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Greater New York Contractors' NEWS



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October 2011

President's Message

I still cannot believe that the summer is now over. The temperatures are getting cooler and cooler each day. It seems to me that last summer we had more hot days for longer durations than we did for this current summer. The summer was hot, however it was not consistently hot. I think we only had one day over 100 degrees if I am not mistaken. I just have to say that I really love heat waves!!

Last month's meeting was an exciting meeting about new HVAC technologies that will be released in the future relating to compressors and Variable Frequency Drives. If you were there, your company gained first hand information to be ahead

Turn to President's Message on page 3



Michael Newman

Thursday, October 6th, 2011

MORE MANAGEMENT TECH TALK

Combustion On Oil/Gas Condensing and The Latest in Testing Equipment

Rich Bruno from Bacharach, Inc., a licensed plumber and member of PHCC, will speak about combustion on oil/gas condensing and will show the latest testing equipment.

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Don't miss this very informative meeting that will keep you on top of this technology.

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Cocktails at 5:30 pm; Dinner at 6:30 pm

Register Online at www.accany.org

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PRESIDENT'S MESSAGE *Continued from page 1*

of the game and ready when this technology is released. It is important for us as an industry to stay ahead of what is new. The refrigeration cycle is always the same, however there have been several innovative technologies that are going to transform the way we diagnose equipment and work with our customers. I would like to thank National Compressor and Twinco for putting together the program. Unfortunately due to inclement weather our golf outing was cancelled. It will be rescheduled for October 24th. We have some more exciting programs for October and November to finish out the year. In November we will have our Management Roundtable discussion which is always informative and draws a large crowd.

This year we will be focusing on increasing the membership within our organization and seeking out greater participation from our contractors, suppliers and associate members. If anybody has an idea or issue relating to our business and industry, please get in touch with us and we will make it happen. How can ACCA help you this year? Are there any issues or topics you want to hear about this year?

Please use ACCA as a networking experience and a place where you can bring the hottest and most relevant business topics back to your day to day operations.

Thank you for your support and I look forward to seeing you at the next meeting! — **Mike Newman**



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Editor's Notes

by Anthony N. Carbone

The Federal Government is seeking ways to create jobs to reduce unemployment rates which are currently at 9%. Although it appeared we are coming out of a recession, that recovery has slowed and many are proceeding cautiously.

Some contractors are seeking workers that have been displaced. These skilled workers with experience are still hard to come by. Good work ethics and top skills are a rare commodity. If you are trying to gear your staff and perfect your team, it is a full-time job: scouting, looking, soliciting and networking

to find qualified individuals who will fit into the culture at your company. Some contractors use Career Builders website, newspapers, HVAC AGENTS, trade papers, signs on store fronts, help wanted signs on trucks and word of mouth from other employees.

These are times when contractors are not sure what's around the corner economically. Is it going to be a dead stop where the burden of overhead can cripple a company or is it time to gear up with skilled man power ready to handle the influx? Hiring is slowly occurring at companies. Many are very lean

and ready to bring on new employees as business permits. These are wait and see times. The driving force for energy efficiency and a departure of oil heat to natural gas due to its 33% less cost is driving the market place in the residential side of the HVAC Business.

New extraordinary discoveries are needed to open doors and intrigue consumers. Solar Assist is starting to infiltrate and solar collectors will impact and are needed to get more energy "bang for the buck." Stay tuned, and join us at our next program meeting.

— Anthony N. Carbone



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Management Tech Talk — September 8th Meeting

New and future HVAC technologies, especially relating to compressors and variable frequency drives, were the main topics of discussion at our Management Tech Talk on September 8th. The session was well attended and very worthwhile. Thanks to National Compressor and Twinco for arranging it.

Photos - Anthony Carbone



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People & The Workplace

By Alan B. Pearl,

Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY
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New Posting Requirements For Employers

As expected, The National Labor Relations Board (NLRB) enacted a rule that requires most private sector employers (except those not covered by National Labor Relations Act) to post a notice advising employees of their rights under that law (NLRA).

The posting requirement, which is already in effect for federal contractors, begins on November 14, 2011. This is the first of many anticipated changes, clearly intended to assist unions in their organizing efforts, from this reconstituted labor board.

