

Wisconsin Chapter NECA  
2200 Kilgust Rd.  
Madison WI 53713



June 2010

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## Winter Meeting Update

The Wisconsin Chapter held its annual Winter Meeting in Manitowoc on January 29 and 30. Beginning with a cocktail reception at the Maritime Museum in Manitowoc, the weekend was a great time to relax, learn, touch base with fellow contractors and have some fun.

Our featured speakers this year all focused on a unified theme: green technologies, and more specifically, solar power. Our first speaker, Tom Glavinich from the University of Kansas, has been studying alternative technologies and their potential for electrical contractors for nearly 20 years. Tom discussed the solar/photovoltaic industry and the changes it has undergone in recent years to become a much more reliable and viable source of energy. Terry Roovers, IBEW Sixth District, then talked about the NJATC's Solar Training program and its recent approval for certification.

Our final speaker of the day was Rick Eland, Eland Electric, who gave us a contractor's perspective on the solar/photovoltaic market and their experiences in this emerging market.

Our opening cocktail reception was held at the Maritime Museum in Manitowoc, featuring a tour of an authentic World War II submarine, and was a fun-filled evening for all.

Saturday evening, we held our closing banquet featuring a pirate theme, and a few of the NECA members decided to participate by dressing up.

## Changes to Prevailing Wage Law

As reported earlier this year, ABC of Wisconsin has filed a suit against the new prevailing wage payroll reporting law which took effect January 1, 2010. The new law requires detailed payroll reports from all contractors whose employees are not covered under a collective bargaining agreement (non-union). The reporting requirements are significantly reduced for union contractors who are simply required to verify that their employees on prevailing wage projects are covered by a union contract, and that the wage/fringe rate in the contract meets or exceeds the prevailing rate on that specific project.

*(Continued on page 2)*

## Seminar Report

In January, the Chapter held the first session of the Collective Bargaining Series seminars for NECA members who serve on their area labor negotiations committees. The seminar focused on the negotiation process, preparation, National Labor Relations law restrictions and how to gauge the union and determine their ultimate goals in negotiations.

In February, the Chapter held the Collective Bargaining Series on CIR. The two-part seminar focused on the preparation required to submit a case to CIR, and followed through to the actual appearance before the Council by the Chapter Manager and Business Manager. The second part of the seminar was focused on bargaining without the CIR clause, which requires the parties to take the issues in negotiations to Council if they fail to reach an agreement at home.

In March, the Local #14 LMCC sponsored the popular Hard Hat Productivity seminar at the Union Hall in Brackett (Eau Claire area).

Finally, the Chapter held a Lead Safe Renovation seminar at the end of April. Attendees received their state certification for the new Lead Safe Renovation rule that became effective May 1, 2010.

## Prevailing Wage Law

*(Continued from page 1)*

The suit was filed just before the first reports were due to be submitted to the Department of Workforce Development, and just as the DWD was completing their programming to accept the reports. The DWD then agreed that although the reports were still due, no penalties would be assessed on contractors who did not submit the reports on time as required, until the matter has been decided.

Dane County judge John Markson recently declined ABC's request for an injunction and dismissed its complaint that the Department of Workforce Development asked too much of contractors. ABC plans to try to introduce legislation to overturn portions of the law, once the elections this fall have been held.

Meanwhile, the DWD has posted their requirements for both union and non-union reporting on their website. The link for the union contractor requirements is: [http://www.dwd.state.wi.us/er/prevailing\\_wage\\_rate/union\\_contractor.htm](http://www.dwd.state.wi.us/er/prevailing_wage_rate/union_contractor.htm) The requirements for union contractors are considerably less than those for non-union, as long as your employees on these projects are covered under a collective bargaining agreement which requires wage/fringe packages equal to or over the prevailing wage rate in effect.

A reminder that the prevailing wage law applies to employers engaged in any public works project that has a total estimated cost of at least \$25,000. It also applies to employers engaged in any private project that receives at least \$1 million in public funding.

## Spring in Palm Springs

NECA's 16<sup>th</sup> Annual Midwest Regional Conference was held in Palm Desert, California from March 21 – 24, 2010. The conference offers a unique opportunity for NECA contractors to network with their peers from the entire region in a setting that is warm enough to allow them to forget those Midwest winters!

