(a) requires cables to be derated when bundled together.

Comm 16.310 adds a 6<sup>th</sup> exc. to the exceptions in the NEC. Branch circuits supplying individual dwelling units generally do not have to be “derated”. However there is a change in the 2008 NEC. The key to avoiding derating is to avoid bundling in locations where the cables are firestopped or are installed in contact with insulation. Three or more cables run through the same opening that is firestopped or in contact with insulation now require “derating”.

## MANPOWER STATISTICS

For the Month of -- **November 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	11	15	19	10	15	10	15	129
<b>Total Local Contractors:</b>	<b>41</b>	<b>15</b>	<b>19</b>	<b>36</b>	<b>15</b>	<b>20</b>	<b>12</b>	<b>21</b>	<b>179</b>
Traveling Contractors: NECA	8	4	5	0	4	5	5	6	37
Non-NECA	4	12	7	4	2	4	1	3	37
<b>Total Traveling Contractors:</b>	<b>12</b>	<b>16</b>	<b>12</b>	<b>4</b>	<b>6</b>	<b>9</b>	<b>6</b>	<b>9</b>	<b>74</b>
<b>TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:</b>	<b>53</b>	<b>31</b>	<b>31</b>	<b>40</b>	<b>21</b>	<b>29</b>	<b>18</b>	<b>30</b>	<b>253</b>
Contractors More Than Two Months Delinquent in N.E.B.F.	1	2	0	1	4	0	0	0	8
Total Number of Contributing Contractors in Area:	54	33	31	41	25	29	18	30	261
Employees: NECA	263	64	108	557	204	53	158	223	1630
Non-NECA	206	114	202	65	51	61	72	78	849
<b>TOTAL EMPLOYED:</b>	<b>469</b>	<b>178</b>	<b>310</b>	<b>622</b>	<b>255</b>	<b>114</b>	<b>230</b>	<b>301</b>	<b>2479</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 Divisions

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

Graybar, Milwaukee Electric Tool and Westex recently signed multi-year sponsorship marketing agreements with NECA. The three companies will be have committed to the elite-level Premier Partner sponsorship category. As Premier Partners, they will showcase their brands, products and services at hundreds of NECA events and in NECA publications.

Graybar, headquartered in Clayton, MO, specializes in supply chain management and the distribution of components, equipment and materials for the electrical and telecommunications industries. Milwaukee Electric Tool, headquartered in Brookfield, produces heavy-duty electric power tools and accessories featuring more than 500 signature red power tools and 3,500 accessories. Westex, Inc. based in Chicago, is the world's largest manufacturer of durable flame resistant cotton and cotton blend fabrics for protective clothing.

## Keep an Eye Out for Credit Card Fraud

Credit card customers from coast to coast are picking up a strange charge on their credit card statements amounting to about 25 cents.

The charge shows up on statements from Adele Services, Melville, NY and the customer has no idea what it is for. It turns out there is no "Adele Services" business in Melville or anywhere else in New York.

Authorities are investigating, but the speculation is that someone is either trying to identify valid credit card numbers and will then make a bigger charge, or they are trying to steal



small amounts from a large number of people. The latter seems to be the case at this time, as none of the cards that have been hit with the small charge have then been hit with a larger charge.

The Better Business Bureau speculates there could be millions of cards that are being charged, and that many consumers have or will overlook the charge on their account, or will not pursue it because it is such a small amount.

If you find such a charge on your credit card statements, dispute it with your credit card company so there is a record of the charge being made.

## From the Desk of Attorney Kay

*(Continued from page 3)*

the process...

In addition, even if Prism had timely sought and obtained injunctive relief, which it did not, the court cannot order the contract to be awarded to Prism or to any other bidder for that matter... The court can enjoin the award of a contract (an available option if the contract has not already been awarded), in which case the procuring body can either let the contract to the bidder who successfully challenged the initial award decision, or it can call for new bids on the procurement.

The Court of Appeals went on to note that when an injunction is sought and granted, the low bidder seeking the award of the project and who succeeds in obtaining an injunction preventing the state agency from awarding it to someone else, may recover as damages its reasonable and necessary expenditures in preparing its bid, plus the cost of obtaining the bonds required by the specifications, but it may not recover its loss of profit. The Court additionally noted that the competitive bidding statutes are designed primarily for the benefit and protection of the public, not individual bidders. The Court said:

By not seeking an injunction, Prism has allowed the disputed project to go forward with another contractor and sought to recover its purported losses with a lawsuit seeking damages. ... If Prism were successful in that scenario, the state and its taxpayers would pay Prism's lost profits in addition to the contract price paid to the contractor who performed the work. ... This result fails to benefit or protect the public. ... Only if Prism had successfully obtained an injunction, would it be entitled to limited damages, not including lost profits.

This decision is still another reminder to contractors that if they dispute an award of a governmental contract they must immediately contact legal counsel so that an action may be timely commenced seeking an injunction preventing the governmental agency from awarding a contract to someone else during the pendency of the case. Time is truly of the essence for any contractor who wishes to contest an award of a construction project.



*"With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan, to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations." - President Abraham Lincoln during his second inauguration, March 4, 1865.*