



Vol. 43, No. 11

(518) 869-9800

May 2026

## NESCA Officer Elections to be held at May 14<sup>th</sup> Membership Meeting

In accordance with NESCA's Bylaws, the May 14, 2026 membership meeting will serve as the association's "Annual Meeting", at which time the election of officers to serve during the 2026-2027 fiscal year will be held. The term of all officers elected at the meeting will begin on July 1, 2026 and will end on June 30, 2027. All members of NESCA are encouraged to attend this meeting and cast your vote. NESCA's Nominating Committee has recommended the following slate of officers:

### **PRESIDENT**

Jeff Orvis – Dagostino Building Blocks, Inc.

### **VICE PRESIDENT**

Rick Otis – Amsure

### **TREASURER**

Mike Lock – PCC Contracting, Inc.

### **SECRETARY**

Jesse Gorman – Postler & Jaekle Corp.

## AGC to Challenge New Custom Fabrication Law

In December 2025, Governor Hochul signed into law legislation that will greatly expand the application of Section 220 of the Labor Law (the prevailing wage law) in New York State by including certain off-site custom fabrication as public work for purposes of payment of the prevailing wage.

Now the Associated General Contractors of NYS (AGC) has informed NESCA that they plan to fight back. AGC has retained the Hinckley Allen law firm and will be moving forward with litigation in federal court to prevent the implementation of this law. AGC believes the law can be challenged on several federal constitutional grounds, and they plan to apply for a temporary restraining order in late April/early May to prevent the law from being implemented until the case can be heard.

Under the new law, off-site fabricators will be required to pay the onsite prevailing wage at the rate where the project is

located. This law will take effect on June 18, 2026, and applies to contracts put out for bid after the effective date. Specifically, the legislation requires payment of the prevailing wage rate for the fabrication of exterior or interior wall panel systems, woodwork, electrical, plumbing, heating, cooling, ventilation or exhaust duct systems, rebar cages, and mechanical insulation solely and specifically designed and engineered for installation in the construction, repair or renovation of a public project or covered private project. However, because the statute contains the word "including", many believe DOL will expand the application and enforcement of this law to fabricated items, such as structural steel fabrication, that are not specifically listed in the statute.

Many contractors, subcontractors and suppliers will be severely impacted by this new law. The law will be virtually impossible to comply with, and contractors are already hearing from suppliers/fabricators that they will no longer participate in NYS public projects after the law's effective date.

AGC is looking for assistance from the construction industry in the following ways:

- They want to expand the number of plaintiffs to include other construction associations as well as companies who will be impacted by this law, including subcontractors and suppliers.
- They are looking for potential witnesses to testify in court on how the law will impact their businesses.
- They are looking for financial help to pay for this litigation, which will be quite expensive.

Members who will be negatively impacted by this law and are willing to help should contact the NESCA office.

## **NESCA Membership Meeting**

**May 14, 2026**

**Italian American Community Center – 6 pm**

**20<sup>th</sup> Annual Safety Awards Presentation**

6:00	Open Bar/Registration
6:30	Dinner: Strip Steak
7:15	Business Announcements
7:25	Election of Officers
7:30	20 <sup>th</sup> Annual Safety Awards Presentation

**Reception & Dinner - \$75**



## PRESIDENT'S MESSAGE

I hope everyone is enjoying the spring weather and business has picked up. I'm winding down to my final two months as the NESCA President and can't believe how fast this has gone. Looking forward to seeing most of you at our upcoming events and we could use your help in finding new members to join NESCA.

NESCA's schedule in April was extremely busy beginning with one of our most popular events. On April 9<sup>th</sup> NESCA held its annual "Meet the Estimators/Purchasing Team" event at the Italian American Community Center in Albany. This year, twenty-nine of Northeastern NY's leading commercial general contractors participated, and hundreds of NESCA subcontractors, suppliers and service providers attended the event. It was a fantastic networking opportunity for everyone involved and provided NESCA members the chance to "put a face to the name" of people they periodically interact with over the phone and through email but rarely see in person.

On April 16<sup>th</sup> NESCA held a regional membership meeting at Coppola's Italian & American Bristo in Hyde Park. Approximately 40 of our Mid-Hudson members came to the meeting to hear Mike Misenhimer present a thorough legislative update. On May 20<sup>th</sup> we will be holding a similar membership meeting for our members in the Binghamton region at McGirk's Irish Pub.

