



THE MONTEREY CURRENT

SEPTEMBER 2013

INSIDE THIS EDITION:

AMF Increase Coming In September

JM Electric Celebrates 65 Years!

Contract Law Seminar Scheduled

2013 NECA Convention Slated for Washington, DC

BIM Class Re-Scheduled

Title 24 Acceptance Testing/CALCTP

Was You Every Bit by a Dead Bee?

The First Labor Day

Classes Offered through JATC

Congratulations to Those Completing Classes

LU #234 Availability List Update

Inside Work Hours Report

Upcoming Events Calendar



**To Benefit -
Participate!**

AMF INCREASE COMING IN SEPTEMBER

As a reminder, the parties to the Inside Agreement signed a Memorandum of Understanding back in March that changes the funding of the Administrative Maintenance Fund (AMF).

As per Article XIII, Section 13.00 of the current Inside Agreement, the contribution rate of the Administrative Maintenance Fund will increase to 1.25% effective hours worked beginning September 23, 2013.



CELEBRATING 65 YEARS!!

Congratulations to JM Electric of Salinas!! They are celebrating 65 years in business and we want to thank them for their years of service to this industry. Here is a little history on their firm! Here's to many years of success to all of you!

When Einner "Lucky" Jensen met Jim Mertz in San Francisco



during World War II, the two men thought they only had one thing in common, that they were both journeymen electricians doing their part in the war effort. Soon they learned that they were both born and raised in Big Sky Country, Lucky in Montana and Jim in neighboring South Dakota. The two men shared a love for fishing, camping and the great outdoors. However, their strongest and most far-reaching connection was their dream of starting an electrical contracting business in sunny California.

In August of 1948 Jensen and Mertz formally went into partnership as J M Electric. They had settled on Salinas as a central location to serve Monterey, San Benito, Santa Cruz and southern Santa Clara counties. More than just a strategic location, Salinas itself was an area with a booming economy following the war. Jensen and Mertz knew it would offer a strong economic base for their company with its

unique mixture of military, agriculture, and tourism revenue. The two men had found the perfect site.

The business has grown considerably since those early days as a two-man shop – both in size and in services. J M Electric has added entirely new divisions using tools and technology that didn't exist 65 years ago, let alone 20 years ago. J M Electric has also since become a family business, led by Lucky's two sons, Rick and Chris Jensen. A third generation of the Jensen family has begun working full-time as well. While much has changed in their 65 years of service, be assured that J M Electric's commitment to quality, safety, and customer service has remained the same.



CONTRACT LAW SEMINAR SCHEDULED OCTOBER 25, 2013

Don't forget to sign up for this seminar!!

Date: Friday, October 25, 2013

Time: 11 AM - 2 PM

Instructor: John P. McGill, Esq.

Contracts are the most important legal aspect of the construction industry. You may be the best builder or tradesman in the area but if your contract is not well thought out or if you don't understand what it is you are signing, all of your good work may be done for free; or worse, you

might end up having to pay to do the job.

This presentation and discussion is intended to review the basics (i.e.- what is a contract and how does a contract get formed), what kinds of contracts there are, and what all those terms and conditions mean- and why you should include or exclude them. The discussion will be free-ranging and will touch on many of the more common provisions that you will find in a typical construction contract including indemnity, claims, changes, and the nastiest of the nasty-attorney fee provisions. We will discuss what these provisions mean, how they should be written, and how in some cases they have been recently changed by the Legislature.

This is not intended to be legal advice but rather a discussion of the legal implications of contract language. Questions are invited and if you want to submit them ahead of time, feel free. If there is a particularly troublesome provision that you have come across, bring it along and we will see if we can make sense of it.

The cost is free to NECA Members and \$75 to non-members. Please call or email Jerri Champlin to sign up for this informative class. Lunch will be provided.



2013 NECA CONVENTION WASHINGTON, DC

The NECA Convention is an exciting mix of opportunities for education inspiration, networking and fun!

