



June, 2018

INSIDE THIS EDITION:

Collin Electric Celebrates 90 Years of Excellence!

2018 JATC Graduation

Basic Estimating Class Scheduled

Politico Update

Omnibus Spending Bill

NECA Convention Update

When You Can and When You Can't

Classes Offered through JATC

Congratulations to Those Completing Classes

LU #234 Availability List

Calendar of Events



COLLINS ELECTRIC CELEBRATES 90 YEARS OF EXCELLENCE!



In 1924, Willard Collins began his company. He hired electrician Gus Sanguinetti that same year. Because of the Great Depression, Collins ended up owing Sanguinetti \$2,400 in back wages. Collins gave Sanguinetti fifty percent of his company.

A long and storied history has seen Collins change ownership, eventually to the Gini family, cousins of Sanguinetti.

In 1990, the Gini Family became majority stockholders, eventually becoming owners in 2001.

While their headquarters are in Stockton, the third generation, family owned business maintains other branch offices throughout Northern California.

Collins Electric's second branch is located right here in our chapter. There original location was on Del Monte Blvd. The Monterey branch was moved to Marina in the early 70's and is still in the same location today located on Reservation Road.

Congratulations to the **Gini Family!** We are proud to have the Ginis, Branch Manager **Eric Tonnesen** and his entire staff in our NECA family! **Congratulations and Happy Anniversary!!**

TO BENEFIT ... PARTICIPATE!

“Well done is better than well said”

Benjamin Franklin



2018 JATC GRADUATION

The 2018 JATC Graduation was held on Friday, May 18, 2018 at the Monterey Tides Hotel. We were pleased that Todd Stafford, Executive Director of the Electrical Training Alliance was our keynote speaker.

We honored our graduates **Wallace Barnes, William Clough, Gerardo Espinoza, Nicholas Karakas, Beau Kelly, Ruben Lozano, Nick Luczak, Austin Pless, and Chris Swim**. In addition, we had (1) S&C graduate: **Cory Hoffman**.



The Outstanding Graduate nod went to **Will Clough** this year. It was announced at graduation that Will will attend NTI as the representative for

the Tri-County JATC at the University of Michigan. Additionally, he will join us at the 2018 NECA Show and Convention and participate in the Outstanding Graduate program which is new this year.

Congratulations graduates!

LAST CALL! BASIC ESTIMATING OF ELECTRICAL CONSTRUCTION

**Monday June 11th -
Thursday, June 14th, 2018
8:00 am to 4:00 pm (each
day)**

Santa Clara Valley Chapter
Office, 1493 Park Ave San Jose

\$500 per-person for Chapter
Members
\$850 for Non Chapter Members

This class normally costs over \$800 per person. SCVNECA is discounting the course to all NECA members!!! Small mistakes in an estimate can have a huge impact on your bid's bottom line and this course provides the tools needed to be both comprehensive and competitive. This course will discuss the process for assembling an estimate including: developing material lists, applying labor unit data, material takeoff and application of direct job costs, overhead, and profit.

Following this course, participants will be able to:

- List types of mistakes found when estimating electrical construction projects and how to avoid them
- Describe the parts of an estimate
- Explain the importance of establishing the true cost for a project
- Develop an estimate to provide job management information
- Discuss how labor units can be used to competitively bid projects
- Explain the difference between a competitive bid and simply a low bid

Please call the Santa Clara office @ [408-288-6100](tel:408-288-6100) or email jgamble@scvneca.com to RSVP.



California Supreme Court Adopts Broad New Misclassification Test

The California Supreme Court has adopted a new legal standard that will make it much more difficult for businesses to classify workers as independent contractors. Specifically, the court adopted a new standard for determining whether a company "employs" or is the "employer" for purposes of the California Wage Orders.

Under the new "ABC" test, a worker is considered an

employee under the Wage Orders unless the hiring entity establishes all three of these prongs:

- A) the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B) the worker performs work that is outside the usual course of the hiring entity's business; and
- C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

This decision not only expands the definition of "employee" under the California Wage Orders, it also imposes an affirmative burden on companies to prove that independent contractors are being properly classified. From an industry standpoint, this decision is a seismic shift for California wage and hour law. The nonunion sector will have a much more difficult time classifying employees as independent contractors. The court now imposes a burden on businesses to defend their classification of workers as independent contractors. Misclassification of such workers will result in significant legal exposure with respect to wage and hour compliance.

