IN THIS ISSUE…

Air Conditioning Contractors of America
Greater New York Chapter
229 South Street, Oyster Bay, NY 11771

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Greater New York Contractors' NEWS

Air Conditioning Contractors of America
Greater New York Chapter

www.accany.org March 2007

President's Message

Ken Ellert

How things change! Last month we were in the middle of a heat wave and now just the opposite, at least we haven't had any snow to mess up the roads.

I want to thank Alan Pearl and his associate Gina for providing an informative discussion on how to determine if your workers can be classified as a salaried employee. He also answered many labor re-

Please turn to PRESIDENT'S MESSAGE on page 3

MARCH MEMBERSHIP MEETING

At press time the program for the March 1st meeting was still being arranged. Members will be notified of the program by email, or you can call the office at 516.922.5832.

Thursday, March 1, 2007
LaGuardia Marriott
Cocktails 5:30 pm; Dinner 6:30 pm

ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.

PRESIDENT'S MESSAGE *from page one*

lated questions from those in attendance. Alan writes a very informative column each month in this Newsletter and is very accessible to answer any HR questions you may have.

The National Convention is less than four weeks away. It's not too late to register and take part in what should be an interesting and educational event. Conference information can be found on their web site at: www.acca.org. There have been a few members already signed up to attend. I look forward to seeing you in Orlando.

Our board orientation meeting was held in January. We have set up our committees and they are eagerly planning many exciting events for the coming year. The first of our annual events is Casino Night being held Wednesday, April 18, 2007 at The Westbury Manor. Invitations have already been sent out. Plan on attending this fun filled evening.

ACCA is a great organization with an abundance of experience and talented people. It is betterment to all of us to share this wealth of information. This is best done by attending the monthly meetings and networking with your fellow members. ***—Ken Ellert***

ACCA Greater NY Chapter

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Brandon Stone, *All Weather Temperature Control - 631-842-8777*
James Stone, *All Weather Temperature Control – 631-842-8777*
Brian Svedberg, *BCC Best Climate Control – 516-981-1008*

Committees

Advertising
Anthony Carbone

Attendance (Membership)
Dan Brothers, Chairman
Joe Bonifazio
Jim Carlson

Baseball Outing
Peter Arbeeny, Co-Chairman
Scott Berger, Co-Chairman

Charitable Works
John Ottaviano

Coupon Book
Roy Bernheimer
Steve Bergman

Golf Outing
Mark Bedson
Roy Bernheimer
Joe Bonifazio
Ken Ellert
Harry Espino
Nick Terran

Holiday Party
Harvey Stoller, Chairman
Anthony Carbone

Monthly Meetings
Joe Bonifazio, Chairman
Mark Bedson

Newsletter
Anthony Carbone
Paul Caiola
Donald Gumbrecht & Co.

Political Action
Anthony Carbone, Co-Chairman
John Ottaviano, Co-Chairman

Sponsorship Task Force
Scott Berger

Web Page
Jim Carlson

Editor's Notes

By Anthony N. Carbone

Governor Eliot Spitzer steps into his new position with a change at the top of Long Island Power Authority (LIPA). Appointed by former Gov. Mario Cuomo from 1989-1995, Richard Kessel took a leading position in negotiations that led to the shut down of the Shoreham Nuclear Power Plant.

In 1997, LIPA trustee, Richard Kessel, was appointed by Republican Governor, George Pataki, as Chairman of LIPA. Richard Kessel was an outspoken critic of the Long Island Lighting Company (LILCO). He constantly attempted to lower Long Island's electric rates. At the same time, Mr. Kessel pursued alternative power strategies as well as offshore power transmission lines from New Jersey. LIPA was a regulative authority that oversaw the power transmission lines that were actually maintained by the utility behemoth, KeySpan Energy.

In addition to the Neptune cable, Mr. Kessel examined the idea of hydrogen fuel cell farms, offshore windmills and the possible purchase of the electrical transmission generators from KeySpan.

The greatest criticism in recent times of Mr. Kessel, were the fuel surcharges. Although the kilowatt rate structure was not being elevated, the fuel and weather surcharges irked many ratepayers.

