



February, 2019

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A Special Board of Governor's Meeting was called by NECA's Executive Committee to consider a Bylaws change to allow a greater pool of candidates for NECA's CEO position which will be vacated with our current CEO John Grau enters his retirement later this year. The Amendment was passed by a large majority. For more information and the vote count, [please click here](#).

educational opportunities and participate in valuable networking events.

Interested in attending? Please contact Jerri Champlin for assistance. Early registration ends February 20th. For a full schedule for this event, [please click here](#).

AGENDA AVAILABLE FOR WOMEN IN NECA AND NECA FUTURE LEADERS

NECA's WIN Leadership Summit + Future Leaders Conference will be held March 19-21, 2019 at the Westin Riverwalk in San Antonio, TX. Register for either event, or attend both for a special discounted rate.

The conference will feature expert speakers, group discussions and networking opportunities. Click here for more info. [WIN Conference Future Leaders](#)



TO BENEFIT ... PARTICIPATE! SPECIAL BOARD OF GOVERNOR'S MEETING

Once again, NECA will take an out-of-the-box approach to the executive leadership conference. Over four days at the JW Marriott Phoenix Desert Ridge Resort & Spa in Arizona, NECA Now 2019 is your place to hear dynamic speakers and subject matter experts, attend relevant



STEP ASIDE WEBSTER

*“Willful” Does Not Mean
What You Think It Means*

John McGill

Sometimes contractors can inadvertently be their own worst enemies. They put things in policy and procedure manuals that come back to haunt them in completely unexpected ways. Of course, if the issue is before a judge or at the Court of Appeals, and the court wants a particular result, they will find a way to either use or ignore, or both use and ignore, what the contractor includes if it is what the court needs to reach the result desired. Couple that with the old adage be careful what you ask for, you just might get it, and you get a decision like the one in ACCO Engineered Systems Inc. v. CSLB where a new and novel definition of “willful” is introduced.

In ACCO the question presented was, what does “willful” mean in the context

of California licensing law? ACCO was the contractor for a boiler replacement project in Los Angeles. It failed to get a permit and CSLB undertook an investigation and then fined ACCO \$500, later reduced to \$200. ACCO appealed the administrative law judge’s (ALJ) decision because the ALJ determined the violation was willful. ACCO contended not getting the permit was an inadvertent mistake by a low-level employee and not a deliberate (willful) effort to circumvent the law. In fact, ACCO later obtained the permit and the County inspected and passed the work; it all worked fine. Nevertheless, the ALJ decided it was a willful violation because ACCO’s policy and procedures identified a “permit coordinator” who was the contact person for any permit questions. The ACCO employee on this project did not get the permit or contact the coordinator but proceeded to complete the work without a permit.

The appellate court upheld the ALJ’s decision that it was a “willful” violation. The court found there was no need to show specific or even general intent on the part of the contractor to circumvent the rules in order for there to be a violation.

All that was needed was the actual failure to get the permit, which was a given and was conceded by ACCO. The fact that the statute required “willful or deliberate disregard and violation of the building laws” did not mean the contractor had to knowingly and deliberately ignore the law, only that it did in fact violate the law.

The court acknowledged that CSLB rules make a distinction between acts that need to be willful and deliberate in order to create a violation and those acts that do not need to be willful and deliberate at all, but are by themselves violations; i.e.- abandoning a project or failure to complete for the contract price. In the latter situation the violation is complete when the contractor acts or fails to act. In the former, there apparently is, or was, a requirement the contractor willfully and deliberately do something in order to create the violation. ACCO argued that it had to deliberately intend not to get the permit for it be a violation and it relied on case law that held “simply a purpose or willingness to commit the act or to make the omission in question... would render meaningless or inoperative the [] distinction between willful and non-willful violations.” In other words,

there is a distinction between willful and non-willful, and because ACCO did not intend to violate the rules, it was not willful and therefore could not be a violation.

The court of appeals disagreed and decided that because ACCO had a policy and procedure for permit issues, as well as a permit coordinator, this both created and satisfied the "willful" violation component. The court held it didn't matter that the low-level employee never contacted the permit coordinator because the permit coordinator of this \$800M company was also the RMO for ACCO and therefore was charged with knowing all of the work undertaken and assuring it all complied with the law, even this very small like for like replacement job and even though he was never asked about the permit. It also did not matter that ACCO presented evidence to the effect the omission was inadvertent, they eventually did get the permit, and the work when inspected, passed.

The ALJ's and the court's interpretation of what "willful" means in the context of the CSLB rules is problematic, especially so when it relies on the contractor's policies and

procedures to find a way to penalize the contractor for what, by any standard, is an inadvertent mistake. The court also rejected ACCO's contention that the court's and ALJ's interpretation creates a kind of strict liability for contractors if "willful" now means "any" violation of the rules.

