

September, 2018

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Pictured: Governor Rick Jensen, National President David Long and Chapter President Eric Tonnesen

NECA NATIONAL PRESIDENT VISITS MONTEREY BAY

We were pleased to meet with NECA National President **David Long** in August to discuss the goals for his term. David is recently unveiled his 1025 Vision for NECA.

The goal is to increase market share by 10 percentage points by 2025

NECA members' market share has been hovering in the 35% to 43% range for a long time. Growing by 10% by 2025, is a more than 33% increase in 7 years. To achieve that level of growth, we have to not only be price competitive, productive,

and efficient, we also have to continue finding ways to add value and attract new talent.

That means greater and deeper services centered around BIM, prefabrication, service & maintenance, D/B, IPD, energy project finance, energy efficiency, renewables, distributed generation, energy storage, low voltage, and Internet of Things (IoT) work. The list, of course, is not all inclusive; which means the future is very bright for those companies willing to try new things. [Click here to view David's vision in it's entirety.](#)

We thank David for visiting with us and hearing our concerns. His tireless efforts are greatly appreciated.



TO BENEFIT ... PARTICIPATE!

POLITICO ALERT

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California Supreme Court Limits a Direct Contractor's Ability to Withhold Money from Subcontractors

The California Supreme Court recently provided a significant win for subcontractor prompt payment rights. The court unanimously held in the case of *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.*, that the direct contractor may only delay payment to its subcontractors when there is a good faith dispute regarding the sufficiency of the subcontractor's performance of the work that is directly related to the monies that are being held. Specifically, the case clarified what constitutes a good faith dispute that allows an owner or direct contractor to withhold payment under prompt payment laws.

Under most prompt payment statutes, the party who is supposed to make payment may withhold 150% of any amount in dispute from the sums that the party otherwise would be required to pay. Over the past decade, there were two conflicting lines of appellate cases with regard to what constitutes the type of dispute for which funds may be withheld. One line of cases, including *Martin Brothers Construction, Inc. v. Thompson Pacific Construction, Inc.*,

interpreted the withholding language very broadly and held that any dispute, of any kind, would justify the withholding of payment. Under these cases, even an affirmative claim (such as a request for a change order) by the party seeking payment could justify the withholding of payment of undisputed amounts.

The second line of cases interpreted the withholding language more narrowly. Under this line of cases, which included *East West Bank v. Rio School Dist.*, the courts held that withholding retention is only justified by disputes related to the retention's security function.

The California Supreme Court ruling in *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.*, resolved the conflict between these two lines of cases. The Supreme Court decided to follow the line of cases that more narrowly interpreted the statutory withholding language and disapproved *Martin Brothers*.

The facts of the case were straightforward. On a project for *Universal Studios*, *Coast Iron* subcontracted to *United Riggers* the installation of the fabricated metalwork. The work was done to everyone's satisfaction. *Universal Studios* paid retention to *Coast Iron*, but *Coast Iron* failed to pay *United Riggers* retention that had been withheld from its progress payments. *Coast Iron* had

continued to withhold retention from *United Riggers* because *Coast Iron* was aware of substantial claims that *United Riggers* had against *Coast Iron* relating to other aspects of the job. *United Riggers* demanded the balance of its original contract, increased expenses which it attributed to *Coast Iron's* mismanagement, and another sum for outstanding change order requests.

United Riggers argued that because the base contract work was completed satisfactorily, *Coast Iron* was obligated, at a minimum, to pay the uncontested base contract balance, including the retention. The Supreme Court agreed and determined that *Coast Iron* had wrongfully withheld payment and held that *United Riggers* was entitled to recover interest, prompt payment penalties, and attorney's fees, stating that:

The dispute exception excuses payment only when a good faith dispute exists over a statutory or contractual precondition to that payment, such as the adequacy of the construction work for which the payment is a consideration. Controversies concerning unrelated work or additional payments above the amount both sides agree is owed will not excuse delay; a direct contractor cannot withhold payment where the underlying obligation to pay those specific monies is undisputed.

In other words, the court stated that base contract progress payments and retention can only be withheld if the dispute deals with work in the original contract or the retention itself.



