



Northeastern Subcontractors Association

N E W S L E T T E R



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(518) 869-9800

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NLRB Requires Employers to Post Unionization Rights Notice

Add another mandatory poster to the employee break room. The National Labor Relations Board (NLRB) has issued a new rule requiring employers to post notices explaining employee rights under the National Labor Relations Act. The rule, published in the Federal Register on August 30, 2011, takes effect on November 14, 2011.

Employers will be required to post the employee rights notice where other workplace notices are typically posted. Also, employers who customarily post notices to employees regarding personnel rules or policies on an internet or intranet site will be required to post the NLRB notice on those sites. The required notice, which is similar to the one required by the U.S. Department of Labor for federal contractors, will inform employees that they have the right to bargain collectively with their employer for improved wages and working conditions, to form, join and assist a union and to refrain from any of these activities.

The notices – which are 11x17 and in color or black and white – must also be posted in the appropriate foreign language if at least 20% of the workforce is not proficient in English. Employers should begin posting the notice on November 14, 2011. Copies of the notice (in English and other languages) will be available for download from the NLRB's website at www.nlr.gov and at the NLRB's regional offices by November 1, 2011.

An employer's failure to post the notice may be treated as an unfair labor practice under the NLRA. The NLRB investigates allegations of unfair labor practices made by employees, unions, employers or others, but does not initiate enforcement action on its own. Typically, the consequences of non-compliance will be limited to requiring that the notice be posted and the unfair labor practice case will then be closed. However, the NLRB may also extend the six-month statute of limitations for filing other unfair labor practice charges against the employer. When an employer knowingly and willfully fails to post the notice, the failure may be considered evidence of unlawful motive in other, unrelated unfair labor practice cases against the employer. The NLRB, however, does not have the authority to levy fines against non-complying employers.

31st Annual NESCA Trade Show to Be Held On October 13th

Business owners, managers and supervisors involved in the commercial construction industry who wish to learn about the latest in construction products and services will have the opportunity to engage in some one-stop shopping when NESCA hosts its 31st Annual Trade Show on Thursday, October 13, 2011 at the Century House in Latham. The Trade Show, which will be held from 4:00 - 8:30 p.m., will expose general contractors, subcontractors, design professionals, facilities managers, owner/developers and others to a wide variety of products and services in virtually every trade category. Specialty gas and welding products, rigging products, water & sewer products, power tools, aerial lifts and scaffold, acoustical products, insulation systems, concrete accessories and products, insurance and bonding services, building materials, fasteners, and equipment rentals are among the many products and services that will be on display at the Trade Show.

All available exhibit space has been sold out for the Trade Show, and total attendance is expected to top 500. NESCA members who have attended the Trade Show in the past know that it is much more than just a trade show, it is an industry event calculated to bring the various segments of the commercial construction industry together for an evening of business networking. While taking in the exhibits, attendees will be treated to a variety of hors d'oeuvres, carving stations and other great food at the International Food Bazaar. Door prizes will be given away by exhibitors, and a "Super 50/50" drawing will be held, with a **guaranteed payout of at least \$1,000 to the winner!**

NESCA's condensed 4 1/2 hour format, unlimited food and bar, exciting prizes, the best construction industry networking event of the year, and the chance to see the most complete line-up of commercial construction products and services available in Northeastern New York is sure to make this event one that NESCA members will not want to miss. The admission fee for the Trade Show is \$30 per person for advance registrations and \$35 at the door. To register to attend the trade show, contact the NESCA office at (518) 869-9800.



PRESIDENT'S MESSAGE

I hope all NESCA members are making plans to attend the upcoming Trade Show on October 13th. NESCA has been hosting this Trade Show for more than 30 years, and its continued success is largely due to its unique character. The event is unique because in addition to being a great Trade Show, it brings all elements of the Northeastern New York commercial construction industry together for one night of business networking and interaction. General contractors, subcontractors, suppliers, designers, facilities managers and public work officials all attend this show. All available exhibit space was sold out weeks ago, and our exhibitors will display a wide variety of commercial construction products and services in virtually every trade category. If past Trade Show attendance is any indication, more than 500 people, all solidly connected to the commercial construction industry, will be there. Please consider coming to the Trade Show on October 13th, particularly if you have never attended in the past. It's an extremely enjoyable event, and a great

opportunity to make and renew business connections.

