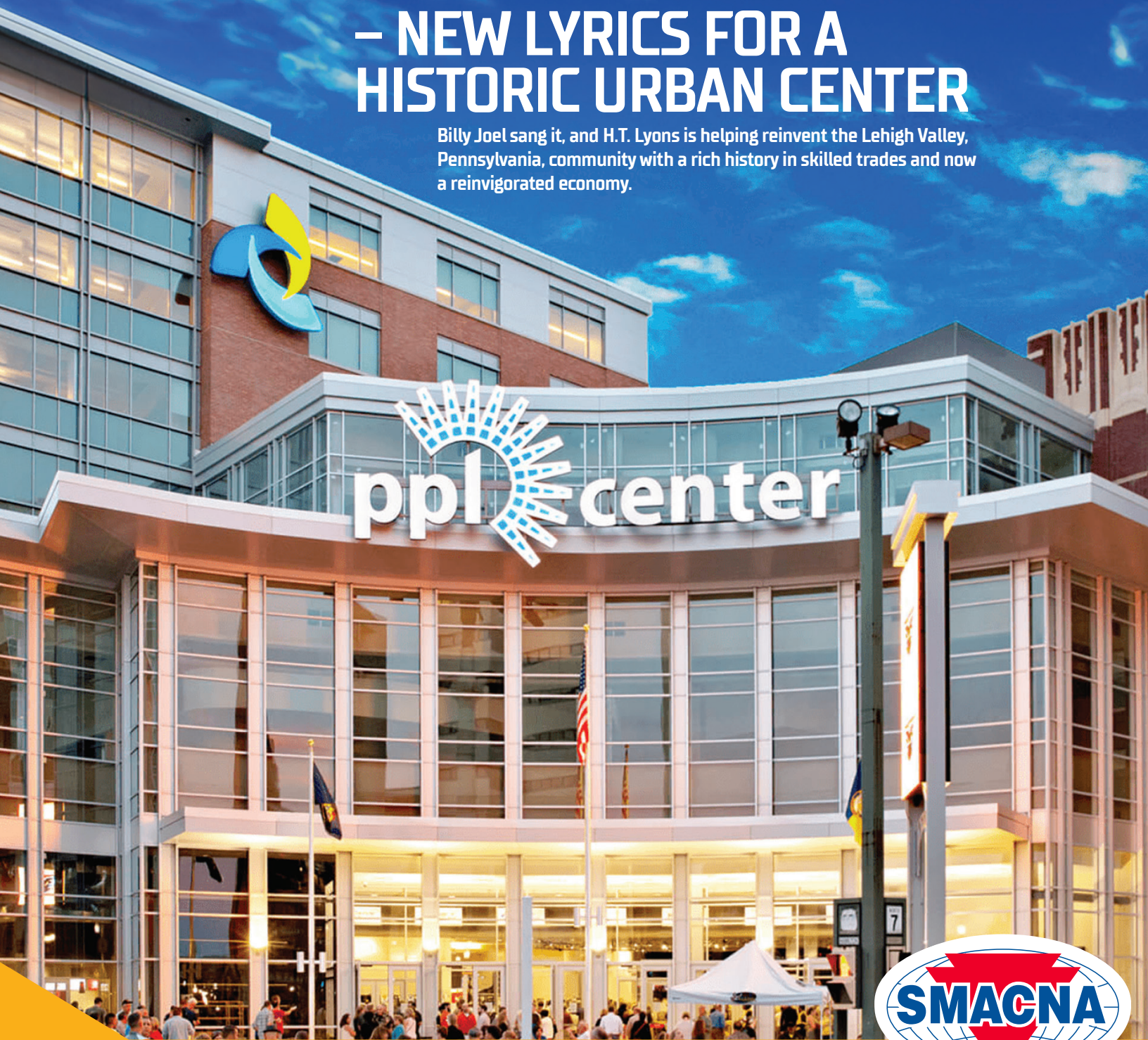


SEPTEMBER/OCTOBER 2024

SMAC NEWS

'LIVING HERE IN ALLENTOWN' – NEW LYRICS FOR A HISTORIC URBAN CENTER

Billy Joel sang it, and H.T. Lyons is helping reinvent the Lehigh Valley, Pennsylvania, community with a rich history in skilled trades and now a reinvigorated economy.



