



Los Angeles Painting & Finishing Contractors Association

April/May 2012

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LAP&FCA Membership Meeting On May 8 At the Beckham Grill

Another informative program is scheduled for the LAP&FCA Membership Meeting on May 8 in Pasadena at the Beckham Grill. Steve Havens, Industry Liaison Western U.S. and Canadian Regions LMCI will be our guest speaker.

Two hot topics will be featured: (1) SSPC-QP-9 - As it reads, the program's objective is to determine if a Commercial Painting Contractor has the

personnel, organization, qualifications, procedures, knowledge, and capability to produce quality surface preparation and coating application of architectural paints in the commercial market.

Steve Havens has been appointed to the QP-9 study panel and will provide you with the latest information which could affect the way you bid jobs.

Steve will also bring you up to date on the new IUPAT Marketing

Initiative which will be solely focused on Private Sector Growth - go into markets that have been abandoned by the union segment of the industry.

These bi-monthly membership meetings which always feature a topic that is relevant to your business, are another benefit of belonging to LAP&FCA.

Please reserve today by completing the enclosed flyer and sending it back to your chapter office.



Allie Corey (Colors In View), Bruce Morrow (Morrow Painting), Yolanda Jones (Glidden Professional), Roger Rivas (Rainguard International), Marci Sanchez (Vice President Operations ATPA) Rocio Moreno, Administrator ATPA enjoying the March 13 LAP&FCA Membership Meeting at the comfortable Beckham Grill in Pasadena.

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President's Corner

In the absence of Chapter President Steve Edgar, who has taken a leave of absence, we will feature the American Subcontractors Association President's Monthly Newsletter April 2012. ASA is one of the important associations that LAP&FCA belongs to, along with the United States Green Building Council, Alliance for Quality Construction, National FCA, National PDCA and the California Council PDCA.

Recent reports suggest that the construction economy may have finally "turned the corner" to climb out of the Great Recession. Everyone would welcome the news that brighter days lie ahead. Such good news would also raise an urgent question for each subcontracting firm: Who does my company need to add to its team to take advantage of anticipated growth? My advice would be to put Veterans at the front of the interview line.

We cannot show enough gratitude to our nation's veterans, who sacrifice every day for our freedoms. Thousands have paid the ultimate price to spare us from terrorism and other threats. Others receive injuries, physical and or mental, requiring difficult and

sometimes lengthy rehabilitation. Service members' personal sacrifices include giving up time with loved ones - time that can never be regained or replaced. During deployment, they cope with major life disruptions.

Veterans shouldn't have to sacrifice their livelihoods too. Through military experience and career training, they've proven themselves dedicated and effective team players - exactly the kind of employees that our businesses want to hire.

Veterans are highly entrepreneurial, many choose to build their futures in civilian life within the construction industry. A study released March 29 by the U.S. Small Business Administration's Office of Advocacy shows that nearly one-third of all veteran-owned firms are in two industries: construction or professional/scientific/technical services.

Last month, I met Bill Koch (wkoch@stillservingveterans.org), director of workforce development for Serving Veterans (www.stillservingveterans.org), a 501(c)(3) charitable veterans' service organization. Bill, who is responsible for developing a network with potential employers, told me that veterans with construction skills are among the hardest to place.

Let's show our gratitude to the men and women who have worn our country's uniform by taking the time to learn about the benefits of hiring veterans (which often include substantial tax benefits for employers) and taking steps to connect with the veterans who have sacrificed so much for us already and are now seeking work.

Please put veterans at the front of your interview line by reaching out to Bill Koch or your contacts at the veterans' service organization of your choice.