On October 20, 2011, the Board of Directors of NESCA's state affiliate, the Empire State Subcontractors Association (ESSA) will meet to begin formulating our legislative program for the 2012 legislation session. Many members may not be entirely familiar with ESSA. ESSA is comprised of NESCA and several other subcontractor associations located in New York City, Syracuse and Buffalo. The combined membership of the four ESSA chapters totals approximately 1,000 subcontractors, specialty contractors and material suppliers statewide. ESSA is, in effect, our "lobbying arm", and combines the collective effort and clout of its four affiliated organizations to pursue beneficial changes in New York State law and regulation to improve the construction business climate within which we all operate. Many of the changes ESSA has secured over the last 30 plus years have saved your company both time and money. Just take a look at the list of ESSA's 38 legislative successes and you will see how many beneficial laws there are that would not be in place if not for the collective effort of subcontractors and suppliers throughout the State. In fact, just two months ago, Governor Cuomo signed two more ESSA bills into law, both which will help preserve the rights of subcontractors and suppliers to recover unpaid retainage. If you feel "there ought to be a law" to address bidding, contract language, payment or other business problems you currently face, give me your ideas and I'll bring them to the ESSA Board meeting on October 20th.

Finally, NESCA's first regular membership meeting of the year will be

held on November 10th, and our program will be a "General Contractor Showcase" featuring Gilbane Building Company. The purpose of the General Contractor Showcase is to provide members of NESCA an opportunity to learn more about a featured general contractor and its upcoming projects, meet its leadership team, and find out what they expect from their subcontractors and what subcontractors can expect from them.

Mike O'Connor, President

NESCA NEWSLETTER

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6 Airline Drive, Albany, New York 12205
(518) 869-9800 www.nesca.org

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COUNSEL'S MESSAGE

On August 4, 2011, the United States District Court for the Southern District of New York decided Building Industry Electrical Contractors Association and the United Electrical Contractors Association, Plaintiffs v. The City of New York and the Building and Construction Trades Council of Greater New York, Defendants. On November 24, 2009, Mayor Michael R. Bloomberg, along with the President of the Building and Construction Trades Council of Greater New York ("BCTC") publically announced that the City of New York and the BCTC had agreed to enter into three Project Labor Agreements ("PLAs") to be enforced through 2014. Subsequently in November 2009, the City and the BCTC announced that three additional PLAs were to be executed.

The Building Industry Electrical Contractors Association ("BIECA") and the United Electrical Contractors Association ("UECA") commenced an action in Federal District Court claiming that the PLAs effectively

excluded contractor-members of the UECA and the BIECA from the competitive bidding process for the City construction projects. Two of the issues raised by the Plaintiffs included (1) the PLAs were preempted pursuant to the National Labor Relations Act ("NLRA"), and (2) the City had violated Section 222 of the New York State Labor Law by enacting overbroad PLAs and not determining the need for a PLA on a case by case basis. The Defendants countered by stating the use of PLAs by local governments was not preempted by the NLRA where the PLAs were used in conjunction with proprietary, rather than regulatory conduct on the part of the municipality and that the City's determination to require PLAs comported with Section 222 of the Labor Law and the New York City's Public Bidding Laws because it was rationally based and supported by expert studies on the PLAs concluding that each of the PLAs resulted in substantial savings.

The Court in citing Buildings & Constr. Trades Council of the Metro. Dist. v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc. ("Boston Harbor") stated "If the City was acting as a "market participant" in executing the PLAs, rather than as a regulator, the PLAs are not preempted by the NLRA". The Court, in addressing the issue as to whether the PLAs were proprietary or regulatory, set forth a lengthy analysis of the existing precedents and concluded that "the PLAs at issue in this case share many of the same provisions of the PLAs challenged in Boston Harbor." Indeed, they are nearly indistinguishable from the Boston Harbor PLAs, except for the fact that they cover multiple projects. Even this distinction might not be of great importance, however, in view of the fact that the Boston Harbor cleanup project spanned decades and involved hundreds of contractors, it was thus an enormous "single project with many components". The Court then concluded that "the PLAs do not extend to govern conduct by the BCTC or other private parties in the construction industry Therefore, these PLAs are not preempted by the NLRA." In concluding that the City was motivated by proprietary interests rather than regulatory, the Court pointed out that New York Labor Law Section 222 exempted projects that operated pursuant to a PLA from the requirements of the Wicks Law. Since the Wicks Law requires the City to employ multiple contractors to oversee certain components of a shared project, it logically resulted in inefficiencies. The PLA by exempting the project from the Wicks Law was cost effective in removing these inefficiencies.