The notice, which is to be posted where other required workplace notices are posted, can be obtained from any NLRB office or downloaded from the NLRB.gov website. The NLRB will also provide translated notices which must be posted in workplaces where 20% of the workforce is not proficient in English, but is proficient in some other language. Additionally, if an employer's business practice is to electronically post notices for employees regarding

its rules or policies, the NLRB notice must be posted there as well.

The notice contains a lot of verbiage about employee rights under the NLRA, including the employee's right to refrain from participating in union activity and how to contact the NLRB if they so desire.

The posting is required in both unionized and non-unionized facilities, and failure to comply may constitute an Unfair Labor Practice (ULP). Although the direct remedy for such a ULP is not severe, a violation can be used as evidence of anti-union feelings in support of more significant accusations against the employer. Accordingly, PMP advises our clients to comply, even though challenges to the Labor Board's authority to impose such a rule are likely.

PMP has an outstanding record of assisting companies for almost 50 years in maintaining a union-free environment. PMP reviews and, where necessary, revises policies and procedures as part of a vulnerability audit to determine where your company may have problems unions can exploit. Additionally, PMP offers training so supervisors and managers can answer questions about this new notice or other union-related concerns without igniting ULP charges. Supervisors and managers will also learn what their rights and responsibilities are under the NLRA.



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The NLRB also issued some decisions in the past month affecting employer /employee relations. One of the more significant rulings is when a Union engages in objectionable conduct that sets an election aside. The Board held when a Union finances a law suit that alleges claims under federal or state wage and hour laws (or any other similar employment law) on behalf of employees and then files that law suit during the critical period between the date of the filing of the representation petition and the date of the Board ordered election, the election is a nullity. This three to one decision of the Board is one of a few pro management decisions we can expect. However, one victory for management is not the rule. This Board is definitively pro union in its views and indicative of that is a three to one decision to restore the success of an old doctrine requiring employers to recognize incumbent unions for a reasonable period of time after a business transaction without challenging the majority status of the employee representative. In a nutshell the Board provided guidance on how much time would be a "reasonable period" for bargaining in the context of the business succession and they answered the question as follows: "no less than six (6) months after the parties first bargaining session and no more than one year after the start of bargaining". Of course the Republican dissent on the Board argues that the majority intended to strike a blow against NLRA succession principles established by many years of Supreme Court decisions in order to protect labor unions and not protect the labor relations stability that encourages employee free choice.

Another decision by the Labor Board concerns the over ruling of precedent established in 2007 under the Bush Board that a representation election petition is barred for a reasonable period of time following voluntary recognition of a Union designated by a majority of employees when conducted by a card check. Simply put, this ruling over-turns a 2007 Bush Board decision that provided for the first time that a petition could be filed within 45 days after an employer voluntarily recognized a Union through a card check. Therefore, no petition can be filed to decertify a Union after a voluntary card check

recognition until the passage of a reasonable period of time. This is the view of the current Labor Board and will probably be the law until a successful court challenge which could take two (2) years.

Harassment By Female Supervisor Shown

A recent decision by a male employee in Puerto Rico claiming discrimination by his female supervisor was reinstated by a Federal Court of Appeals recently. The rational is rather interesting. In this case the subordinate showed a hostile work environment based on sporadic statements of sexuality and the following: "asking the person to be her man and sucking on his neck". The Court said that these events were enough to get to trial. Obviously, all employees should refrain from physical contact with colleagues. The conduct was unwelcomed and based on sex said the Court.

These points illustrate the need for training on how to handle union issues and how to educate not litigate! I may be reached at ABPearl@PMPHR.com. •

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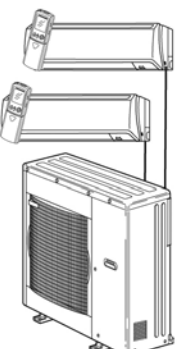


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Customer Service Means Quantifying Value

By Kelly Hiner/Enterprise Fleet Management

How do you measure customer service? When it comes to your company's fleet of vehicles, customer service depends on optimizing everything from vehicle acquisition, funding, aftermarket equipment and maintenance programs to fuel management, risk management, registration, disposal and reporting. To consider any of these items on cost alone short-changes the value of customer service available from a professional fleet management company.

Simply stated, measuring customer service for fleet management depends on two basic principles: the strategic partnering process and the ability to analyze key end-to-end activities associated with entire lifecycle of a fleet of vehicles.