Washington, D.C., the most powerful city in the world, is full of history and history in the making. Get set for another historic event when the 2013 NECA Convention and Trade Show come to the Walter E. Washington Convention Center October 12-15 to explore a different kind of power.

Topics include:

- Business Leadership and Management
- Customer Sales and Service
- Energy Solutions
- Technical Information
- Safety/Risk Management
- Project Management and Labor Saving Tools
- Line Construction Challenges and Opportunities

Choose from pre-convention workshops, management seminars, technical workshops, Energy Form, Safety Forum or any combination. You will learn where to find new work, how to get it, and the right way to get it done. For more information, visit www.necanet.org

Our chapter has been assigned to a room block at the Grand Hyatt. For information on booking rooms and registration information, please contact Manager Jerri Champlin.

BIM CLASS RE-SCHEDULED

Date: Saturday, November 23,
2013

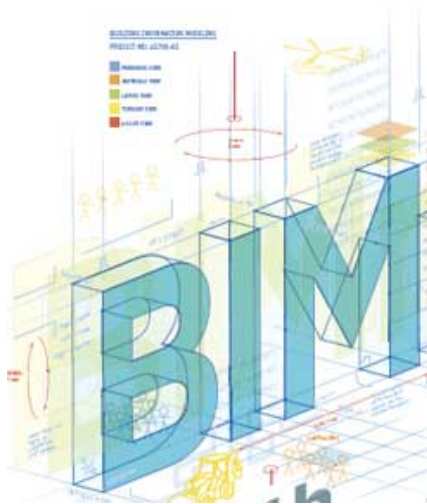
Time: 7 AM - 4 PM, lunch
provided

MEI Instructors: Thomas Korman,
Ph.D. and Lonny Simonian

NOTE: In order to increase the number of participants, we have re-scheduled the BIM Class for November 23rd. Interested in this class? Please call Stacy at the JATC office to sign up! She can be reached at (831) 633-3063.

Building Information Modeling (BIM) the process of generating and managing building data during its life cycle. BIM requires changes to the definition of traditional architectural and engineering phases and more data sharing than is common during the design and construction stages.

Participants who successfully complete this seminar will be awarded 0.6 CEUs and Journeymen will receive 8 hours.



TITLE 24 ACCEPTANCE TESTING/CALCTP

Beginning January 1, 2014, the California Building Code Energy Efficiency section, Title 24, will require lighting control systems on all new commercial construction and most retrofits. State certified testing of those lighting control systems – Acceptance Testing – will also be mandated. Contractors who are certified to perform acceptance testing will not have to arrange for an outside acceptance tester to certify their lighting controls work. For over a year, NECA and IBEW have worked closely with legislators, the California Energy Commission (CEC) and our lobbyists in Sacramento to allow contractors to self-certify. CALCTP has been recognized as a state approved certification provider. The CEC/Title 24 will require certification to conduct lighting controls acceptance testing in California, and will also require employers of acceptance testers to be certified. Contractors who are CALCTP certified will also need to participate in an additional four-hour training program in order to provide acceptance testing services. Contractors who are not certified to perform acceptance testing will have to arrange for an outside acceptance tester to certify their

lighting controls installations. Acceptance Testers will be required to provide at least three years of verifiable professional experience with lighting controls, and additional theoretical and hands-on training. A written and practical exam will also be required to achieve certification. More information will be forthcoming concerning training and other logistics.



THE FIRST LABOR DAY

The first Labor Day holiday was celebrated on Tuesday, September 5, 1882, in New York City, in accordance with the plans of the Central Labor Union. The Central Labor Union held its second Labor Day holiday just a year later, on September 5, 1883.

In 1884 the first Monday in September was selected as the holiday, as originally proposed, and the Central Labor Union urged similar organizations in other cities to follow the example of New York and celebrate a "workingmen's holiday" on that date. The idea spread with the growth of labor organizations, and in 1885 Labor Day was celebrated in many industrial centers of the country.