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CEO UPDATE Aaron Hilger



SMACNA at the Forefront of AI Tech

Construction has existed since before historical records existed. Back then, improving the built environment started simply by creating a shelter from wind or rain. From these basic structures, humanity learned how to construct the ancient megaprojects like pyramids. Today, we build skyscrapers that reach thousands of feet into the air, mile-long mega factories and massive infrastructure projects to move people and goods. The construction process is also still, in many ways, the same. A need is identified, a project is designed and skilled workers take an idea and make it real. Of course, steps in the process have changed. We don't

draw our designs on papyrus anymore. Nor are we dependent on paper drawings or having to haul materials with a hand hoist. Innovation and technology have improved our processes in many ways. Along the way, we may also have lost some historical skills as they were replaced with faster construction methods.

Embracing artificial intelligence (AI) is one of the next steps for construction. AI is more than a tool to help college kids write faster term papers (although I am sure the triplets are using it). As we learn how to harness the power of AI, we have the potential to design better projects and execute them more efficiently. Along

the way, we may also be able to reduce the amount of time our skilled staff spend on low-value tasks, like routine paperwork and submittals. AI might help us work more safely by identifying hazards and finding solutions to mitigate them.

So many tools are helping construction firms nationwide develop newer and better project management methods. This includes bringing multiple existing platforms together to form a unified interface to streamline workflow and ensure that projects are delivered on time and within budget. SMACNA is





FROM THE PRESIDENT

Carol Duncan

working with industry leaders in AI to pave the way for our members to better understand these technologies and how they can be leveraged to deliver maximum value to our customers. I look forward to seeing the programs that our

structively. This also represents a massive economic opportunity for SMACNA contractors, as our expertise in this field can be used well, primarily as this law is implemented and these new energy production assets begin to come online.



MANY TOOLS ARE HELPING CONSTRUCTION FIRMS DEVELOP NEWER AND BETTER PROJECT MANAGEMENT METHODS, INCLUDING BRINGING MULTIPLE PLATFORMS TOGETHER TO FORM A UNIFIED INTERFACE TO STREAMLINE WORKFLOW."

AI Task Force creates in 2025, and I invite you to share your thoughts with me or any other SMACNA staff member.

SMACNA has also been on the cutting edge of urging our leadership in Washington to push forward the Advance Act legislation that will streamline the regulatory process for nuclear reactors. One of the intended results of this law is the production, installation and activation of small nuclear reactors at energy-intensive sites, including (but not limited to) data centers. The needs that our growing data management and storage infrastructure are putting on our energy grid are enormous, and there needs to be common sense solutions to these challenges, which the Advance Act forwards con-

Artificial intelligence and nuclear reactors — are they the next step to robots overthrowing humanity? I surely hope not, although living in the land of data centers, we wonder at times. All joking aside, SMACNA and SMACNA members will be leading the use of AI and will have large roles in nuclear development. SMACNA will continue to keep our members at the forefront of these changes so they can compete in this dynamic marketplace. ▼

Aaron Hilger is CEO of SMACNA, bringing more than two decades of executive association leadership to this role. Hilger is focused on building a stronger, more competitive environment for all SMACNA contractors.

Invest In Your Workforce Future

This summer, I had the pleasure of joining Portland SMACNA for a Heavy Metal Summer Experience camp. The success of this program over the past couple of years has been nothing short of remarkable. This program is a great opportunity to give our young people chances to explore careers where they have access to superb medical care, wages and retirement benefits but also know they are responsible for working on projects that will stand the test of time and benefit their communities.