On April 21<sup>st</sup> NESCA began its leadership development series of seminars for young professionals with sessions on "Fundamentals of Accounting" and "Fundamentals of Banking". Our May 5<sup>th</sup> sessions will cover "Fundamentals of Insurance" and "Fundamentals of Bonding". We will complete the series on May 19<sup>th</sup> with "Fundamentals of HR" and "Fundamentals of Construction Law".

And to conclude a busy month, from April 29<sup>th</sup> until May 1<sup>st</sup> several NESCA officers and board members will represent our membership at the annual spring conference of the National Subcontractors Alliance (NSA) in Boston. There is always a lot to learn at the NSA conference and we never fail to come back with good ideas for programs, events, and legislative initiatives.

NESCA's May 14<sup>th</sup> membership meeting will not only include the presentation of our annual safety awards to deserving members, it will also serve as NESCA's "Annual Meeting" at which time officers will be elected to serve during our July 1, 2026 – June 30, 2027 fiscal year.

NESCA Membership Directory update forms were sent to all members in April. Please review your current listing in the Directory and provide the NESCA office with any changes or updates you may have. NESCA's Directory is not only sent to all members, but also to

general contractors, design professionals, and public contracting agencies.

And finally, members should mark your calendars for several more upcoming NESCA events. On May 27<sup>th</sup> NESCA will hold its annual "Sales Tax" seminar at the Building Industry Center. On July 23<sup>rd</sup> NESCA will hold our very popular "Day at the Races" in Saratoga, and September 14<sup>th</sup> is the date of our annual golf outing, this year at Shaker Ridge Country Club.

I also want to thank Mike, Sue, Loraine and all the Board members for all their work in keeping things going.

*Joe Jerkowski, President*

## NESCA NEWSLETTER

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MIKE LOCK, Secretary

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## COUNSEL'S MESSAGE

A construction legal issue which repeatedly presents itself to our office is subcontractors not being fully aware of their contractual responsibility when encountering changed or unforeseen conditions materially differing from what is described in the plans, specifications, or contract documents. Frequently subcontractors are presented with extra work arising either completely outside the scope of their subcontract or are directed to perform additional work generally in the nature of the subcontract but not specified in the subcontract. Admittedly it is sometimes difficult to distinguish the difference between extra work and additional work. The important thing is the subcontractor will be confronted with spending money for performing work which the subcontract does not have a provision to pay.

This is when a written change order will be required for a subcontractor to receive payment. It is

also when a subcontractor's failure to understand the contractual procedure required to preserve its right to receive a change order; its obligation to continue performance of the work under a written directive pending finalization of either a change order or undertaking a formal claim under the dispute clause of the contract and importantly the economic impact the subcontract's pay when pay clause imposes when a written change order is not developed until several months after the additional/extra work is completed.

However, if the subcontractor does not give written notice precisely as set forth in the subcontract it signed on the project on which the claims arose, not the previous subcontracts it had experienced, it risks having its claims dismissed without any compensation. Those subcontract clauses providing 72 hours to provide notice of claim must be notified during negotiations to **preferably 21 days but no earlier than seven working days after the claim was identified.**

When submitting a Notice of Claim the subcontractor should also include a request for time extension to be included with the duration, which is reasonably identifiable. Importantly if unable to negotiate the removal of a second layer of information required to be furnished within several days of the initial notice, the subcontractor needs to provide as much information as possible in its possession in writing and reserve the right to submit supplemental information to comply with the provisions as it becomes available.

It is also important when given a written directive that whoever is issuing the directive retains the contractual authority under the prime contract and subcontract to do so. If the person issuing the directive does not have contractual authority to do so the subcontractor will not be entitled to receive compensation. The person on behalf of the owner and prime contractor retaining such authority to issue written directives should be identified in the subcontract document itself before the project begins.

It is noteworthy that many subcontracts now contain language, known as exculpatory clauses, which relieves the prime contractor of any payment responsibility for work performed without a change order, or under written directive, unless a myriad of events occur prior to beginning work. Needless to state there will be insufficient time to comply with those procedural steps and comply with the construction schedule since there will be no time extension accompanying the change order, if at all, while work continues to be performed. The subcontractor should carefully review the subcontract prior to signing and revise those clauses to the best of its ability.