WAS YOU EVER BIT BY A DEAD BEE?

*Why Attorney Fees Provisions are
a Really Bad Idea*

By John P. McGill

There is nothing so disappointing, and annoying, as losing a lawsuit. The aggravation and distraction that lawsuits involve and the time that they consume are extraordinary and are not to be underestimated when and if you are considering suing someone. If you are dragged into one it is all the more an imposition and losing at trial is *almost* the icing on the cake. There is one thing more that will really put you over the edge- when you have to pay the other side's attorney fees. If you think losing is bad, paying the other party's attorney for all of the aggravation they have caused you will really put a damper on your enthusiasm.

In this country we have the *American Rule*: each party to a lawsuit pays its own attorney fees and costs. This though is sometimes, oftentimes, changed by contract. Instead of each party bearing its own costs and fees, it is agreed in the contract that the prevailing party in any dispute will be entitled to recover their fees and costs. In this writer's opinion, if you have an attorney fees provision in your contract, or if you agree to an attorney fees provision in a contract, you are just asking for problems. Take

them out or cross them out, but do NOT agree to them.

Why?

Well, for one thing, attorneys love attorney fees provisions, and if attorneys love them, you know they can't be good. If the case is marginal, that is, the facts could go one way or the other, the case is more attractive to the attorney. The risk of having to pay fees if you lose is a threat that each side makes against the other, and one of them will be wrong. Likewise, if you, the contractor, want to try and settle the case, and there is a fee provision in the agreement, you will likely find that the cost of settling will go up the longer the case drags on. The other side is not likely to want to settle for a percentage of the actual amount at issue if they have been litigating the case for awhile. Fees go up proportionately, sometimes disproportionately, to the time it takes the case to get to a point where you can actually start negotiations to resolve the dispute. And of course, if one side has more money than the other, or the facts are such that one side has a more favorable position than the other, then the fee provision can really become a hammer that is used to drive a settlement that might otherwise be more reasonable and fair.

Fee provisions can be introduced into litigation in some unintended and unexpected ways too. In the case of *Barnhart v CMC Fabrications Inc.*, the subcontractor CMC bid a project for Barnhart the

General. After the bid was in, and after Barnhart relied on the bid when it submitted its price to the owner, CMC and Barnhart got into a dispute and CMC refused to sign the subcontract. Barnhart had to find another contractor, spent more money on the replacement contractor, and then sued CMC to recover that amount. Barnhart alleged two causes of action: promissory estoppel and breach of contract.

Promissory estoppel is based on an equitable theory of recovery that basically says- I reasonably relied on your bid to my detriment and so you owe me the difference (damages) that I incurred in getting somebody else to do the job. Barnhart won on this issue, but they lost on the breach of contract.

The breach of contract claim alleged that CMC's bid was an *offer* to perform work. Barnhart *accepted* that offer when it used the CMC bid. Therefore, a contract was formed and because CMC did not perform, they breached and Barnhart was entitled to damages. The interesting and unfortunate part of the case for Barnhart was that the CMC bid contained an attorney fees provision in it. The court found that, because Barnhart alleged it had a contract with CMC, the fee provision was activated. When the trial court found that there was no contract formed though, CMC was deemed the prevailing party on that cause of action because without a contract there could be no breach. Therefore CMC was entitled to attorney fees, and

not just attorney fees for the underlying litigation, but for the appeal as well.

You are probably thinking- "Wait a minute, if there was no contract then how can the fee provision be effective to allow one side to recover fees against the other?" A fair question and one whose answer really stretches logic. According to the appellate court, because Barnhart would have been entitled to recover fees if it prevailed on the breach of contract claim, then CMC could recover if Barnhart did not prevail. It is an odd logic that leads to this conclusion- the fact that a provision in a document, which is not effective at all as a contract, could still have a provision that would be triggered in any event, seems a bit odd.