Very truly yours,

Kerrick Whisenant
ASA President 2011-2012

Hire
a
Vet

CALENDAR

WHEN

WHAT

WHERE

May 8 11:30 a.m.	Chapter Membership Meeting	Beckham Grill Pasadena
May 8 10:45 a.m.	Associates Meeting	Beckham Grill
May 8 1:30 p.m.	Board of Directors Meeting	Chapter Office
May 2-4	National Issues Conference	Capital Hilton Washington DC
May 3-5	PDCA Western Conference of Councils	Palm Springs Hilton
May 15-19	FCA Annual Council	Hilton Hawaiian Village
June 20	10th Annual Q Award Honoring Union Projects	Providence Holy Cross Medical Center Mission Hills
June 21-23	PDCC Mid-Year Board	Bahia Resort San Diego
August 4	LAP&FCA Dodgers Event Reception 4:10 p.m. Dodgers vs. Cubs 6:10 p.m.	Dodger Stadium Loge Terrace
December 8	LAP&FCA Holiday Event	Pasadena Hilton



LEGISLATIVE NEWS



STATE

LAP&FCA Represents State Council in Sacramento on April 17-18

LAP&FCA once again participated in the "Day At The Capitol" in Sacramento with J.R. Grzeskowiak of the Blakely Co., his wife Nancy, LAP&FCA Executive Director Greg Quinn along with Executive Directors Clifford Burg (PDCC) and John Kuspar (NCPFC) .

Attendees were briefed early Wednesday morning in the State Capitol on what bills they would be asking their respective legislators to support. The first bill AB 1794 (Williams-D Santa Barbara) Workers' Compensation Insurance Reporting, would require all licensed contractors to notify their insurance carrier within 20 days of hiring new employee(s). Currently, unscrupulous employers often fail to pay the required premium or only after an employee is injured which drives the costs of premiums up 2-3 times for those contractors who play by the rules and provide workers compensation for their employees.

The second bill AB 2237 (Monning-D Santa Cruz) Consultants Licensing, would require individuals serving as construction managers or consultants to be licensed by the Contractors State License Board (CSLB), if they exercise control over, or maintain oversight of a construction project.

The best thing about the future is that it only comes one day at a time.

Abraham Lincoln

The third bill SB 1185 (Price-D Los Angeles) Central Intelligence Partnership Act would create a multiagency partnership, comprised of one representative from each participating agency, to collaborate in combating illegal underground operations in California. According to the Employment Development Department's analysis of findings made by the Internal Revenue Service, the underground economy in California is estimated to be between sixty billion dollars (\$60,000,000,000) and one hundred forty billion dollars (\$140,000,000,000) each year. According to the State Board of Equalization, an average of eight billion dollars (\$8,000,000,000) in corporate, personal, and sales and use taxes goes uncollected in California each year, with unreported and underreported economic activity responsible for the vast majority of that total.

The underground economy hurts all Californians. Revenues to support government services are lost, workers are forced to go without basic employment protections, and legitimate business are confronted with unfair competition.

LAP&FCA attendees visited the offices of Assembly Members Smyth

and Jeffries and Senators Huff and Liu.

CSLB Examines Enforcement Issues, Upcoming Strategies

Information for the following article is from an article by Ted Riegner as it appeared in the March 2012 edition of Indoor Comfort News

California's underground economy and the under-reporting of payroll contributions in the construction industry increase costs significantly for honest contractors to conduct business. The effects of health care reform could exacerbate the situation when employer requirements under the Affordable Care Act take effect in 2014. This was the message from Frank Neuhauser, executive director of the Center for the Study of Social Insurance at the University of California Berkeley, in a presentation January 18 to the Enforcement Committee of the Contractors State License Board (CSLB) in Sacramento.

Non-payment or under payment of workers' compensation insurance is a significant problem in the construction industry, and an area of increasing focus for CSLB enforcement. Neuhauser said the construction trades tend to be among the highest cost professions for workers' compensation, and account for 4% to 25% of payroll costs depending on the company. "Many think that when workers' comp is unreported or under-reported that the fraud is being perpetrated against the insurance companies. But the insurance companies just raise rates to

maintain their margins, so they're not being harmed. Instead, the rates for everybody else that does operate honestly are higher than they should be."

Neuhauser listed two types of workers' comp cheating:

- (1) Employers do not report all or part of payroll
- (2) Employers misreport types of employees to avoid higher-risk, higher-cost categories, such as calling a roofer a receptionist.