NECA FORMS NEW VAS RELATIONSHIP WITH KEEN SAFETY FOOTWEAR

NECA's latest VAS opportunity with KEEN Utility, a safety footwear brand, is available to NECA members, chapters and staff. The company produces jobsite and PPE-rated footwear, including over 20 styles made in America using materials sourced from around the world.

NECA member-contractors will receive special offers on KEEN Utility safety footwear, plus free ground shipping!

"NECA is excited to be working with KEEN Utility to offer quality products that help keep our members safe," *Daniel D. Faoro, NECA Executive Director of Marketing and Communications*. "This program gives members the opportunity to connect with products and services that support their businesses by securing

exclusive offers with popular companies."

"KEEN Utility is steadfast in its dedication to the skilled trades and recognizes their importance to daily life. NECA members are among some of the hardest working trades men and women in their industry and face unpredictable conditions daily," *Chris Heffernan, General Manager of KEEN Utility*. "We understand the value NECA creates for its members and this new relationship underscores our belief that hard work deserves innovative footwear designed to answer the need for safety and comfort on the job and beyond."

Visit necanet.org/VAS to learn more about the discounts and services that NECA offers



The Occupational Safety and Health Administration (OSHA) released a set of [53 Frequently Asked Questions \(FAQs\)](#) to provide guidance to employers and employees regarding the [Respirable Crystalline Silica Standard for Construction](#).

NECA was involved in the formulation of these FAQs through its participation in the Construction Industry Safety Coalition (CISC), an organization made up of 25 trade associations that represents associations from all sectors of the construction industry committed to helping create safety construction job-sites for workers.

The development of the FAQs stemmed from litigation filed against OSHA by numerous construction industry trade associations challenging the legality of OSHA's rule. OSHA has agreed to issue a Request for Information on Table 1 to revise the table to improve its utility. NECA will continue to look for ways to work with OSHA to improve workability of this significant rule.

NECA PRIVATE SITE OFFERS TOOLS

Don't forget! Members have access to a host of additional tools in the Chapter's private site! Log in to see what's available!

BENEFIT STATUS LETTERS AVAILABLE THROUGH NECA STAR

DID YOU KNOW? If you are an IBEW Local 234 reporting employer in good standing with the Trust Funds, you can generate current Benefit Status letters directly from your NECA-STAR account. For a current letter to be available, the following conditions must be met:

1. You must be an actively reporting employer covered by the Local 234 Inside or MAI agreements.
2. All of your current report(s) due must be Authenticated by Benesys.
3. Your balance must be less than \$100.

A Benefit Status letter will be automatically available for you to generate in their NECA-STAR account each month, if you have reported and paid for all agreements to date. If not, then a short description is provided as the reason in lieu of a letter. ie – “Missing 234 Inside 5-2018” or “\$X.XX Outstanding Balance Due”.



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 **September 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. ***The series has been renewed for an additional 12 months.***

CPR/FIRST AID

The next CPR/First Aid (with Blood Borne Pathogens) will be offered **Saturday, September 8th from 8 am to 1 pm**. Call Stacy at the JATC office for details and sign up for upcoming classes.

FOREMAN DEVELOPMENT SERIES

The Foreman Development Series continues with Instructor Stephen Slovacek on the following class nights: Monday, September 10th and 17th. The class will be held from 5:30 pm to 8:30 pm. Call the Training Center to reserve your spot!

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/qkW7Al 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!

FOREMAN DEVELOPMENT SERIES

8/14/18

- Abraham Adams
- Andy Gattis
- Nick Preglovick
- Tom Thomas
- Alberto Rangel

8/21/18

- Abraham Adams
- Andy Gattis
- Nick Preglovick
- Tom Thomas



APPRENTICE OF THE MONTH

The Apprentice of the Month program is sponsored by Milwaukee Tools. The goal is to encourage apprentice participation and reward a high performing student for achieving outstanding results both in the classroom and on the job. For September 2018 the JATC has chosen to recognize: 3rd-year: Javier Martinez as the Milwaukee Apprentice of the Month. The apprentice of the month will have a dedicated parking space at the Training Center and also receive a gift provided by Milwaukee.