But as Eddie kept asking Steve and Slim in *To Have And Have Not*- "Was you ever bit by a dead bee?" In this case, the answer was yes! So be careful with your pleadings and be careful with attorney fees provisions- they can bite you when you least expect it. Take them out of your agreements; there are any number of other ways fees can be awarded without putting a provision in your agreements that guarantees them.

Bio: John P. McGill is an attorney and represents contractors and suppliers throughout the Bay Area and Northern California in both private and public work disputes as well as in employment, transactional, and administrative matters. He received his JD with distinction from the University of the Pacific, McGeorge School of Law, and is a member of the school's Traynor Honor Society. He is the author of California

Contractor's DESKTOP GENERAL COUNSEL What You Need To Know About California Construction Law (www.M3-Publisher.com) and writes on construction issues at *California Construction Law Toolbox* www.californiaconstructionlaw.wordpress.com. Direct office - 925-952 5403 & cell- 707 337 1932.



CLASSES OFFERED THROUGH THE TRI-COUNTY JATC

Significant Changes to the Code

Instructor David Martinez will be leading the way through the Significant Changes of the 2011 National Electrical Code. 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. The next class is scheduled for **Tuesday, September 10th at 5:30pm.**

CALCTP Training
California Advanced Lighting Controls Training Program (CALCTP) with Instructor Stephen Slovacek is scheduled for **Tuesday, September 17th** at 5:30 pm. This class is a total of 50 hours: 10 hours of lecture and 40 hours of lab. The class schedule and start date will be coordinated with those interested.

YOU MUST BRING PROOF OF COMPLETING THE ONLINE COURSE TO THE FIRST CLASS OR EMAIL TO stacy@tricountyjatc.org.

Students will not be allowed to attend the class if they have not completed the online coursework. Go to bit.ly/IBEW234CALCTP to get started today. As a bonus, there is a \$125 stipend available upon successful completion provided by the Monterey Bay LMCC.

EVITP 3.0 Classe

The **Electric Vehicle Infrastructure Training Program** (EVITP) 3.0 class with Instructor Stephen Slovacek is scheduled to begin on **Monday, September 23rd** at 5:30pm. 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 of the class provided by the Monterey Bay LMCC.

CPR/First Aid Training

CPR/First Aid is scheduled to take place on **Saturday, September 14th at 8am.** Instructor Roni Jane Sudyka will be teaching the basics of First Aid and CPR along with Blood Borne Pathogens. Call Stacy at (831) 633-3063 to reserve your place. Class size is limited.

Inside Blended Learning

Are your IBEW Journeyman interested in taking online classes through our JATC? If so, here is what they need to do: go to the NJATC website to

register for the classes they would like to take.

1. Go to www.niatc.org and click on the "Inside Blended Learning" tab.
2. Under "NOT YET REGISTERED?" click on the blue "REGISTER" button.
3. Select "Tri-County Electrical JATC" for Training Location.
4. Type in the password "IBEW-NECA"

The first class we will be offering is **TEST INSTRUMENTS**. This class is NOW AVAILABLE ONLINE. There is no cost for Local 234 members. However, a \$50 deposit is required, which is refundable upon successful completion of the class.

The Test Instruments course begins by introducing safety requirements for using test instruments. The course proceeds into the specific applications for industry standard test instruments. An overview of measurement principles and test instrument procedures are covered along with an explanation of personal protective equipment as specified in NFPA 70E.

We are able to enroll you in the course once you have registered on the website and made your \$50 deposit. A text book will be mailed to the JATC to accompany the online coursework. Credit cards may be taken over the phone or you may pay by check.