Based on data analyzed by his center at UC Berkeley, Neuhauser said an estimated average of \$15 billion to \$68 billion of California payroll was annually unreported from 1997-2005, or about 4% to 12% of total California wages. As a result, workers' comp premiums are 2 to 3 times higher than appropriate rates for employers of high-risk category workers which hurt honest employers the most.

When the Affordable Care Act (ACA) takes effect in 2014, employers will be required to offer their employees a health care policy, or pay a percentage for each employee to select a policy from a pool called the "Affordable Insurance Exchange." Discussing the looming challenges of the ACA, Neuhauser said, "I suspect there could be a greater effort for some contractors to go underground as a result of ACA in 2014. The State must make additional efforts and enforce laws against the underground economy".

In an effort to improve enforcement, EEEEC was reorganized as the Labor Enforcement Task Force (LETF), effective January 1, 2012, and will perform research to identify and target offenders before visiting job sites to more effectively increase enforcement actions. Other LETF partners are the Department of Industrial Relations, Employment Development Department and Board of Equalization. LETF will also collaborate with the Department of Insurance, State Attorney General, and local district attorneys.

FEDERAL

Lawmakers Still Hopeful Congress Will Act On Bills of Interest to Construction Industry

Despite the looming general election campaign, lawmakers and stakeholders remain optimistic that Congress may act on a number of bills aimed at bolstering job creation and addressing other employment and labor-related issues. In the short congressional time remaining before the November election, lawmakers hope to work on bills reauthorizing the Workforce Investment Act, reauthorizing the surface transportation program, and dealing with a controversial National Labor Relations Board rule. In addition, they hope to debate bills dealing with mandatory use of the federal employment verification system E-verify, and a consolidation of veterans' employment services.

AFL-CIO Officials Discuss Plans For New Super PAC

The AFL-CIO through its Super PAC, "Workers Voice", plans to activate and energize networks of working families to have their voices heard in the politi-

cal process by organizing friends, family, and neighbors through cutting edge technology and old fashioned energy," AFL-CIO Secretary-Treasurer Liz Shuler said April 12.

Addressing a press briefing to outline the federation's plans in the upcoming political elections for its newly created Super PAC, Shuler said "for too long our political process has been dominated by too much money, and too much power, concentrated in the hands of too few. That's why Workers' Voice was created - to build an independent voice for the working and middle class," both union and nonunion alike, she said.

"Workers Voice isn't about political parties or individual candidates," nor is it about "Federal Election Commission deadlines, television ads, or the usual Super PAC activity," Shuler said. Rather, "it's going to be about building a new way for workers to connect and a new way to build relationships together."

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LAP&FCA represents the painting industry in Sacramento on April 18. J.R. and Nancy Grzeskowiak with the State Capitol in background.

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The federation announced last fall it was creating the Super PAC in order to be able to communicate with the general public for the 2012 political elections. The decision to create the Super PAC was in response to the U.S. Supreme Court's decision in *Citizens United v. FEC* (130 S. Ct. 876, 187 LRRM 2961 (2010)), which struck down decades-old restrictions on direct campaign spending by corporations and unions. In the decision's wake, numerous Republican operatives have started PAC's and have funneled millions of dollars into political campaigns.

Workers' Voice has raised \$5.4 million in the past two quarters, and has \$4.1 million cash in hand. So far, all the money has come from affiliates, according to Eddie Vale, the communications director for Workers' Voice. He told BNA, "We are going to add on building a network of online small donors on top of raising funds from affiliates".

Bloomberg BNA Construction Labor Report, 4/21/2012

FCA Legislative Update House and Senate Return from Break

Congress returned from a two-week long Easter recess to focus on budget matters, highway bills and tax reform, with much of the action relegated more to votes ahead of November rather than legislation passed by both chambers.

Senate Fails to Pass the Fair Share Act in Procedural Vote

The Senate held a procedural vote on

the Fair Share Act (S. 2230), but were unable to pass it. The Fair Share Act includes a measure to set a higher phased tax return on the wealthy, a measure endorsed by President Obama.

The Act has also been nicknamed the "Buffet Rule" after billionaire Warren Buffet, and would set a minimum tax rate of 30 percent for households earning more than \$1 million per year. It would also modify the charitable contribution deduction to prevent its value from being reduced via the new tax. Charitable contributions could be deducted from adjusted gross income before the 30 percent tax is applied.