[Click here](#) for more information.

Federal OSHA Reporting Requirement

Effective January 1, 2017, employers in states regulated by federal OSHA were required to electronically submit Log 300 records of injuries and illnesses. As this was a federal program change, state-run safety and health programs like CalOSHA were required to respond and comply to the change.

CalOSHA has not yet completed its review of this change.

However, on April 30, 2018, federal OSHA posted a "trade release" requiring all affected employers to submit injury and illness data in the federal OSHA Injury Tracking Application (ITA) online portal, even if the employer is covered by a state plan that has not completed adoption of their own state rule.

Please review the following link: <https://www.dir.ca.gov/dosh/calosha-updates/log300-reporting.html>. The links contained in the notice provide instructions on how to access the ITA.

Construction employers with a workforce from 20 -249 employees must report their log 300 information for the year 2017 through the ITA portal by July 1, 2018.

Immigration Worker Protection Act

We are reminding contractors that in 2017 California passed a new law, the Immigration Worker Protection Act that prohibits employers from voluntarily cooperating with ICE. In brief, under the new law, employers are prohibited from allowing immigration enforcement agents into non-public areas of the workplace without a judicial warrant and from allowing ICE agents to access, review or obtain employee records without a subpoena or judicial warrant. (There is an exception to this requirement for Notices of Inspection, which are generally letter requests for Form I-9s and sent to an employer at least 3 days in advance of the inspection). The new law also requires employers to provide their employees with certain written notices when the employer is notified that it will be inspected by ICE. (The Labor Commissioner is required to develop a template notice before July 1, 2018, which it will likely make available on its website). Employers who violate the new law will be subject to penalties ranging from \$2,000 to \$5,000 for first violations, and \$5,000 to \$10,000 for subsequent violations.

It's recommended that contractors educate their managers and any employees likely to encounter an ICE agent (such as receptionists, security officers, jobsite foremen, etc.) not to provide access to ICE

agents unless they produce a judicial warrant, and not to voluntarily provide them with any employee records. Field employees should be advised to contact a foreman or management if approached by ICE, and to take a picture of any "official-looking" paperwork presented by ICE to send to a manager (if the manager is not present) or to your main office for review. Managers/foremen should also be instructed to contact upper management if approached by ICE, and to provide upper management with any "official-looking" documents presented by ICE. ICE agents should be politely told to wait in a public area (which may be outside or on the street, in some cases) until they have contacted upper management. ICE agents may act like they have the authority to demand access to employee records or non-public work areas without a warrant or subpoena, they do not—giving in to their demands when they do not have the proper documentation may subject the company to penalties.

If contractors are not doing so already, you should keep all Form I-9s in a separate file. (You can put a copy of the employee's Form I-9 in their personnel file as well). You should also be using the most recent Form I-9 for new hires. Following is a link to the current Form I-9 (released Jul. 17, 2017):

<https://www.uscis.gov/i-9>

In early January, 2018, US Immigration and Customs Enforcement also updated its I-9 Handbook for Employers (available at <https://www.uscis.gov/i-9-central/handbook-employers-m-274>) which we suggest you print out for your office or jobsite use.

Conducting an I-9 audit, is also recommended.



NECA CONVENTION

CUSTOMIZE YOUR LEARNING EXPERIENCE

With a wide range of topics, NECA provides a one-stop shop for the information you need to keep your company on top.

All sessions for NECA 2018 Philadelphia are listed on the schedule by related topic, or "track" category. Each track is filled with hours of content. Attendees can customize their agenda by selecting sessions in each track that fit their individual and business needs. In addition to our tracks, we have also highlighted a special series of sessions geared toward Executive Leadership that will encompass multiple tracks.

NECA course instructors are the leaders in the industry, with unique insight and expertise to customize seminars to the management and business needs of professionals working in all levels of electrical contracting. Their presentations are geared to providing strategic and practical solutions for electrical contractors. If you want to grow your business, make sure to bring additional key personnel, so you can cover all the bases.

Choose from our in-depth pre-convention education, convention education and technical workshops to attend courses on a variety of topics to help grow your business. Full *track descriptions can be found below.