CONGRATULATIONS TO THOSE WHO HAVE COMPLETED UPGRADE CLASSES

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

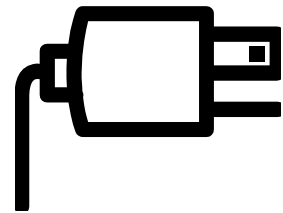
2011 NEC SIGNIFICANT CHANGES (8/13/13)

- Steve Trybom
- Keith Rudd



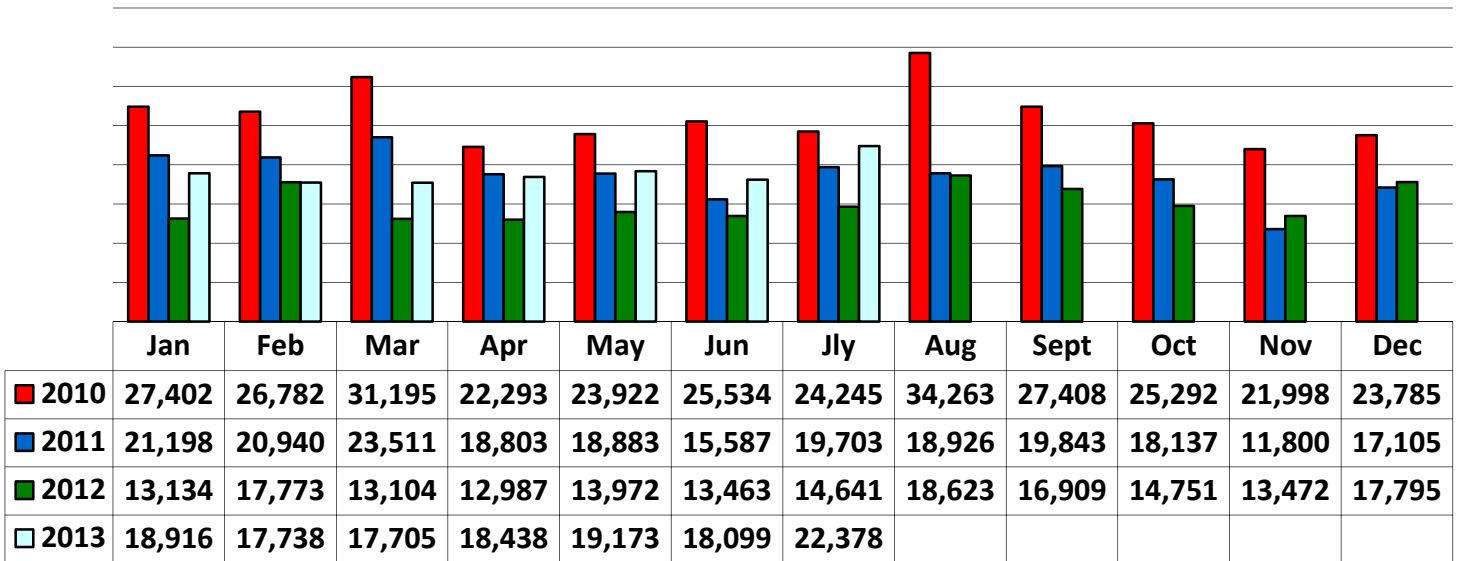
LOCAL #234 AVAILABILITY LIST UPDATE

On the Inside Out-of-Work List, there are 14 on Book 1 and 22 on Book 2. For Sound & Communications there is 2 on Book 1 and 1 on Book 2. We currently have no Inside apprentice out of work.





INSIDE MONTHLY HOURS REPORT





UPCOMING EVENTS CALENDAR

September 2, 2013

Labor Day Holiday

September 21, 2013

JATC Aptitude Test

October 5, 2013

Local #234 BBQ

Toro Park – Buckeye Area

Salinas, CA

October 12-15, 2013

NECA Convention and Show

Washington DC

October 25, 2013

Contract Law/Legal Review Class

Training Center

Castroville, CA

October 24-25, 2013

“The Bob”

Electrical Contractors of CA Golf Tournament

November 23, 2013

Building Information Modeling (BIM) Class

Training Center

Castroville, CA

December 6, 2013

Chapter Christmas Party

Montrio Bistro

Monterey, CA