Bert Cunningham, LIPA Vice President for Communications said because of $2.5 billion in investments over the past 8 years, the LIPA transmission system has never been in better condition.

Governor Spitzer has named Kevin S. Law, a top aide to Steve Levy (Suffolk County Executive), to succeed Mr. Kessel as the authority's Chairman. A phase out will occur and be completed by fall 2007.

Mr. Law is a lawyer well versed in energy matters, Long Island politics and government operations. Mr. Law will be in charge of creating a new relationship with National Grid, a London based company that has recently acquired KeySpan Energy. In addition, he will decide if LIPA moves ahead with the proposed 40 turbine wind complex generators located off the south shore. This project can generate up to 140 megawatts of electricity.

Some have claimed Mr. Law's appointment will give Mr. Levy (a frequent LIPA critic) an inside track on regional energy issues. It will also shift Long Island's power center eastward from Nassau County. Mr. Law is 46 and from St. James in Suffolk, while Mr. Kessel is 57 and from Merrick in Nassau County.

Well, now ACCA has an interest in how LIPA will interface with our industry organization. The cash rebate program for high efficiency central air systems installed is of great interest to us.

Time will tell how this plays out. The cast of characters continues to evolve in this energy utility sector. Next, I would like to see KeySpan Home Energy Solutions put on the block...going once...twice...sold!

—Anthony N. Carbone

THE GREATER NEW YORK CHAPTER'S
REVAMPED WEB SITE
WILL BE UP AND RUNNING THIS MONTH.
STILL THE SAME WEB ADDRESS
BUT WITH MANY NEW FEATURES.
BE SURE TO VISIT.

www.accany.org

Associate Member Membership Levels

The Greater New York Chapter, ACCA offers a variety
of Associate Membership Levels, each featuring certain benefits.
Choose the Level that meets with your needs and call the ACCA office at 516-922-5832.

BRONZE Membership includes: Value: $880..... $600

Associate Membership and One Dinner at Eight monthly meetings

SILVER Membership includes: Value $1,980..... $1,200

Associate Membership, One Dinner at Eight monthly meetings, Golf Tee Sponsor, Two Casino Night tickets, Casino Night Sponsor and Associate Presentation at one meeting

GOLD Membership includes: Value: $3,130.....$2,000

Associate Membership, One Dinner at Eight monthly meetings, One Golfer, Golf Tee and Hole Sponsor, Two Casino Night tickets, Casino Night Sponsor, Associate Presentation at one meeting, Two Holiday Party Tickets, and Holiday Party Sponsorship

PLATINUM Membership includes: Value: $6,130..... $4,000

Associate Membership, One Dinner at Eight monthly meetings, Monthly meeting sponsor (eight times), Four golfers, Golf Tee, Hole and Major Sponsor, Four Casino Night tickets, Casino Night Sponsor, Associate Presentation at one meeting, Four Holiday Party Tickets, Holiday Party Major Sponsor, One time feature Spotlight in Monthly Newsletter, Ten tickets to Night at the Mets and a Pass for two people onto Shea field.

(Can be paid in two installments – $2,000 down and $2,000 to follow.)

American Standard Companies Announces Plan To Separate Its Three Businesses

American Standard Companies Inc. announced that its board of directors has completed a strategic review of the company and unanimously approved a plan to separate its three businesses this year.

"The board has concluded that separating American Standard into three focused, better understood companies will create greater shareowner value than the current structure," said Fred Poses, chairman and CEO. "The businesses have the size, global reach, industry leadership and organizational talent to succeed as separate companies."

Upon completion of the plan, American Standard will focus on its global market-leading air conditioning systems and services business with 2006 sales of $6.8 billion and will change the company's name to Trane, the company's flagship air conditioning brand. The company plans to spin off its global vehicle control systems business with 2006 sales of $2.0 billion as an independent, publicly traded company, expected to be known as WABCO. The company expects to complete both the spinoff of WABCO and the sale of Bath and Kitchen by early fall of this year.