This year's conference was held at the JW Marriott Desert Springs Resort and Spa, which features stunning views of the desert and the Santa Rosa mountains. Palm Desert is located just a few miles southeast of Palm Springs and is one of the area's most beautiful settings.

The conference began with a cocktail reception Sunday evening, the general session meeting was held Monday morning, and the Awards Breakfast was held Wednesday morning, featuring keynote speaker Peter Marshall, former host of "Hollywood Squares". Congratulations to Governor Jerry Schulz, Michels Power, on being recognized with the "District IV Industry Leader Award."

The conference concluded Wednesday evening with a farewell reception. The Wisconsin Chapter had three people in attendance at the annual conference.

## From the Desk of Attorney Randy Andersen



### LEGAL CHALLENGES TO BIDDING PROCESS ON STATE CONSTRUCTION PROJECTS

The State of Wisconsin frequently issues solicitations for bids on state construction projects. Section 16.75 of the Wisconsin Statutes provides that with certain limited exceptions, contracts are to be awarded to the “lowest responsible bidder.” Bid solicitations generally contain instructions which the contractor must follow to be considered the “lowest responsible bidder.” Contractors often invest substantial time and effort participating in the bidding process. Occasionally, a contractor is disappointed to learn that its bid has been rejected as a result of failure to comply with bidding instructions which the contractor believes to be ambiguous or contradictory. The contractor may believe that the state has failed to follow its own procedures or bid instructions. Occasionally, a contractor may be the apparent low bidder when the bids are opened, but the state nonetheless rejects the bid for reasons which the contractor believes to be unfair. Under those circumstances, the contractor may have a remedy in court, but time will be of the essence in pursuing legal action.

The procedure which contractors must follow under such circumstances was laid out by the Wisconsin Supreme Court in Aqua-Tech, Inc. v. Como Lake Protection and Rehabilitation District, 71 Wis. 2d 541, 239 N.W.2d 25 (1976). Before the contract is awarded, the contesting contractor must file a complaint in circuit court seeking a temporary injunction, prohibiting the state from awarding the contract to any other bidder. The contractor must show that it has a reasonable probability of success on the merits of its claim of error by the state. If the contractor becomes aware that the contract is to be awarded imminently to another contractor, the contesting contractor should also seek a temporary restraining order preventing the state from awarding the contract until the motion for an injunction can be heard. If the contractor waits until the contract is awarded to a third party, it may be too late for the court to intervene because at that point the third party awarded the work will have a vested interest in the contract and the potential right to recover breach of contract damages. Such a result would be contrary to the state’s goal of performing construction work in the most cost-effective manner.

If the contractor is successful in obtaining the temporary injunction, that does not mean that the court will order the state to award the contract to the contractor. The court may enter an order prohibiting an award of the contract to another contractor. However, the courts generally do not intervene in the state’s exercise of discretion in determining the lowest responsible bidder. The state may reject all bids and rebid the project, although it is possible that the state will simply decide to award the contract to the contesting contractor. If the apparent low bidder is successful in obtaining a temporary injunction and the contract is not awarded to that contractor, the contractor may be entitled to recover its reasonable and necessary expenses in preparing its bid, plus the cost of obtaining any bonds required by the project specifications.

In 2009, the Wisconsin Supreme Court reiterated that the Aqua-Tech procedure remains the proper path to follow for an aggrieved bidder. In PRN Associates, LLC v. Department of Administration, 2009 WI 53, 317 Wis. 2d 656, 766 N.W.2d 559, a claim for lost profits by an apparent low bidder who failed to timely seek an injunction was denied. Citing Aqua-Tech, the Supreme Court noted that procuring statutes and regulations “are designed to prevent fraud, collusion, favoritism and improvidence in the administration of public business, as well as to ensure that the public receives the best work....at the most reasonable price practicable.” The failure to timely request an injunction rendered the contractor’s complaints moot, and left the contractor without a remedy.

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### July 2010

**July 7**  
Madison Membership  
Janesville-Beloit Membership

**July 8**  
Indianhead Membership

**July 12**  
Kenosha-Racine Membership

**July 14**  
Fox Valley-Northeast Joint Membership

**July 22**  
Wisconsin Valley Membership

### Upcoming Meetings

#### **No 2010 Summer Meeting**

#### **August 3-5, 2010**

District IV Council Meeting  
Ann Arbor, MI

#### **October 2-5, 2010**

NECA Convention & Trade Show  
Boston, MA

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## Large Construction Jobs Decline in May

Employment in the construction industry declined in May as 35,000 lost their jobs, offsetting most of the job increases experienced in March and April 2010. The construction unemployment rate for the month of May was the highest May rate since 1976.