Because no two customers are alike, the strategic partnering process begins with aligning customer goals with fleet management actions by identifying needs, quantifying opportunities, evaluating solutions, implementing plans and measuring both performance and continuous improvement. This works best when the fleet management company has a well-trained local account team in place to proactively manage

individual customer relationships on a day-to-day basis.

The strategic partnering process can also extend to fleet customers who are members of local industry trade associations that have a negotiated partnership agreement with a fleet management company. Benefits can range from receiving up to 15 percent savings or more in fleet operation expenses to discounted pricing on all makes and models of cars, trucks and vans, as well as incentive programs negotiated with certain manufacturers that enable customers to receive the best pricing available for vehicle acquisition.

Experience proves a "good deal" can sour pretty quickly if your long-term needs are not being served by the most qualified professionals who have your best interests in mind. In fact, customer service makes the biggest difference when a fleet management company has the ability to successfully function as customer's management advisor with a proven program of best practices to reduce costs and maximize performance.

Fleet management companies committed to optimizing customer service focus on the following performance drivers:

Personal Attention – When proactive account teams take the time to meet regularly one-on-one with the customer and their drivers, they are better able to understand and recommend how specific vehicles can best meet the customer's needs, help reduce costs and improve efficiencies.

Customized Programs – With a customized vehicle replacement strategy and maintenance management program, customers can lower costs and improve efficiencies. A managed vehicle replacement program, sometimes called cycling, ensures vehicles are replaced at appropriate intervals to achieve optimum performance and the best resale value for an individual business. Maintenance management can help a business better manage expenses for routine and emergency repairs, as well as ensure that all vehicles are operating at peak performance, reducing the expense of downtime when a vehicle breaks down and is out of service.

One-Stop Solutions – Access to a variety of programs available through one fleet management company is important. Examples may include a fuel card program where each driver is assigned a separate ID number that is immediately recorded electronically at the point of fuel purchase; establishing a separate line of credit through a fleet management company that enables a business to avoid tapping its line of credit at the bank to purchase vehicles that depreciate quickly; and affordable mobile resource management solutions that integrate real-time GPS vehicle tracking and navigation tools with automated scheduling, dispatching and route optimization applications, as well as job status tracking.

Annual Client Review – An annual review enables customers to compare their year-over-year performance and

costs to their own business, as well as to the industry average and like-kind fleets. Performed by the fleet management company, an annual client review is an increasingly important customer service program component.

The bottom line is to remember not to wait until after you've accepted delivery of your new company vehicles to find out that "customer service" doesn't mean as much as you thought it would. Look carefully at customer service programs before choosing a fleet management company and consider the companies that have established partnership agreements with your industry trade association.

Kelly Hiner is Group Sales Manager for Enterprise Fleet Management in New York and can be contacted at 973-709-2499. Visit the company's web site at www.enterprisefleet.com or call toll free 1-877-23-FLEET. •

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**Statement From
Stuart S. Zisholtz, Esq.**

On Retainage

On many construction projects, a contractor submits a monthly requisition for payment. Incorporated into the requisition is a reduction of the amount due to be held as retainage.

Retainage is defined as money that is due to the contractor, but held essentially, for security purposes to be released as the end of the project. In the event the contractor defaults or fails to complete certain work, the owner may be permitted to utilize the retainage held back from the contractor in order to complete the necessary work.

Many times a contractor who performs work early on in the project is forced to keep its retainage with the owner until such time as there is a release of the retainage towards the end of the project. This could be a short period of time, or, in other instances, years before the retainage is released.

Recently, New York Governor Andrew Cuomo, signed into law an amendment to the Lien Law which addresses unpaid retainage.

Specifically, the Lien Law was amended to allow for Mechanic's Liens to be filed for unpaid retainage within ninety (90) days after retainage is due to be released. This

law is a significant extension of the lien rights of the sub-contractors.

Before, a contractor was entitled to lien a project eight months after it last performed work or furnished materials. Now, it may file a Mechanic's Lien for unpaid retainage years after it performed work or furnished materials.

The amendment only pertains to private construction projects. It does not pertain to public improvement work. When addressing public improvement work, a contractor may file a Mechanic's Lien within thirty (30) days after the project is completed and accepted by the public owner. This time frame could be years after the contractor performed its work or furnished materials.

The key component to this Amendment to the Lien Law is the fact that a private construction project can have a Mechanic's Lien filed well after the eight-month period of time.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to mechanics liens and payment bond claims, kindly contact me or the Association.

Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200. •

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