"We've come a long way since the company went public in 1995," said Poses. "Over the past 12 years, we've generated average annual total shareowner returns of about 18 percent. Over the past seven years, we reduced our debt by more than $1 billion, achieved investment grade ratings, and established our quarterly dividend and subsequently increased it. At the same time, we invested in our businesses to strengthen their overall capabilities.

The sales process for the company's bath and kitchen business is expected to begin this month. Proceeds from the sale are expected to be used to reduce the liabilities of the remaining company (Trane) and to repurchase Trane's common stock.

Trane's headquarters will remain in Piscataway, N.J., and the company will continue to trade on the New York Stock Exchange (NYSE) using a new stock symbol to be announced later. WABCO will be a U.S. company, with executive and administrative offices in Brussels, Belgium, and Piscataway. It is also expected to be listed on the NYSE.

The company will retain the right to use the American Standard brand name for its heating, ventilation and air conditioning (HVAC) products.

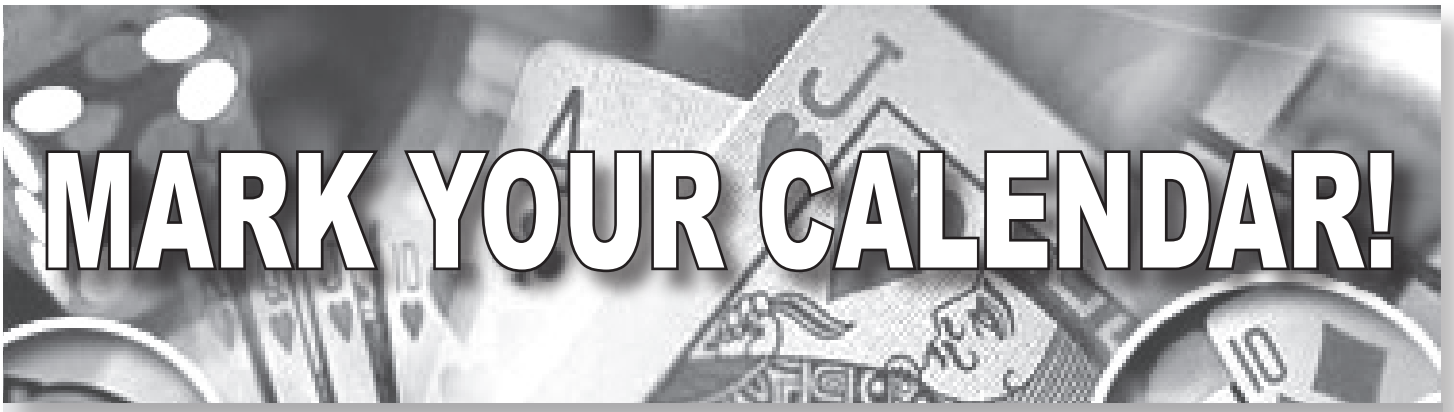
Completion of the proposed separation is subject to final approval by American Standard Companies' board of directors. •

March 6-8, 2007 Orlando, Florida

The #1 Learning Experience for HVACR Contractors

Imagination in Action

If you can imagine it, you can make it happen -- and the 2007 ACCA Conference is all about creating new opportunities for your business. We started by re-imagining our own event, and lined up a completely new and revamped schedule, chock-full of provocative thinkers and dynamic workshops led by successful contractors. **Plan to be there...**



To All Members and their Guests

BLASCO/ACCA CASINO NITE

WEDNESDAY, APRIL 18, 2007
at the WESTBURY MANOR
6:30 to 10:30 PM
$50 per person

People & The Workplace

By Alan B. Pearl,
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY
516-921-3400, Fax 516-921-6774 e-mail: ABPearl@pmpHR.com, www.pmpHR.com

For Those Who Missed The February Membership Meeting

A sizeable turnout on February 1st at the Westbury Manor had an opportunity to discuss and ask questions about wage and hour rules with emphasis on regulations regarding the "administrative exemption."

I commented at length in my February ACCA article that the FLSA administrative exemption is not a catch all exemption meaning that you just can't throw people in there, give them a salary and say that they are exempt from overtime.

