

## **NECA 2018 Philadelphia**



**On Tuesday, Oct. 2, U.S. President Donald J. Trump addressed the closing general session at NECA 2018 in Philadelphia. In his speech, Trump spoke about his administration's agenda and policies, jobs, and the economy, and he credited organizations such as NECA with making strides in workforce development.**

**This is the first time in NECA's history that a President has addressed our members at a convention.**

**Click on link below to see highlight of President Trump's speech:**

**<https://www.facebook.com/WhiteHouse/videos/184288169133151/?t=3>**

# POLITICO ALERT

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## **Governor Brown Signs Industry Supported PAGA Reform Bill**

In a major victory for the union construction industry, Governor Brown has signed AB 1654 which we were strongly supportive of. This measure waives the California Private Attorneys General Act (PAGA) within the construction industry for employees and employers covered by a valid Collective Bargaining Agreement (CBA) who agree to waive PAGA in the CBA.

PAGA provides employees with a private right of action against a California employer in order to collect penalties on behalf of the state's Labor and Workforce Development Agency (LWDA) for labor code violations. It is technically a type of qui tam claim. PAGA requires that 75 percent of any penalties collected be paid to the LWDA, with the remaining 25 percent distributed to the aggrieved employees. More significantly, it also allows for attorneys to recoup their fees and costs in a successful suit.

The exposure PAGA placed on our contractors was significant and the need for reform was real. The United States Supreme Court recently issued a decision impacting class action waivers that resulted in upholding employment arbitration agreements, but the California Supreme Court and the Federal Ninth Circuit Court of Appeals have both previously held that an employee cannot waive a future PAGA claim via an arbitration agreement or class action waiver. AB 1654 provides clarity in this area for the union construction industry.

Specifically, AB 1654 waives PAGA claims (authorized under California Labor Code Sections 2698-2699.5) related to the Construction Industry for employers and employees that engaged in a Collective Bargaining Agreement (CBA) that expressly provides for:

- Wages, hours of work, working conditions, premium wage rates for overtime, and provides an hourly wage of not less than 30% more than the minimum wage.
- A grievance and binding arbitration procedure to redress violations.
- A waiver that addresses the requirements of PAGA in clear and unambiguous terms and authorizes the arbitrator to award any and all remedies otherwise available under PAGA (paying penalties to the state is specifically banned under the new law).

We cannot stress enough how significant of a victory this new law is for the union construction industry. AB 1654 strengthens and upholds the sanctity of CBAs. The measure acknowledges that CBAs, through grievance procedures, provide for a thorough, consistent and fair process to resolve disputes. Most importantly, AB 1654 is an excellent example of labor and management working together to improve and strengthen the union construction industry.

We would like to thank all the contractors who provided testimony of the need for reform, and helped pass this important bill for our industry.



## **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 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 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 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.

# **Labor and Workforce Development Agency Announces Record Number of Apprentices**

California Labor and Workforce Development Agency Secretary David M. Lanier announced that there are nearly 82,000 active apprentices, across all industries, in California – the highest number in the 79-year history of formal apprenticeship job training in the state. In 2015, California had approximately 53,000 active apprentices and is on track to double the number by the end of 2020.

“Apprenticeship programs provide workers with paid on-the-job training that can lead to good-paying careers and supply employers with skilled workers,” said Secretary Lanier. “We have made significant progress during this period of economic growth in strengthening existing apprenticeship opportunities – reflected by the nearly 50,000 apprentices in state-approved apprenticeships in the building trades – and in creating new programs in high-growth industries.”

California is home to the nation’s largest and fastest-growing apprenticeship system. According to the State Building and Trades Construction Council of California, the state-supported apprenticeships make more jobs available for young people out of high school.

“California has a highly trained and streamlined workforce of 450,000 men and women who are ready to build public infrastructure and private projects while earning middle-class wages – which enables them to buy a home, support a family and drive our economy,” said State Building and Construction Trades Council President Robbie Hunter. “Apprentices who learn skilled trades will be the workers of the future who keep California’s economy strong.”

## **California Adopts First in Nation Solar Panel Requirement**

California has become the first state in the country to require that all new homes be built with solar panels. The mandate is aimed at reducing California’s overall greenhouse gas emissions.

The California Energy Commission voted unanimously to recommend energy efficiency standards that are set to be added to state building standards later this year, affecting all construction after January 1, 2020.

Under the new rules, builders will be required to either build each new home with its own solar power system or build a shared solar power system to serve a group of homes. In addition to single family homes, the requirement will also apply to apartment and condominium complexes of three stories or less.

The solar panel rule next goes before the California Building Standards Commission (CBSC), which typically adopts recommendations from the energy commission. CBSC is expected to take up the matter in October or November.



# **ABI August 2018:**

## **End of summer sees healthy billings rebound.**

**Download ABI August 2018 [here](#).**



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## October 2018

Sun	Mon	Tue	Wed	Thur	Fri	Sat
	1	2	3	4	5	6
7	<b>NECA Convention</b> Philadelphia, PA		10	11	12	13
14	15	16	17	18	19	20
<b>International Foundation of Employee Benefit Plans Annual Conference</b> New Orleans		23	24	25	26	27
28	29	30	31	<b>Electrical Contractors of California Annual Golf Tournament</b> San Diego		
		<b>Inside JATC</b> Martinez Training Center 2:00 p.m.				



**CONTRA COSTA CHAPTER**  
1024 Court Street, Martinez, CA 94553  
(925) 372-3222  
[www.ccneca.org](http://www.ccneca.org)