



Bryan Berry to Lead NESCA as President

Bryan Berry, President of Color Code Painting, Inc., has been elected president of NESCA for the 2024-2025 term. Effective July 1, 2024, Bryan will succeed Robert L. Kind of Teal, Becker & Chiaramonte, CPAs. Bryan has been a member of NESCA since 2017 and has served on the Board of Directors since 2019.

Bryan formed Color Code Painting, Inc. in 2012. Color Code Painting is a minority-owned painting and cleaning contractor located in the Town of Guilderland, New York. The firm has been a designated New York State Minority Business Entity (MBE) since 2015. With over 20+ years of commercial and residential painting utilizing a variety of applications, Bryan believes that his success comes from putting the client's needs first. "Your Details Matter" is Color Code Painting's motto.

In 2023 Bryan transitioned his firm from open shop to a union shop firm to answer Color Code's needs of an experienced and nimble workforce. He is a recent member of the Eastern Contractor's Association (ECA) and is an active member of NESCA where he enjoys meeting members and building out his network. Through NESCA his firm has participated with other NESCA members on several contracts.

Outside of Bryan's involvement in NESCA, he is involved in giving back to the local community. Bryan is a firm believer in second chances and providing a hand up to marginalized individuals. He champions the notion of expanding the dwindling labor force by integrating individuals who might otherwise face barriers to employment, such as those with criminal records. Before joining the union, Bryan would work hard with his employees to assist their families through healthy salaries, financial education, and giving start-up tool packages. You can find Bryan every Thanksgiving Day serving meals to the less advantaged alongside Albany restaurateurs.

Bryan is the proud father of eight children, ages 3 to 30. His 5 youngest children keep him running on the weekends to soccer practices, at-home dance competitions, basketball, fishing, and any other activities they may want to do. Backyard camping and story time with a fire and marshmallows may be their favorite activities of all time. Bryan is honored to serve as NESCA's incoming president. He looks forward to serving the membership and meeting each of you.

Also elected as 2024-25 NESCA officers were Joe Jerkowski of Armistead Mechanical, Inc. as Vice President, Jeff Orvis of Dagostino Building Blocks, Inc. as Treasurer, and Rick Otis of Amsure as Secretary.

Members who were recently elected to serve on NESCA's Board of Directors beginning on July 1, 2024 are:

- For 3-year terms representing NESCA's Steel Fabricators & Erectors – Robert Gennett of Schenectady Steel Co. as director, and Justin Gregory of Midwest Steel, Inc. as alternate director.
- For 3-year terms representing NESCA's Suppliers – Ernie Burkart of L&W Supply as director, and Tim Doherty of United Rentals as alternate director.
- For 3-year terms representing NESCA's Plumbing & Heating Contractors – Jesse Gorman of Postler & Jaeckle Corp. as director, and Phil Cuddy of Appolo Heating, Inc. as alternate director.
- For a 2-year term representing NESCA's Service Providers – Nate Pannucci of Teal, Becker & Chiaramonte CPAs as alternate director.



Incoming President Bryan Berry (right) accepts gavel from Rob Kind



PRESIDENT'S MESSAGE

This will be my final President's message as I'm wrapping up my last month as NESCA's president. It's been a great year and like everything else, I can't believe how quickly it has gone by. It's been an honor to serve as NESCA's president and the experience and lessons learned will stick with me forever. The best part of the experience is the people I have met along the way and relationships that have been made. Getting a chance to meet business owners and learn more about what subcontractors deal with on a daily basis has enabled me to better serve and understand my clients in the construction industry.

While working along with NESCA's team of Mike, Sue and Loraine you get to see how dedicated they are to the organization. I've mentioned this before, they never miss a meeting, event or chance to help a member. The organization runs like clockwork and always stays on schedule. It's been a pleasure working with them this past year and I look forward to many more years.

If I had to pick one thing that's my favorite accomplishment with NESCA

over the years, it's the formation of the Young Professionals Committee and what has been accomplished with raising the next generation of members and leaders. I think it was about 10 years ago when I was elected to NESCA's Board of Directors that I was appointed to chair the newly formed Young Professionals Committee. This committee was formed to encourage our members' younger management-level employees to advance their careers by becoming more active in NESCA. What started as having a couple fun events each year has blossomed into completing charitable and education events. But what's more important is the relationships that have been developed which will carry the organization into the future. Many from this committee have joined the NESCA Board of Directors and a couple, including myself, have run through the chairs or will run through the chairs in the future.

One of the highlights of NESCA's Young Professionals Committee this year has been the establishment of a series of professional development seminars targeting NESCA, AGC and ECA young professionals. A total of six seminars have been or will soon be held on topics including: Fundamentals of Insurance, Fundamentals of HR, Fundamentals of Accounting, Fundamentals of Bonding, Fundamentals of Banking and Fundamentals of Construction Law.