Nationally, over 1.7 million construction workers were unemployed, and many more were working reduced hours. Hit the hardest was the nonresidential construction sector, which accounted for four of every five jobs lost during the month.

The figures illustrate just how fragile the construction sector remains during the recovery period.



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

## Hertel's Code Update Class Goes On!

As you know, the Chapter's annual Summer Meeting was cancelled this year as a cost-saving measure to the Chapter. Unfortunately, one of the highlights of our meeting, Joe Hertel's Code Class was also cancelled as a result. The good news is that the Chapter has scheduled Joe to present a six-hour code update class for NECA members in lieu of this meeting. The class will be held on Saturday, July 24, 2010 from 9:00 a.m. to 3:00 p.m. in Wisconsin Dells, at the Wintergreen Resort Hotel. The cost of the seminar to all NECA members is just \$40, which includes a lunch for all attendees. Joe has approved this class for 6 CEUs to be applied to the Journeyman or Master Electrician certification, and the course will be tailored specifically to our electrical contractors.

Joe has asked that attendees bring a 2008 NEC Code Book to the seminar with them.

A block of rooms is available at the hotel for those who wish to come in the night before the seminar, at a rate of \$95 per night. Members should contact the hotel directly if they wish to reserve a room (608) 254-2285, and mention the NECA block. Any hotel rooms not reserved by July 9 will be released.

The registration deadline for the seminar is July 9, 2010. If you have questions regarding the seminar, please contact Rachel or Tavia at the NECA Office (608) 221-4650.

## Tom's Code Corner

**Question:** We used listed "hospital grade" Type AC cable to supply receptacles on the critical branch in a hospital. The inspector indicated we could not use AC cable for this application. Why?

**Answer:** All patient care areas in health care facilities must meet NEC 517.13(A) and (B). This requirement applies to wiring methods for branch circuits supplying lighting, receptacles, and electrical equipment in the patient care area. These branch circuits are required to be run in a metal raceway or metallic cable armor that is in itself an equipment grounding conductor. There are types of AC and MC that are approved for this purpose. In addition, 517.13(B) also requires an insulated equipment grounding conductor sized in accordance to 250.122 for the size of the overcurrent protection of the circuit.

517.30(C)(3) wiring methods that provide increased mechanical protection for the emergency circuits in a hospital. Only non-flexible metal raceways, Type MI cable or Schedule 80 PVC conduit are permitted. Of course, nonmetallic raceways are not permitted to supply patient care areas.

517.30(C)(3)(3) allows limited use of flexible raceways and listed metal sheathed cable assemblies. The use of flexible wiring methods is limited to:

- a. Where used in listed prefabricated headboards.
- b. In listed office furnishings.
- c. Where fished into existing walls or ceilings, that are not otherwise accessible and not subject to physical damage.
- d. Where necessary for flexible connection to equipment.

## MANPOWER STATISTICS

For the Month of -- April 2010

Local Union #	14	127	158	159	388	430	577	890	TOTAL
Local Contractors: NECA	8	2	4	17	5	5	3	6	50
Non-NECA	29	7	14	17	7	18	8	13	113
<b>Total Local Contractors:</b>	<b>37</b>	<b>9</b>	<b>18</b>	<b>34</b>	<b>12</b>	<b>23</b>	<b>11</b>	<b>19</b>	<b>163</b>
Traveling Contractors: NECA	9	6	5	5	4	5	4	6	44
Non-NECA	8	9	6	4	1	2	0	3	33
<b>Total Traveling Contractors:</b>	<b>17</b>	<b>15</b>	<b>11</b>	<b>9</b>	<b>5</b>	<b>7</b>	<b>4</b>	<b>9</b>	<b>77</b>
<b>TOTAL # OF CONTRACTORS - LOCAL AND TRAVELERS:</b>	<b>54</b>	<b>24</b>	<b>29</b>	<b>43</b>	<b>17</b>	<b>30</b>	<b>15</b>	<b>28</b>	<b>240</b>
Contractors More Than Two Months Delinquent in N.E.B.F.	5	5	1	2	3	0	1	1	18
Total Number of Contributing Contractors in Area:	59	29	30	45	20	30	16	29	258
Employees: NECA	391	28	120	495	180	37	145	160	1556
Non-NECA	196	89	249	62	31	54	52	49	782
<b>TOTAL EMPLOYED:</b>	<b>587</b>	<b>117</b>	<b>369</b>	<b>557</b>	<b>211</b>	<b>91</b>	<b>197</b>	<b>209</b>	<b>2338</b>