It is also noteworthy that many subcontracts today contain exculpatory clauses relieving the prime contractor from payment liability unless the owner first pays the prime contractor. If the subcontractor is unable to negotiate that risk out of the subcontract, then it should emphasize a modification to the clause authorizing disputed work to be performed by written directive that the owner must also be a signatory to the written directive. This will clarify the owner is aware that disputed work was being performed under its authority and the owner may be subject to pay additional funds for the directed work.

All the above information is critically important. However, the most important is the subcontractor **MUST COMPLY WITH ALL CONTRACT CLAUSES REQUIRING WRITTEN NOTICE OF CLAIM** to the prime contractor and/or the owner if required. It also must be recognized that, even with an agreed upon but unsigned change order, there must be a written directive issued by the prime contractor, and in some contracts also the owner, to the subcontractor to perform the work. An unsigned change order is no more than a claim for payment of the directed work under the contract. This is true regardless of

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the amount of unwritten assurance or pressure, which is given that the subcontractor will be paid.

Remember commencing changed or extra work, even if orally agreed upon by the parties, without a written signed change order, or written directive to perform specified work, will likely result in a legal determination that you considered the work not to be require additional compensation or contractual time you chose to waive any claim for additional compensation or time. In fact, some subcontracts will state exactly that, and subcontractors still fail to provide the requisite written notice of claim contained in the subcontract.

Hopefully, after reading this article that will not happen to any of NESCA members! Remember if in doubt always send a written notice of anything that could be considered changed, extra or additional work and require a written change order or written directive BEFORE COMMENCING TO PERFORM THE DISPUTED WORK!

*Walter G. Breakell, NESCA Legal Counsel*

## Member Payment Tip

The groundwork for prompt payment and good cash flow must begin prior to the award of a subcontract. It is all too easy for a general contractor to hide behind unfair payment terms and answer your pleas by telling you to “read your contract”. The best position for a bidding subcontractor is to have included as part of its bid its preferences for inclusion in the subcontract. Thus, prior to or with submission of the bid price, the subcontractor should clearly communicate its intended bid scope and all other qualifications, exclusions, limitations, terms and conditions which it proposes to be included in any resulting subcontract agreement. Then the subcontractor’s bid can only be enforced by the general contractor with those expressed conditions included in the subcontract agreement. The general contractor cannot unilaterally bind the subcontractor to the bid price without agreeing to the accompanying terms and conditions upon which the price was expressly conditioned. NESCA has developed a sample pre-bid proposal letter for use by members which defines the scope and basic payment terms upon which the bid is based.

## NESCA Member Milestone Anniversaries

**Builders Installed Products – 10 Years**  
**Dimension Fabricators, Inc. – 15 Years**  
**WPNT Construction, Inc. – 15 Years**  
**Johnson, Lauder & Savidge, LLP – 25 Years**  
**Commercial Interiors, Inc. – 30 Years**  
**Donnelly Construction, Inc. – 30 Years**  
**Warren W. Fane, Inc. – 40 Years**  
**Schenectady Steel Co., Inc. – 55 Years**

## Welcome New Members

**Apex Striping, Inc.**  
 6500 New Venture Gear Drive  
 East Syracuse, NY 13057  
 315-432-0714  
[hulsizer@apexstriping.com](mailto:hulsizer@apexstriping.com)  
 Contact: Laura Hulsizer

**Dodge Construction Network**  
 58 Broad St. Suite 14070  
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 208-994-2361  
[mike.vogt@construction.com](mailto:mike.vogt@construction.com)  
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## Calendar of Events

**May 14, 2026**  
*Board of Directors Meeting*  
 Italian American Comm. Ctr. 5 pm

**May 14, 2026**  
*NESCA Membership Meeting*  
 Italian American Comm Ctr., 6 pm

**May 20, 2026**  
*Binghamton Membership Meeting*  
 McGirk’s Irish Pub  
 Binghamton, 6 pm

**May 27, 2026**  
*Sales Tax Seminar*  
 Building Industry Center  
 Albany, 6 pm

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