[Full Description of Courses](#)

THE OMNIBUS SPENDING BILL IS GOOD NEWS FOR ELECTRICAL CONTRACTORS

On March 23, Congress passed, and the president signed, a \$1.3 trillion federal spending bill. It keeps the federal government open for the remainder of the fiscal year and contains portions that may be favorable to electrical contractors.

"There is no such thing as a perfect piece of legislation, but this is pretty good," said James Farrell, manager, government affairs, NECA. "There are a

number of NECA priorities in this bill, which we have been working on for several months, and the bill came together as a result of a very open process in Congress."

Benefits come in the form of infrastructure spending, small business lending, training and more.

INFRASTRUCTURE

"This bill makes some serious investment in infrastructure spending, and this means a lot of opportunities for electrical contractors," Farrell said.

The final agreement provides \$70.3 billion in discretionary spending, which is a \$12.6 billion increase from the year before.

As relates to the U.S. Department of Transportation, there are \$27.3 billion in discretionary appropriations, and \$58.9 billion in mandatory appropriations. A total of \$45 billion is available for the Highway Trust Fund. The bill authorizes \$7.5 billion for the Federal Highway Administration.

An impressive total of \$1.5 billion (a \$1 billion increase from FY2017) is available for Transportation Investment Generating Economic Recovery (TIGER) Grants, also known as the National Infrastructure Investments.

"This is a serious investment," Farrell said.

These grants are designed for projects that help achieve national objectives and can include capital funding for municipality and county projects.

"There is also \$1.9 billion in funding for Amtrak, which will translate into some much-needed infrastructure investment," Farrell said.

In addition, \$250 million is earmarked for the Federal-State Partnership for State of Good Repair grants.

"This funding will address critical rail investments nationwide and on the Northeast Corridor," he said.

The Federal Aviation Administration budget was increased to \$1.2 billion for next-generation systems, which means more infrastructure projects.

"This is a serious investment." —James Farrell, manager, government affairs, NECA

Additional infrastructure funding is made available to the U.S. Department of Defense. In specific, \$10.1 billion (\$2.4 billion above the FY2017 level and \$308 million above the Trump administration's budget request) will be available to fund 201 military construction projects. This includes funds for

large and small construction and renovation projects on domestic and overseas military bases.

There is also \$885 million available for major and minor construction projects associated with Veterans Affairs (VA) hospital replacement and scores of projects to improve access to VA hospitals, Farrell said.

For the U.S. Department of Commerce, \$301 million is available for the U.S. Economic Development Administration, which supports brick-and-mortar projects in economically distressed communities, including the expansion of smart grid and broadband infrastructure.

In addition, \$1.2 billion was provided to the National Institute of Standards and Technology (NIST), part of which is earmarked for the NIST Manufacturing Extension Partnership, a public-private partnership, part of which is designed to support cybersecurity initiatives.

Furthermore, the General Service Administration will be able to spend \$9 billion from the Federal Buildings Fund, which provides funding for construction, repairs, cleaning, utility costs, security and other maintenance costs of federal buildings.

"This funding is long overdue," Farrell said. "Funding is also in place for the construction of new

federal courthouses, which will all translate into jobs that contractors can bid on."

"All of these numbers translate into jobs that electrical contractors can bid on," he said.

LENDING

The omnibus bill also enables the Small Business Administration to provide assistance to small businesses and increase job growth.

"The bill fully funds loans at \$156.2 million," he said.

TRAINING

There is also much in the way of new funding for technical and vocational training. The U.S. Department of Labor, for example, receives \$295 million for its Veterans Employment Training (VETS) Program, which will give veterans access to job training and other services. Another \$2.8 billion is earmarked for workforce training programs. These funds are distributed by formula to states and localities to meet each state's unique job training and re-employment needs.

"All of these numbers translate into jobs that electrical contractors can bid on." — James Farrell, manager, government affairs, NECA

An additional \$1.7 billion is made available to fund the 126 Job Corps centers, which represent the nation's largest career technical training and

educational programs for youth. Approximately 95 percent of Job Corps students end up attaining industry-recognized

certifications. And, \$145 million (an increase of over 50 percent from FY2017 funding) is earmarked for apprentice training programs.