House to Consider New Small Business Tax Cut Legislation

The House will consider the Small Business Tax Cut Act (HR 9) legislation introduced by the Republican leadership which would give businesses tax deductions as an incentive to hire new workers.

Under the legislation, businesses with fewer than 500 employees would be eligible for a tax deduction of up to 20 percent of taxable income. House Majority Leader Cantor sponsored the measure which could cover 99 percent of American businesses, making 22 million small businesses eligible for such a deduction. It would create a one-year hiring incentive to businesses and would cost an estimated \$46 billion. The top deduction would be capped at 50 percent of W-2 wages paid by the business.

FCA Legislative Update, 4-25-2012

New OSHA Enforcement Memo Targets Safety Incentive Programs

by Bruce Rolfson
Bloomberg BNA Construction Labor Report, 3/29/2012

A new guidance memo from the deputy director of the Labor Department's Occupational Safety and Health Administration calls for increased attention by agency compliance officers and investigators to whether disciplinary and safety incentive programs violate safety regulations.

The memo from Deputy Assistant Secretary of Labor for Occupational Safety and Health, Richard Fairfax, dated March 12, focused on workers who face retaliation for reporting on-the-job injuries or illnesses and safety incentive programs that discriminate against workers who notify employers about injuries and illnesses.

"Reporting a work-related injury or illness is a core employee right, and retaliating against a worker for reporting an injury or illness is illegal discrimination under section 11 (c) of the Occupational Safety and Health Act, Fairfax told the agency's regional administrators and whistleblower program managers. Later in the memo, Fairfax addressed safety incentive programs. "If the incentive is great enough that its loss

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Editorial Committee

Executive Director: Greg Quinn

Chapter President: Steve Edgar

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dissuades reasonable workers from reporting injuries, "the memo said, the employer is violating rule 29 C.F.R. 18904, and a referral for a recordkeeping investigation should be made.

OSHA already has told employers in the Voluntary Protection Program that before their participation will be renewed, their safety incentive programs need to be reviewed to determine whether they discourage reporting.

AFL-CIO Supports Memo

The AFL-CIO is among the groups pushing for safety incentive programs that measure employers' actions, such as training, instead of focusing on workers' performance or awarding bonuses to managers whose departments report few injuries and illnesses.

Bloomberg BNA Construction Law Report, 3/29/2012

Federal Court Temporarily Blocks NLRB Poster Rule

The U.S. Court of Appeals for the District of Columbia Circuit granted an injunction

on April 17 preventing a National Labor Relations Board rule requiring employers to display posters informing employees of their right to organize from taking effect.

The injunction places the rule on hold until the appeals court resolves the Coalition for Democratic Workplace's appeal of the U.S. District Court for the D.C. Circuit's March 2 ruling, which found the NLRB has the authority to mandate the posters but cannot enforce the rule by treating violations as unfair labor practices. Just days before the appeals court's injunction, the U.S. District Court for South Carolina ruled that the NLRB does not have the statutory authority to require business owners to display the posters.

The rule was set to take effect on April 30. "There is no new deadline for the posting requirement at this time," according to the NLRB Web site.

Source: ASAToday 4/20/2012

INFOLINE

Fraze Paint Joins LAP&FCA New Associate Member

FRAZEE PAINT

Contact: Phil Brown/
Sales Representative
181 S. Rosemead Blvd., Suite A
Pasadena, CA 91107
Phone: 626-396-1142
Fax: 626-396-1182
pbrown@frazee.com

Standard Mileage Rates for 2012

The 2012 standard mileage rates for use of an automobile are 55.5 cents per mile for business miles (the same rate in effect for the last half of 2011). A taxpayer may not use the business standard mileage rate for any vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS or claiming a Section 179 deduction for that vehicle, or for more than four vehicles used simultaneously.

LAP&FCA Dodger Event on August 4

The ever popular "Night At Dodger Stadium" will be held on Saturday August 4 with the private reception in Loge Terrace beginning at 4:10 p.m. followed by the Dodgers v. Cubs at 6:10 p.m. The Dodgers are off to their best start since 1981, the year they went on to win the World Championship!