The court proposed two scenarios to show how and why strict liability was not at issue. The first is when the local authority tells the contractor no permit is needed and the second is where the local rules are so ambiguous the contractor would not know if they needed a permit. The court suggested in either case the contractor would not be in violation of the Code if they did not get a permit. Both examples beg the question though.

It is not whether the permit is needed according to the local building department that raises the question of whether the violation is willful, it is whether the contractor "willfully or deliberately" intended to violate the rule. The statute includes this language as the predicate for any violation. The court's examples ignore this; in fact the examples do not implicate the contractor at all, and therefore do not assist in any way to

determine what willful means and why ACCO is incorrect in its concern about strict liability given the now extremely broad definition of willful.

It is even more concerning because the statute at issue- Bus. & Prof. Code section 7110- applies to all "violations for building laws of this state". There are any number of building laws and now apparently just the violation alone makes it actionable; there is no longer any specific intent or even a general intent to violate the rules, nothing willful or deliberate at all, but simply that the rule is violated.

Finally, the statutes provide for disciplinary action for a violation, and while 'disciplinary action' is not defined, you can bet any violation of the Code will be enough to encourage attorneys to exaggerate any violation into something calculated and diabolical, especially now that there is no such thing as an inadvertent violation. And watch out for what you include in your policies and procedures manual too. Once again, judicial wordsmithing leads to confusion not clarity, and the result is problematic for contractors.

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. Contact info: 707 337 1932 jmcgill@mcgill-lawfirm.com



UPCOMING CLASSES OFFERED THROUGH THE JATC

FIRST AID/CPR

A CPR/First Aid class is scheduled for March. Instructor Merralinda Goddard will be teaching the basics of First Aid and CPR. Call Stacy at (831) 633-3063 to reserve your place. Class size is limited.

SIGNIFICANT CHANGES TO THE CODE

Instructor David Martinez will be leading the way through the Significant Changes of the 2017 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, February 19th at 5:30pm.

CALCTP-AT

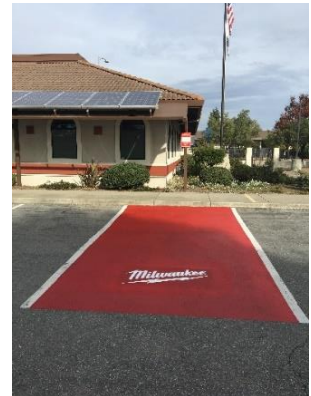
California Advanced Lighting Controls Training Program-Acceptance Testing (CALCTP - AT) with Instructor Stephen Slovacek. This class is a total of 32 hours. The class schedule will be coordinated with those in attendance. The prerequisite for this class is completion of the 50 hour CALCTP. An application 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.

CALCTP

California Advanced Lighting Controls Training Program (CALCTP) with Instructor Stephen Slovacek. This class is a total of 50 hours: 10 hours of lecture and 40 hours of lab. The class schedule will be coordinated with those in attendance. YOU MUST PROVIDE PROOF OF COMPLETING THE ONLINE COURSE PRIOR TO THE FIRST CLASS. Email your proof 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. There is a \$125 stipend available upon successful completion provided by the Monterey Bay LMCC.

EVITP 3.0

Electric Vehicle Infrastructure Training Program (EVITP) 3.0 with Instructor Stephen Slovacek. This class is an 18+ 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.



APPRENTICE OF THE MONTH

We would like to congratulate fifth year apprentice **Ivan Garcia** for being selected the Apprentice of the Month for February 2019! Milwaukee Tools has provided a reserved parking place for the month and will also be presenting him with a Milwaukee backpack and tools as his gift. The JATC selects one apprentice in the program based on attitude, performance and participation in the classroom and on the job. Congratulations and thanks to Milwaukee Tools for their continued support!

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!

- Sabyn Cupples
- Mohammed Garaan
- Erik Guerrero
- Javier Guzman
- Nick Jackson
- Anthony Kalstrom
- David Martinez
- Jose Melgarejo
- Steve Rios
- Jack Russo
- Jeff Singer

application is now available. For more information regarding the process, please click in the following link:

[JATC INFORMATION](#)



SIGNIFICANT CHANGES TO THE 2017 NEC

- Javier Guzman
- Andy Hartmann
- Steve Luiz
- Robert Melgar
- Jim Shumaker
- Brian Staley
- Ron Zych



APPRENTICE APPLICATION INFORMATION NEW TEST DATE

The Tri-County Electrical JATC accepts applications on a year-round basis. A new online

AVAILABILITY LIST UPDATE

On the Inside Out-of-Work List, there are 24 on Book 1, 16 on Book 2, 12 on Book 3 and 2 on Book 4. There is 2 on Book 1 and 2 on Books 2 for Sound & Comm. There are 45 on CW Book 2. There are no Inside apprentices available for work at this time.