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:

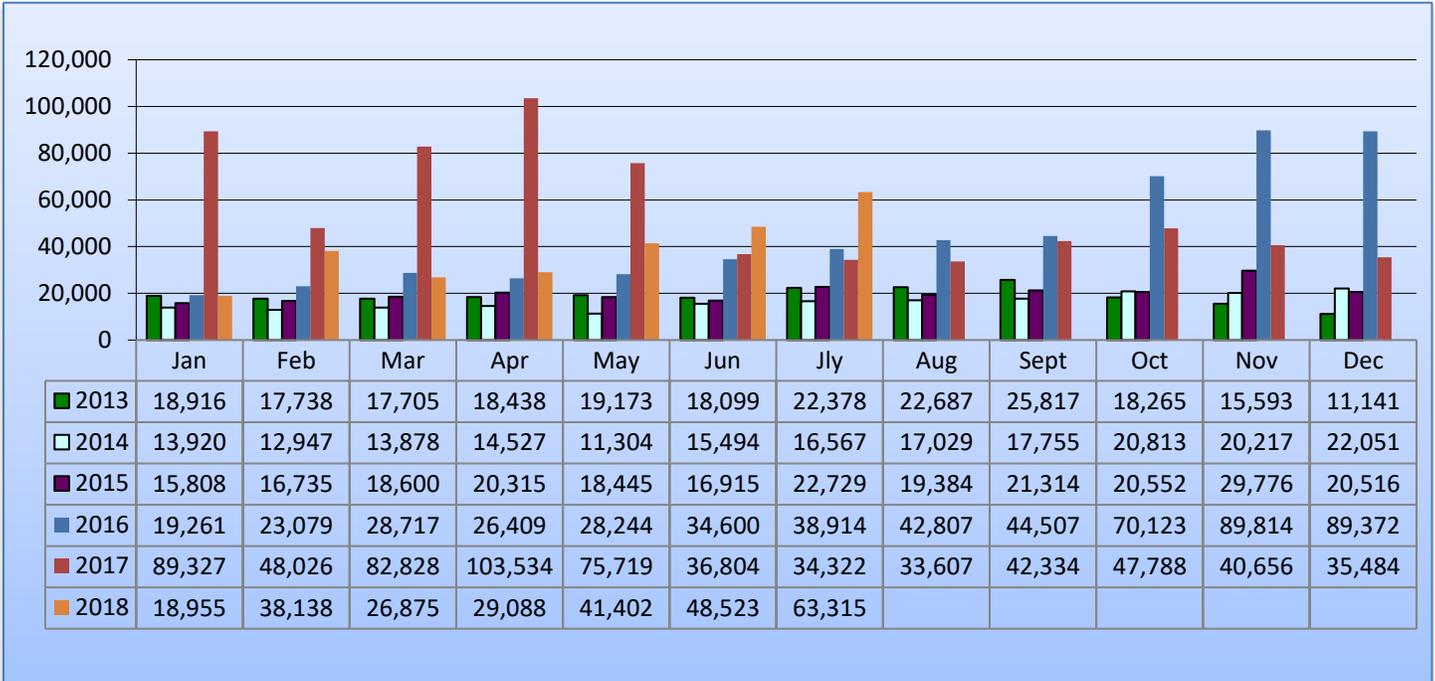
[JATC INFORMATION](#)

AVAILABILITY LIST UPDATE

On the Inside Out-of-Work List, there are 10 on Book 1, 52 on Book 2, 11 on Book 3 and 15 on Book 4. There are 2 on Book 2 for Sound & Comm. There are 10 on CW Book 1 and 82 on CW Book 2. There are 3 Inside apprentices available for work at this time.



INSIDE MONTHLY HOURS REPORT



Upcoming Events



September 3, 2018

Labor Day Holiday

September 29, 2018

IBEW 234 Family BBQ and Health Fair
Toro Park – Buckeye Area
Salinas, CA

September 29-October 2, 2018

Board of Governors Meeting
&
NECA Convention
Philadelphia, PA

October 11, 2018

Board of Directors Meeting

October 24-25, 2018

“The Bob” Golf Tournament
Grand Del Mar Golf Course
San Diego, CA

November 30, 2018

NECA Christmas Party
Monterey Aquarium
(By Invitation Only)