PDCA Great - Clyde Knight Passes

Information submitted by Suzy Schneider, Administrator East Bay Chapter PDCA

Our very good friend, Clyde Knight passed away on Friday April 21st at the age of 88. He loved PDCA, and we respect Clyde for the leader he was throughout his PDCA membership. As many of you know, Clyde was a past president of both the East Bay and Contra Costa Chapters, the California Council, and National PDCA. We will continue to honor him each year through the CC Knight Award. Clyde became famous at conventions for being able to break the ice by telling a good joke when the time was just right. There will be a private family gathering.



Barbara Goshorn (The Blakely Co.) with emcee Harold Gidish (H&E Equipment Services) was one of the many raffle prize winners at LAP&FCA's Day At The Races on April 7 at Santa Anita Park.

Know Your Contract

by Sam K. Abdulaziz & Kenneth S. Grossbart
Abdulaziz, Grossbart & Rudman

When you bid on a job you need to understand what work is involved, what materials you will use, and what subcontractors or material suppliers you will be using. But do you understand the rest of the contract? In the [Greg Opinski Construction, Inc. v. City of Oakdale case](#), it is seen why it is important to have a complete understanding of what is in your contract. This matter went to trial for various other issues, but the issue at hand in the appeal is all that is discussed for purposes of this article.

This particular case came about because of seven months of job delays, unapproved change orders, construction defects and non-payment. The contract called for the job to be completed within 300 days. It laid out very specific change order procedures for which either the contract time or price could be changed. There were two acceptable avenues to have a change order accepted. The first was execution of the change order by mutual agreement in writing. In other words, the contractor determines that a change order is necessary and submits the written change order to the City, which in turn approves and signs the change order making it an accepted change

order. The second way was to ask the engineer for a formal decision on the requested change order and to give written notice of the claim to not only the engineer but the other party no later than 30 days after the event of the occurrence. To clarify this, if a change order that the contractor submitted to the City was not accepted (signed), the contractor could petition the engineer for a decision with respect to that same change order, if it is done within 30 days of the need for that change order first being realized, and the City was also notified in writing of the petition.

The liquidated damages were \$250 per day for those days after the 300 in the contract. The project was 7 months late. The City refused to pay almost \$200,000 towards the balance of the contract and change orders, which the City refused to approve, and kept the funds in retention. The City also alleged defective conditions. During trial, it was determined that the cause for the delay was actually the fault of the City, not the contractor. However, the City still claimed that the liquidated damages were due it because Opinski not only did not submit a change order for the time increase to finish the job, but Opinski also did not submit a claim to the engineer for the time increase or the other change orders that the City refused to approve.

After careful review of the contract documents, prior case law, and statutes, the court ruled in favor of the City for \$54,000 plus interest, and just over \$3,000 for the defects. The court further stated that the City withholding the monies in retention was reasonable because it was allowed to withhold up to 150% of the amount in dispute. The court went on further to state that Opinski's claims were rejected because Opinski did not submit its claims in the manner laid out by the contract within the correct time frame laid out by the contract.

The appellate court sent the case back to the trial court to figure out the difference of what was awarded to the City and what was left of the retention in escrow. The difference of which was to go to Opinski.

Because Opinski was not familiar enough with the contract that was signed, he lost out on a large sum of money that was initially due to it. When change orders were denied, Opinski needed to follow the second course of action by petitioning the engineer, who required that particular work to be done and would have approved the change orders. When Opinski was done with the job other contractors were still working on the project. Opinski should have had substantial completion signed off on for its part of the work or submitted a change order so as not be responsible for the liquidated damages as laid out in the contract.

If Opinski knew its contract, this would have only cost \$3,000 for the defects rather than over \$65,000! Make sure you know what your contract says and that you refer to it frequently on the job so that something like this does not happen to you!



Attendees learning about the Training opportunities from Jason Vogel, Training Director Federal OSHA at California State University Dominguez Hills on March 13 at the Beckham Grill.