FIRST AID/CPR January 26, 2019

- John Barber
- Stephen Christensen
- Matt Craddock

OSHA FINES INCREASE IN 2019

Below are the adjusted maximum penalty amounts that will take effect in 2019 upon publication in the [Federal Register](#).

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$13,260 per violation
Failure to Abate	\$13,260 per day beyond the abatement date

Willful or Repeated

\$132,598 per violation

State Plan States

States that operate their own Occupational Safety and Health Plans are required to adopt maximum penalty levels that are at least as effective as Federal OSHA's.

For More Assistance

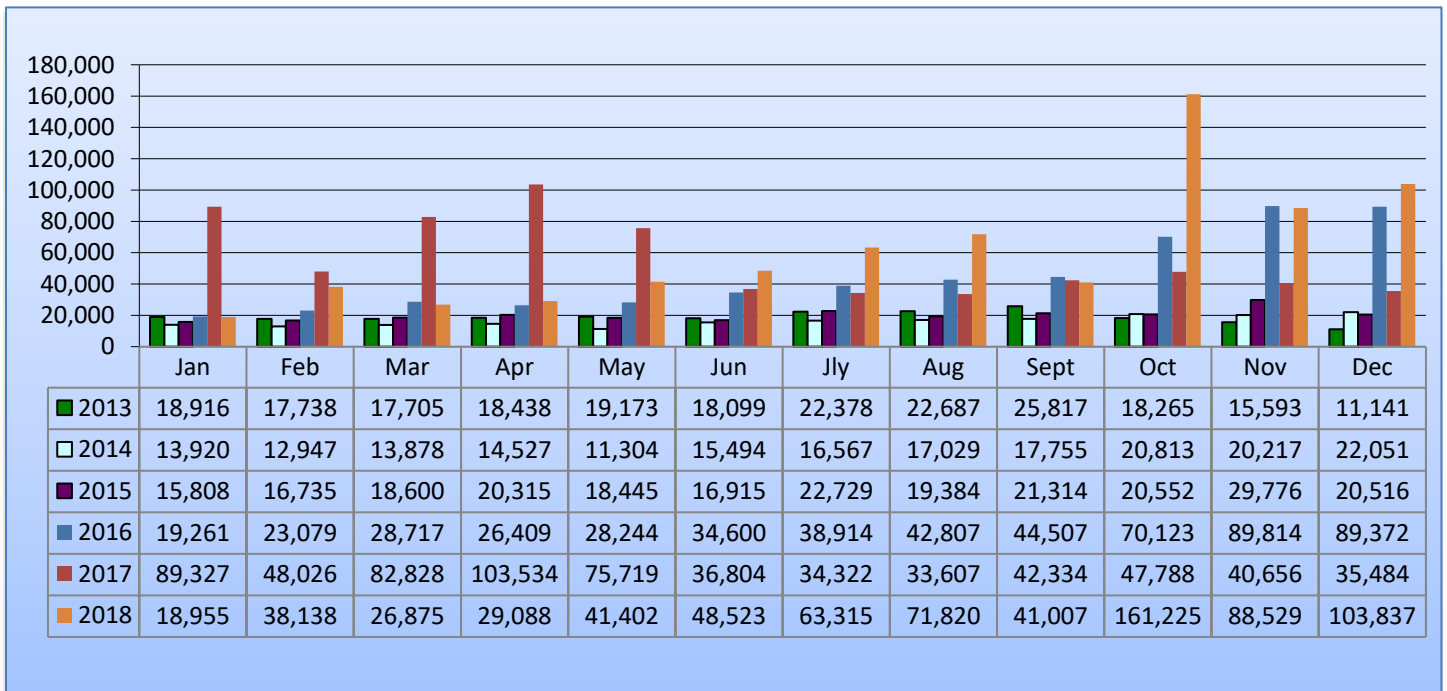
OSHA offers a variety of options for employers looking for compliance assistance.

The On-site Consultation Program provides professional, high-quality, individualized assistance to small businesses at no cost.

OSHA also has compliance assistance specialists in most of our 85 Area Offices across the nation who provide robust outreach and education programs for employers and workers.

For more information, please contact the Regional or Area Office nearest you.

INSIDE MONTHLY HOURS REPORT





February 5, 2019
Board of Directors Meeting

February 14, 2019
Valentine's Day

February 18, 2019
President's Day Holiday

February 27-March 1, 2019
Association Executive's Institute
Las Vegas, NV

April 1-4, 2019
NECA Now
Phoenix, AZ

April 15-28, 2019
Labor Relations Conference
New Orleans, LA

June 25-27, 2019
District Nine Meeting
Intercontinental Hotel
Monterey, CA

July 27-August 2, 2019
National Training Institute
Ann Arbor, MI

September 14-17, 2019
NECA Convention and Tradeshow
Las Vegas, NV