NESCA continues to place an emphasis on developing the next generation of construction employees. This spring, NESCA's two endowed scholarship funds at Hudson Valley Community College awarded a total of four scholarships to deserving construction students, and NESCA's Scholarship Committee will soon meet to award Roger H. Jones scholarships to several additional students pursuing

construction-related degrees. In addition, this year NESCA established a relationship with the Northeast Construction Trades Workforce Coalition, whose mission it is to engage with school districts and their students to help them understand the pathways into the construction industry.

A highlight on the legislative side came with the signature by Governor Hochul of legislation that limits the withholding of retainage by owners of private commercial construction projects, where the value of the project equals or exceeds \$150,000, to no more than five (5) percent of the contract sum. This was NESCA's 40th legislative success since 1975.

Even with my presidency ending I will not be going anywhere. TBC has been a member supporting NESCA for over 45 years and that will not change. My father and I are the second father son tandem to be NESCA's president and we also have both been managing partner at TBC. The good news for the future is my son Robert is almost 18 and he is smarter than both of us. All joking aside, being associated with this great organization has helped me grow my career and I have been blessed to work with so many of NESCA's members, the Board and NESCA's team.

Robert L. Kind, President


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COUNSEL'S MESSAGE

Beginning January 4, 2022, contractors and construction managers became strictly liable for their subcontractors' failure to pay their employees their standard wages, prevailing wages, overtime and benefits. This liability exists whether it occurs under public or private contracts.

Interestingly, the law does not apply to home improvement contracts between an owner and contractor on an occupied home. Nor does it apply to contracts for the construction of less than 10 one- or two-family homes at one project site.

Furthermore, the legislation provided employees and/or their representative (union local) the legal right to directly recover from the contractor for these unpaid wages and benefits. There exists a three-year statute of limitations from non-payment for employees to initiate such an action.

The Legislature enacted General Business Law Section 756-f which requires subcontractors to provide

certain payroll records at the contractor's request. As many members have learned, the records required to be supplied by subcontractors are not limited by the statute.

It is not unusual for contractors to now incorporate within subcontracts financial audit requirements, financial statements, labor & material payment bonds, expansive indemnification clauses, daily and weekly certified hourly work sheets in addition to certified payroll records. Officers of subcontractors are also being required to personally guarantee the payment of employee wages, overtime and benefits to their employees.

Many subcontracts also now include monetary fines for non-payment or non-compliance with record production demands. Broad contract language provisions are also being incorporated to allow withholding of contract funds for suspicion of non-payment of employee wages and benefits. Subcontract clauses also include liquidated damages, attorney fees and the right to suspend or terminate subcontractors for non-compliance with record production demands.

It is interesting the legislature did not provide protection for the contractor or subcontractor from labor unions that allow their signatory employers to become extraordinarily delinquent in payment of employee benefits without withholding furnishment of labor to signatory contractors.

Subcontractors must understand they also retain responsibility for payment of their sub-subcontractors' non-payment of wages, overtime, benefits etc. to employees. Accordingly, it is extremely important they demand from their subcontractors in their sub-subcontracts the same scope of information and protection being required by prime contractors and construction managers.

Walter G. Breakell, NESCA Legal Counsel

COVID Paid Sick Leave to End July 31, 2025

New York, the last state in the country still requiring employers to provide COVID-specific paid sick leave to employees, will finally have that come to an end...more than a year from now. Governor Hochul's original fiscal year 2025 Executive Budget proposal included language that would end the state's COVID paid sick leave on July 31, 2024. The Senate version was slightly different from the Governor's proposal in that it would have repealed COVID paid sick leave for everyone except for health care workers.

The Governor and Legislature did finally reach agreement in the State Budget to repeal COVID Sick Leave...just not until July 31, 2025, so employers will have to deal with COVID paid sick leave for another year.

New York's COVID sick leave law was enacted at the beginning of the pandemic in March 2020, and requires five (5) or fourteen (14) paid sick days (depending on the size of the employer) during an employee's COVID isolation. Employees working for employers with less than 100 employees can subsequently take PFL/DBL benefits if their isolation period extends beyond their allotted 5 COVID sick days. Because the law did not come with a sunset date, it remains in place until repealed by the Legislature.

NESCA members are reminded that any given employee may qualify for COVID paid sick leave no more than three times total (as per a NYS Department of Labor directive). And, in order to be eligible for paid sick leave on the second and third occasions, the employee himself or herself must have received a positive COVID-19 test.

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A-W Coon and Sons, Inc. – 10 Years

NEFCO – 10 Years

Northco Products, Inc. – 10 Years

D.F. Brandt, Inc. – 20 Years

Armstrong Ceiling Solutions – 25 Years

United Rentals – 25 Years

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NESCA Day at the Races

Thursday, July 25, 2024 - Saratoga Race Course

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