Terence J. Burke, NESCA Legal Counsel

Question of the Month

Q. Most subcontracts I receive from the general contractor state that the contractor's contract with the owner is to be considered part of my subcontract. If the contractor refuses to provide me a copy of his contract, do I have any recourse?

A. Yes. Since 1988, Section 8 of the NYS Lien Law has required a construction owner, within 30 days of a request being made by a subcontractor or supplier, to provide such subcontractor or supplier with the terms of his contract with the prime contractor. If the owner refuses or neglects to furnish the terms of his contract with the prime contractor within the 30-day period, the owner could become liable for any loss sustained by the subcontractor or supplier by reason of such refusal or neglect.

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Calendar of Events

October 6, 2011

Board of Directors Meeting
Century House, Latham, 6 pm

October 6, 2011

5-Week STP Course
Unit 5 – Planning & Scheduling
Building Industry Center, 6 pm

October 13, 2011

31st Annual Trade Show
Century House, Latham, 4 pm

October 20, 2011

ESSA Board of Directors Meeting
Building Indus. Center, 10:30 am

October 25, 2011

Seminar
DOT Roadside Inspections
90 Harts Lane, Albany, 6 pm

November 10, 2011

Board of Directors Meeting
Century House, Latham, 5 pm

November 10, 2011

NESCA Membership Meeting
Century House, Latham, 6 pm

December 8, 2011

NESCA Holiday Meeting
Century House, Latham, 6 pm

Important Changes to NY Workers' Compensation

For the past several years, each fall has brought changing leaves and the inevitable changes to the New York Workers' Compensation rates and factors affecting your costs. Aon's earlier articles and association bulletins informed NESCA members of benefit changes and the corresponding revisions to the payroll limitation cap.

The final phase is now in place with the NY Insurance Department approval of an average Loss Cost Rate increase for all classifications of 9.1%. Our review of the most common construction industry classifications is an average increase of about 10.1%. Rate changes will become effective with policy rating anniversary dates of October 1, 2011. The Rating Board and Insurance industry point to the escalating cost of medical care and benefit increases as the prime motivators for the rate increase.

As you may recall from past rate changes, loss costs are only one aspect of a classification rate. Each carrier will apply a loss cost multiplier (LCM) to the respective loss cost rate. Although the loss cost has increased, the State Fund has announced that their loss cost multiplier will not increase this year.

For private insurance carriers, the New York State Assessment will increase from 18.1% to 20.2% of standard premium. For STA & NESCA Safety Group members, the assessment will change from 8.1% to 10.1% a savings enjoyed only through the State Insurance Fund program. Discounts, dividends and reduced assessment charges continue to make the Safety Group far more competitive than private carrier plans available today.

Equally important to contractors is the effect changes will have on expected loss rates, utilized in calculating experience mod's (EMR's). Our analysis comparing the new rates for a number of popular construction classes reveals that an increase in expected loss rates over last year should result in lower EMR's this coming year so long as your claims activity does not increase. We do caution members that the individual claim limit has been increased to \$354,500 a factor that can negatively impact EMR's. And for contractors employing workers who fall under The United States Longshore & Harbor Workers Act the surcharge has been reduced from 74.6% to 48.2%, a welcomed savings for the industry. As a reminder, the payroll limitation cap for policies effective on or after 7/1/11 is \$1,159.44 per week with 0% premium differentials.

As a member of NESCA, you are eligible to apply for membership in the STA/NESCA Safety Group. This year, the group declared a 30% dividend and continues to offer up to 25% advanced discounts. We also encourage Safety Group members to apply for additional Premium Adjustment Credits (PAP) via the Rating Board website and to contact me with any questions you may have about your Workers' Compensation cost and coverage.

John Frizalone, Aon Construction Services Group 516-396-4401

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