As I watched graduation, the first thing that struck me was the pride these young men and women felt. They had just spent a week working with their minds and hands and learning new skills. The families and loved ones in attendance echoed that sense of accomplishment. The feeling in that room was electric.

Heavy Metal Summer Experience offers these students a chance to learn more about our industry and the skilled trades. They had the opportunity to build tangible projects and to learn more about the pathway to a successful career in the skilled trades. Opening this career track is more critical than ever. With the shifting nature of the global economy, making an investment in college is becoming more difficult to justify than ever before. However, a career where you are responsible for building sustainable and enduring infrastructure that will stand the test of time is something that will never go out of style.

The demands being placed on our industry are like none other that I've encountered during my professional life. If you had told me when I started at General Sheet Metal that SMACNA contractors would be working on places that build electric vehicles or high-capacity microprocessors for supercomputers, I would have shaken my head in disbelief. But here we are.

To meet the demands of these massive projects, we need to put ourselves in a position to attract the best and the brightest. More importantly, we need to get the attention of this incredible talent pool as soon as possible. This is where programs such as Heavy Metal become more critical. First-hand exposure to the wonders of this industry is a win-win for everyone. We give these young people the exposure to a beneficial career path. At the same time, contractors can make early inroads in addressing their talent and workforce challenges.

If you haven't had the opportunity to host a Heavy Metal camp, please consider it. You will not only be making a worthwhile investment in your business but also in the future of so many talented young men and women. ▼

Carol Duncan, SMACNA President



Solving Window Pains

A Spokane, Washington, residential architectural project required Carlson Sheet Metal to figure out how to prevent rainwater from penetrating the flashing around a high-end home's many windows.

The home uses 5,500 square feet of 24-gauge exterior panels from Metal Sales Manufacturing Corp. Carlson Sheet Metal Works also created a fireplace surround from 14-gauge hot-rolled bare steel.

Most of the work done by Carlson Sheet Metal Works is industrial, but that doesn't mean the 78-year-old, Spokane, Washington-based company doesn't have a large portfolio of architectural projects. Carlson is a metals multitasker, working on commercial, industrial and architectural work using specialty metals such as stainless steel, copper, aluminum, brass and carbon steel.

According to company President Brian Fair, a reputation for high-quality work and longstanding relationships with general contractors around eastern Washington state and

northern Idaho has allowed it to work on historic and custom homes in the region while also maintaining a focus on industries such as farming, forestry and food processing.

That includes a multimillion-dollar custom home recently built on Liberty Lake in a wooded area near Spokane. Fair says his company has an almost 30-year relationship with the general contractor who supervised the project. It involved installing steel interior and exterior metal panels. The interior work called for Carlson to create a fireplace surround using 14-gauge hot-rolled bare steel. The exterior used 2,500 square feet of TL-17, a flush-face panel made



The home has about 50 windows. Creating custom flashing to ensure they didn't leak during one of the region's numerous rain storms was challenging, company President Brian Fair says.

of 24-gauge steel from Metal Sales Manufacturing Corp. painted in the company's Mistique Plus color. It also used 3,000 square feet of TL-20, a standing-seam metal panel, also 24 gauge, in Metal Sales' Dark Bronze color.

KEEPING THE WATER OUT

According to Fair, the biggest challenge in this project involved sealing the home's many windows to ensure rain didn't get in during the region's famously rainy weather. He estimated the house has about 50 windows.

"This project was different," he says. "They used commercial window frames because of the size of the windows. The vinyl window manufacturers could not build the windows with these tall, linear components." The frames were commercial grade and made of extruded aluminum. They rest inside the wood frame.

"Our challenge was to figure out how to weatherproof and build a building envelope around a window that could not be sealed to the wood framing," Fair adds. "And the challenge of that is the flush panel projects from the surface of the wood are about an inch and a half, but the standing theme panel is flush with the wood."

"So we actually had two different elevations and had to figure out how to build an envelope around that aluminum frame so that any water that hits the side of the building would not make its way through the panel and the building envelope," he says.