<u>Union #</u>	<u>NECA Division Name</u>
14	Indianhead/La Crosse Divisions
127	Kenosha Division
158	Northeastern Division
159	Madison Division
388	Wisconsin Valley Division
430	Racine Division
577	Fox Valley Division
890	Janesville-Beloit Division

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

A new state law, 2009 Wisconsin Act 292, will give the Department of Workforce Development authority to begin fining employers who “misclassify” their workers as independent contractors. The DWD will be hiring four inspectors who will follow up on tips about contractors who have intentionally misclassified their employees to avoid payment of unemployment, workers compensation, and Social Security taxes. Doing so also allows them to avoid withholding state and federal taxes on wages paid.

This has been a particular problem in the construction industry with damaging results. A contractor who misclassifies his employees, thereby avoiding the above mentioned expenses has a considerable advantage in bidding work over an honest contractor who correctly pays these expenses, and many of you have experienced this with unscrupulous contractors in the past.

## Man-hour Comparison Chart

### Local and Chapter Man-hour Comparison

	Hours Apr-10	Hours Apr-09	2010 vs. 2009	% Change	Hours 2010 YTD	Hours 2009 YTD	2010 vs. 2009	% Change
Local #14	97452	61357	36,095	59%	350367	229513	120,854	53%
Local #127	24997	24116	881	4%	95602	94143	1,459	2%
Local #158	46421	38227	8,194	21%	216375	167040	49,335	30%
Local #159	87241	83308	3,933	5%	347925	300867	47,058	16%
Local #388	26353	33018	-6,665	-20%	96054	136960	-40,906	-30%
Local #430	14739	16414	-1,675	-10%	61948	68510	-6,562	-10%
Local #577	28867	31169	-2,302	-7%	118470	122321	-3,851	-3%
Local #890	32747	29853	2,894	10%	121263	134251	-12,988	-10%
<b>Chapter</b>	<b>358816</b>	<b>317462</b>	<b>41,354</b>	<b>13%</b>	<b>1408003</b>	<b>1253605</b>	<b>154,398</b>	<b>12%</b>

\*YTD numbers are January through April

As you have probably noticed, the Watts News newsletter has been on hiatus the last few months. If you would like the Man-Hour Comparison numbers and Manpower Statistics from those missing months, contact Shari at the Chapter Office and they will be provided to you. Thank you!

## A Sunny Solar Outlook in Wisconsin

Although northern cities and states like Wisconsin are not usually considered to be overly sunny, the U.S. Department of Energy names three northern cities, Minneapolis, Milwaukee and Madison, as Solar America Cities. The designation entitles the cities to specialty funding for solar energy projects. While the Midwest might not be the sunniest spot in the country, the area businesses and residents have shown a real interest in projects large and small to utilize the power of the sun.

Muskegan, Michigan, recently announced a \$740,000 solar power development which will provide at least 30 percent of the power needed at the Torresen Marine Marina, and will produce enough the equivalent energy it takes to power 20 homes. The Orion Energy Systems project in Manitowoc will have a collection capacity of 250 kilowatts. The "Milwaukee Shines" project will attempt to reduce administrative, economic and procedural barriers to solar projects in the area. And in Madison, the "MadiSUN" project will attempt to double the use of solar energy over the next two years.

Overall, the sun is shining on Wisconsin these days!

## Attorney Randy Andersen, Continued

The lesson to be learned is that when a contractor believes another contractor has erroneously been determined to be the apparent low bidder, or that the state has failed to follow its own bid instructions, or other mandated procedures, the contractor must request an injunction in court before the contract is awarded to another party. This procedure should be followed not only on state projects, but also for projects where a municipality or other branch of government is soliciting bids for materials or services. Contractors are encouraged to seek legal assistance when this situation arises to ensure that the proper procedure is followed.