Many members in the audience were interested in the difference between the salaried exempt individual and a salaried non-exempt individual. I saw many heads shake; looking perplexed. There is a misunderstanding about this concept that is available, on a limited basis, to employers. Here is how it works: Let's say the dispatcher is on a salary and he works a fluctuating work week. However, by definition dispatchers normally aren't exempt under the duties test. Therefore, they are generally entitled to an hourly rate of pay, plus overtime, (Remember in order to be exempt under the law, you have to pass the salary test and the duties test.) Dispatchers generally do not have discretion on matters of significance to pass the duties test and therefore are generally non-exempt. But there is a way to pay them a salary. How do you do that? You pay them a salary for all hours worked and you pay them half time for all hours over forty. It is simple, figure it out. The more hours they work the base rate decreases. Therefore, the dispatcher who may take advantage of you by recording more hours in the work week, finds out that his base rate of pay diminishes as each hour he works. It is one of the few exemptions allowed. So that is how you have a non-exempt individual paid a salary for all hours worked and getting paid half time, not X1/2. If you need an explanation, call me and I will be pleased to discuss it with you.

Other questions focused upon the exempt status of Administrative employees. In other words, who is truly exempt under the regulation as amended in August 2004. Section 541 of the regulations as of August 2004 state the following generally meet the Administrative exemption guidelines: (1) An employee who leads a team of other employees assigned to complete a major project for the employer; (2) an executive assistant or administrative assistant to a business owner or an administrative assistant to a business owner or a senior executive of a large business; (3) If an employee without specific instructions or prescribed procedures has been delegated authority regarding matters of significance the exemption will cover; human resource managers who formulate, interpret and implement employment policies and management consultants who study the operations of businesses; purchasing agents with authority to bind a company on significant purchases; the last catch all and perhaps the one most utilized is the "work directly related to management or general business operations" of the work (in other words non-manual work of significance regarding the company and not its product). This list includes but is not limited to work in functional areas such as tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing and research, safety and health, personnel or human resources management, employee benefits, labor relations, public relations, government relations, computer networking, internet and database administration, legal and regulatory compliance and similar type activities.

So in order to avoid getting caught in the web that the FLSA regs provide, I distributed a form for ACCA members to utilize in determining whether or not a person is exempt or non-exempt. If you wish a copy of the form, please email me at abpearl@pmphr.com and I will gladly send you back a copy. At the end of the meeting, it seemed that most had a fair understanding of the FLSA administrative exemption. Members seemed dedicated to performing the task of creating or updating job descriptions so that a person's status could be reviewed under FLSA principles. This is a necessity not a luxury. Put it on your must do list this month.

Why Is OSHA A Timely Subject To Mention In February?

Well, the OSHA Act established a National Institute for Occupational Safety and Health (NIOSH). NIOSH is the research agency for occupational safety and health. Although, it is not a part of OSHA, it is considered a sister agency. OSHA's job since its inception has been to protect American workers' rights and one of the main goals is to send every worker home and healthy at the end of each work day. In order to promote these lofty goals, the agency requires three objectives:

1. Improve workplace safety and health by reducing injuries, illnesses and fatalities;
2. Change workplace culture by increasing employer and employee commitment to improve safety and health;
3. Secure public confidence through excellence in developing and delivering OSHA services.

To move forward on these three counts, OSHA requires that employers conduct extensive recordkeeping. NOISH is the beneficiary of this information. OSHA covers all employers and certain record keeping requirements are waived if you are a small employer. A small employer is defined as an entity that has less than 10 employees. Obviously, OSHA

requires employers to keep records of injuries, illnesses and fatalities. Consistent with that rule, OSHA requires that within 8 hours of any accident resulting in a fatality or the hospitalization of three or more employees that they be informed promptly. A failure to comply usually invites stiff penalties and fines. To comply with OSHA's reporting and recordkeeping requirements:

1. Employers must maintain records in each establishment of occupational injuries and illnesses as they occur and make those records accessible to employees; (OSHA Form 301)
2. Report within 8 hours the aforementioned incidents of death or inpatient hospitalization of 3 or more employees. The report is normally made to the local OSHA area office in your geographic location. For Long Island, the area office's phone number is 516-334-3344 and it is located in Westbury. (OSHA Form 301)
3. Employers with 10 or fewer employees are exempt from maintaining the OSHA log of injuries and illnesses unless the Bureau of Labor Statistics or OSHA notifies the company that they have been selected to participate in a mandatory data collection program. Employers in the following low hazard industries are exempt from OSHA's recordkeeping and reporting requirements: (1) retail trade, building materials, general merchandise stores, food stores, finance, insurance, real estate and service industries (except for hotels and other lodging places), repair services, amusement and recreation services and health services.

Thus, ACCA members faced stiff fines for not keeping the required OSHA log. (OSHA Form 300)

Finally, I am often asked should an employer send the summary of injuries and illnesses to OSHA. The answer is do not send the recordkeeping forms unless you are audited. What forms are most often times utilized? The answer is simple. OSHA 300, 301 and 300A. Employers must log each recordable occupational injury and illness within 6 working days from the day the employer learns of the injury. A copy of a current OSHA log must be present in the establishment of the employer at all times. OSHA 300 is the log of occupational injuries and illnesses and each employer must complete the Form 300 within 6 working days from the time the employer learns of a work related injury. Finally, the summary of work related injuries and illnesses form 300A must be posted by February 1st of each calendar year for a period of 90 days. That is why OSHA is important in February!

In another column I will discuss when OSHA enforcement inspectors may call on you to see that you are in compliance. OSHA is notorious for conducting inspections without advance notification.

As always, should you have any questions concerning the within documentation, drop me a line at abpearl@pmphr.com or fax me at Portnoy, Messinger, Pearl & Associates, Inc., 516-921-6774. I look forward to seeing you at our next meeting. Stay warm. •

Statement From Stuart S. Zisholtz, Esq.

What To Do About Additional Costs On A Construction Project

Construction projects can be long and tedious. Numerous delays, changes, etc., can extend a project for months and sometimes years.

The question is, how do these delays impact on you and can you recoup them?

A delay claim is recoverable in certain circumstances. A contractor can recover from the owner additional costs for an extended period of time. Many contracts, however, contain "no damage for delay" clauses which could prevent a recovery by a contractor against the owner for delays. If, however, the contract does not contain a "no damage for delay" clause, then a party may be able to recover damages for delays.

In order to recover for such a claim, the contractor must prove specific damages. You must show the additional costs associated with the delay, that the contractor did not cause the delay, that the damages are real and that the parties could have expected to incur such damages at the time the contract was executed. If these items are established, then the contractor may be able to collect from the owner for damages sustained by the delays.

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Letters to the Editor

Please fax your comments or experiences that you would like included in our monthly newsletter. Send it in, hand write if you like. Fax it over and we will print it and see what others think. Fax...516-829-5472.

was executed. If these items are established, then the contractor may be able to collect from the owner for damages sustained by the delay.

The other question is whether a contractor is responsible to the owner when the job is extended for an inordinate amount of time. Can an owner recover from a contractor lost profits for delays caused by the contractor? The Appellate Division, First Department, recently held that an owner must demonstrate that at the time the construction contract was executed, the parties contemplated economic loss as a potential basis for damages in the event of delays. To do this, the contract must have a time of the essence clause. The contract should also have a clause setting forth the expected damages in the event the contract is not completed by the specified date. While a contract may have a completion date, it must state that time is of the essence. Incorporating a completion date in the contract does not by itself make time of the essence. Failure to incorporate those items in the construction contract will prohibit an owner from recovering for lost profits.

Once liability is proven, the owner must establish with reasonable certainty its lost profits. Speculation is not enough when proving lost profits. The owner must be able to establish real damages when attempting to collect lost profits. He must come forward with actual damages and with proof of lost profits in order to be entitled to damages from the contractor.

Never Let Your Lien Time Run Out!

For a free copy of a pamphlet pertaining to payment bond claims and mechanic's liens, please 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. •

Welcome New Members

New Contractor Member:
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E-mail: mascia@nymist.com

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