The U.S. Department of Education receives \$1.2 billion for career and technical education state grants. Farrell said many of these training programs may not directly benefit electrical contractors.

"However, it is always good to encourage training and apprentice programs," he said. "It shows that there is a serious commitment at the federal level to not just pushing a four-year college degree down everyone's throat, which was a trend for a number of years. These programs show young people that there are other options."

PERSPECTIVE

Overall, Farrell thinks ECs should be happy with the legislation.

"The bill was a very good one for infrastructure investment," he said. "It shows that Congress is taking the president's commitment to infrastructure seriously by putting some real money toward it. In fact, we see this bill as a 'down payment' on an even larger infrastructure bill."



NECA MANUAL OF LABOR UNITS

NECA has released a new online course free to NECA Members, the [Introduction to the Manual of Labor Units](#) and is a **must** for all new users of the *Manual*.

Designed to coincide with the updates made in the 2017-2018 edition of the [NECA Manual of Labor Units](#), this course details the components and proper applications when estimating electrical construction projects. [Register here!](#)





WHEN YOU CAN AND WHEN YOU CAN'T

Wrongful Withholds And The Land Of Good Faith Disputes

John McGill

As anyone that has ever been involved in a lawsuit, especially one involving construction issues, knows, the courts do not always understand construction or what happens on a jobsite. Unlike other contracts, construction contracts are expected to change over the course of the project. Change orders, extra work orders, claims for delay, disputes over payment are all part of the way contractors and owners do business. There is nothing mysterious about it, but to the uninitiated it can be a very odd way of doing things. It is, but it works.

The problems occur when the disputes get taken to court and a judge who is not usually

a contractor or experienced in construction, or a jury of your peers, but who are not really because they don't usually allow contractors on the jury of a construction case, are tasked with deciding a construction based dispute. All sorts of things can happen and sometimes bad law gets made because the judge or jury thinks they understand the issue, but they really don't.

In 2009 the *Martin Brothers Const. v Thompson Pacific Const* case was decided. *Martin Brothers* involved a claim for change orders that were not paid and the interest that accrued on those change orders as well as attorney fees to recover the change orders. The subcontractor- *Martin Brothers*- sued and alleged wrongful withholding of its money and retention. As the case progressed, most of the issues were settled but *Martin Brothers* still wanted interest and attorney fees because of the wrongful withholding.

The case ended up at the Court of Appeals and the decision there was that no interest or fees were due because there was a good faith dispute. The General insisted it could hold *Martin Brothers*' retention money when *Martin Brothers* pursued its change order claims, insisting they were entitled to do this because there was a good faith dispute over entitlement to those change

orders. The Court of Appeals agreed.

The decision makes no sense though because, as we all know, change orders are new money claims and retention is for work already performed. The court said it was OK not to pay the change orders and it was also OK to keep 150% of the retention based on the change order claim because there was a good faith dispute over entitlement. Essentially, *Martin Brothers* was not paid for its change orders and was not receiving its retention either because it made the change order claim; a double whammy.

It took until 2015 for another case, *East-West Bank v Rio School Dist*, to review this same kind of issue and come to the more logical conclusion that withholding retention because of a good faith dispute has to bear some relation to the underlying dispute. In other words, if for example, the contractor does poor work in pouring a concrete pad but wants to be paid for it, the contractor can withhold 150% of the amount to correct the poor work from the subcontractor. This is a good faith dispute. What cannot happen is the contractor withholds 150% for work that is not related to the work for which retention or payment is held; i.e.- change orders.

When there is a conflict in the decisions of the lower appellate courts, the CA Supreme Court will review a case with the same facts in order to reconcile and settle the law. That is what happened in the recent case of *United Riggers & Erectors Inc v Coast Iron & Steel Co.* There the Court analyzed whether a contractor can withhold funds for “any” dispute or whether a withhold has to be “directly relevant to the specific payment that would otherwise be due.” The Court held that the withholding has to be related to the payment that is due and not just any dispute.

The Court reviewed the statutory language and determined that withholding of retention has to be specific to some dispute on the project and to work that was performed by the subcontractor that is not acceptable for one reason or another. And the burden of proof is on the contractor withholding the funds to show the withholding is in good faith and related to the sub’s defective work. The Court also reviewed and decided that the wrongful withholding statutes and how they apply are the same whether it is public or private works.

Keep in mind though that a sub’s claim for wrongful withholding of retention against a General only arises

after the General receives the retention from the Owner. The sub has no claim against the Owner for wrongful withholding although the General does. And the same analysis applies for wrongful withholding by an Owner to a General or Prime as applies for General to a sub.

The Court did acknowledge that the wrongful withhold statutes are “not built on the most secure basis” given the Legislature’s frequent changes and modifications to the statutes, but the *United Riggers* case does clarify when and how retention money can be withheld if there is a dispute. The Court overruled *Martin Brothers* to the extent it was inconsistent with its holding, which is the other good thing to come out of the case.

Bottom line, if you intend to withhold payment make sure you document it, give notice of why, and be clear about the work that is at issue. It can be change order work, but only if the change order work is deficient, not, as in *Martin Brothers*, just because there is a disagreement about the change order itself.

Bio: John McGill is an attorney representing contractors and suppliers throughout the Bay Area and Northern California in both private and public work disputes. He is the author of

California Contractor’s
DESKTOP GENERAL
COUNSEL 3d ed What You
Need To Know About
California Construction Law.
Contacts: 707 337 1932
jmcgill@mcgill-lawfirm.com



UPCOMING CLASSES OFFERED THROUGH THE JATC



SIGNIFICANT CHANGES TO THE CODE

A Significant Changes to the Code series, with instructor David Martinez is scheduled for **June 19, 2018 from 5:30 pm to 8:30 pm** and will be held the third Tuesday of the month. Drop on in! You are welcome to attend one class or as many as you like in this series. This is a (3) hour class. ***This is the final class in this series!***

CPR/FIRST AID

The next CPR/First Aid (with Blood Borne Pathogens) will be offered on **Saturday, July 14th from 8:00 am to 1:00 pm.** Sign up today!



CALCTP-AT

The JATC is also taking sign-ups for the California Advanced Lighting Controls Training Program-Acceptance Testing (CALCTP-AT) with Instructor Stephen Slovacek. This class is a total of 24 hours. The class schedule will be attendance. The prerequisite for this class is completion of the 50-hour CALCTP. An application form must be completed prior to starting class. To register for this class there is a \$225 application/record maintenance fee. Go online to goo.gl/qkW7AI to complete an application and pay the application/record maintenance fee. There is a \$125 stipend available upon successful completion provided by the Monterey Bay LMCC.



EVITP - CONDENSED

EVITP 3.0 Class Electric Vehicle Infrastructure Training Program (EVITP) 3.0 with Instructor Stephen Slovacek. This class is a condensed version of the 35-hour course. It is a prerequisite for EVITP that you are a California Certified General Electrician. As a bonus, there is

a \$125 stipend available upon successful completion provided by the Monterey Bay LMCC. Call Stacy for more information.

CONGRATULATIONS TO THOSE COMPLETING UPGRADE CLASSES

Congratulations to the following individuals who have recently completed classes offered through the apprenticeship program! We appreciate your commitment to the industry!

SIGNIFICANT CHANGES TO THE NEC

- Robert Rovella
- Jonathan Stanley

FOREMAN DEVELOPMENT SERIES

- Andy Gattis
- Michael Julian
- Juan Torres
- Abraham Adams Jr.
- Michael Mangrum
- Tom Thomas

CPR/FIRST AID

- Abraham Adams Jr.
- Gabriel Regalado
- Ricky Rodriguez
- James Stanchfield
- Chris Swim



FORKLIFT/GRADE-ALL

- Abraham Adams Jr.
- Israel Andrade
- Tyler Daly
- Alejandro Escobar
- John Greene
- BJ Heading
- Anthony Kalstrom
- Michael Mangrum
- Jonathon Marquez
- Daniel Martinez
- Elvis Newsome
- James Stanchfield
- Tom Thomas
- Manuel Valdez
- Ralph Yniguez

APPRENTICE APPLICATION INFORMATION

The Tri-County Electrical JATC accepts applications on a year-round basis. For more information regarding the process, please click in the following link:

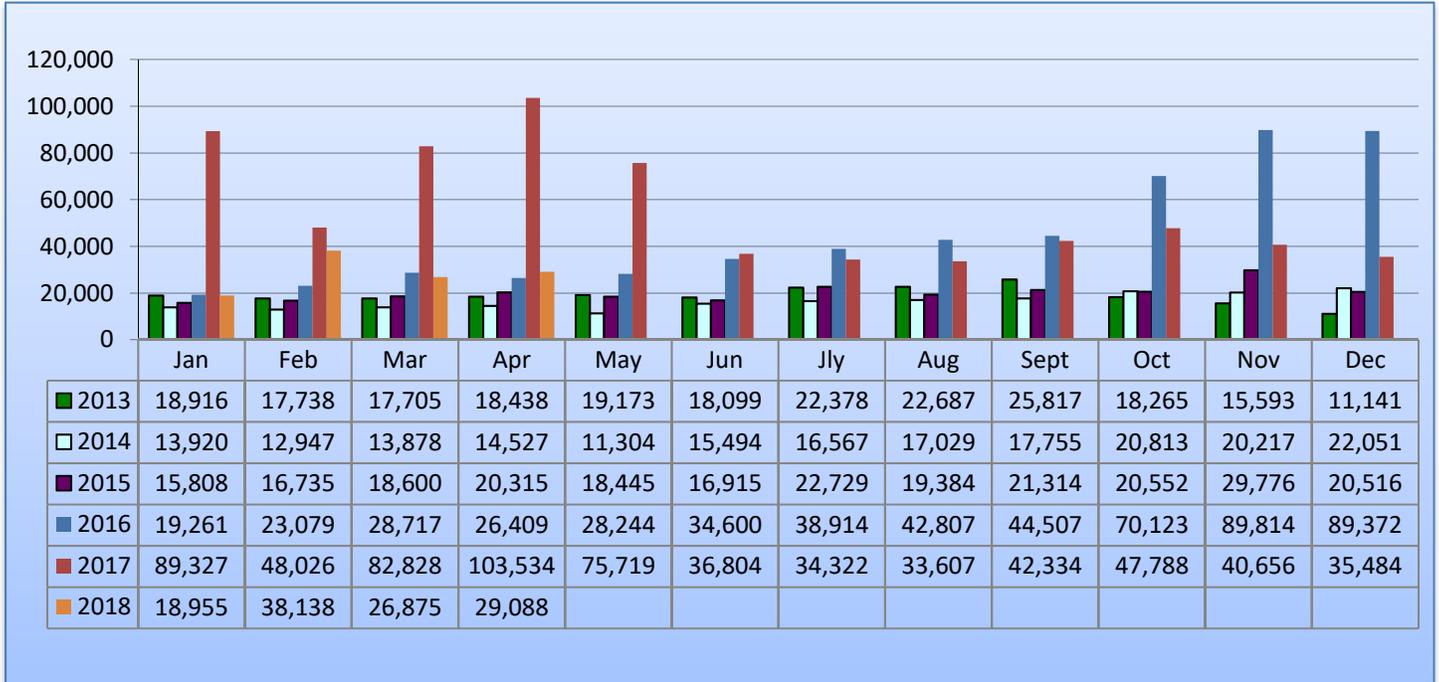
[JATC INFORMATION](#)

AVAILABILITY LIST UPDATE

On the Inside Out-of-Work List, there are 8 on Book 1, 80 on Book 2, 5 on Book 3 and 17 on Book 4. There are 2 on Book 2 and 1 on Book 3 for Sound & Comm. There are 7 on CW Book 1 and 206 on CW Book 2. There are no Inside apprentices available for work at this time. We are starting new first year apprentices, so please contact Stacy if you have a need for another apprentice.



INSIDE MONTHLY HOURS REPORT



Upcoming Events



June 13-16, 2018

Western Region Managers Meeting
Anchorage, AK

June 20, 2018

Northern California LMCC Meeting

July 22-26, 2018

Tri-District Meeting
Colorado Springs, CO

July 28-August 4, 2018

National Training Institute
Ann Arbor, MI

September 29-October 2, 2018

Board of Governors Meeting
&
NECA Convention
Philadelphia, PA

November 30, 2018

NECA Christmas Party
Monterey Aquarium
(By Invitation Only)