THE SOLUTION?

"It really was in the flashing," Fair says. "And how we actually counter-flashed the windows. We built a custom flashing receiver pocket that would enclose the metal panel, but allowed us to create a hidden joint around the aluminum extrusion." Carlson workers created a model in the shop to ensure it would work. "We built our window package around that sample. And we tested it a couple of times."

The fix satisfied the homeowner, architect and general contractor. "They just say, 'Hey just make it so

Carlson's Beginnings as a Residential HVAC Contractor

Carlson Sheet Metal Works Inc. was founded in 1946 by Swedish immigrant Conrad Carlson as a residential HVAC company. In the 1950s, it was purchased by Dan "Bud" Fair, the grandfather of current President Brian Fair. That allowed the company to expand into farm equipment fabrication, Brian Fair says.

"When my grandfather bought the business, we were really a small HVAC company," he says. "He was actually a gentleman farmer. So he bought the business to use the skills that he had in the shop to help him (make) farm implements. We used to do quite a bit of agricultural-type work."

Brian's father, Roy Fair, took over after Bud Fair's retirement in the late 1980s. Roy Fair moved the company into the industrial market, purchasing a 600-ton, 22-foot press brake. "We built a building around that press brake. That really kind of started the whole industry," Brian Fair says. "That was my dad's vision. He saw that there were fewer people in those markets."

That led to industrial project work in the aluminum and mining industries, which continues today.

it doesn't leak. I don't care how you do it.' That wasn't really in their wheelhouse, figuring that part out, but it was a really big deal."

While it's not the type of project Carlson works on every day, Fair says he enjoys the chance to demonstrate his company's architectural skills. "It is satisfying," he says. "When they do come by, it's based on building our relationship with the general contractor. If he's got it in his scope of work and says that he can afford our costs and burdens, then we never turn them down." ▼



Above and Beyond

United HVAC installs hotel ventilation system as part of a Boston redevelopment project.

The 400-room, 14-story CitizenM hotel in Boston's Back Bay section. SMACNA member United HVAC won a \$3.7 million contract to install all the ductwork for the hotel's ventilation, smoke removal and fire life safety systems.

In a high-traffic section of Boston, an area above the Massachusetts Turnpike is being turned into a commercial, retail and residential destination. And a SMACNA contractor played a major part in its redevelopment.

Known as "Parcel 12," the development in Boston's Back Bay section encompasses the area near the end of Boylston Street, Newbury Street and Massachusetts Avenue. A portion of the Massachusetts Turnpike runs under this bustling section of Back Bay, which is highly developed and has a constant flow of pedestrian and vehicle traffic.

In 2018, plans were announced to turn the area into a pedestrian- and tourist-friendly area, with bike paths,

green space, offices, stores and a 144,000-square-foot, 14-story hotel built above the turnpike. Historic Fenway Park, home to the Boston Red Sox, is also nearby.

Designed by Boston architecture firm Elkus Manfredi, the development includes 450,000 square feet of commercial space in addition to the hotel. Massachusetts-based auto shopping website company CarGurus Inc. is among the office tenants. Another 50,000 square feet is marked for retail and dining.

SMACNA member United HVAC, a design-build contractor based in Rockland, Massachusetts, was awarded a \$3.7 million contract in 2021 to install all the ductwork, including the ventilation, smoke removal and fire life safety systems for the 400-room CitizenM hotel being built over the highway.



Left: Much of the ductwork for the hotel was manifolded at United HVAC's sheet metal shop before being installed on site. Right: Rectangular duct hangs in the hotel's second floor. The project used 107,000 pounds of ductwork.

AN UNUSUAL PROJECT

Tom Scolaro, United HVAC President, says the project's scope and location was unusual. "Parcel 12 was the first air rights project in 30-plus years in Boston," Scolaro says. "This project is not only built on top of the Mass Pike but the MBTA (Massachusetts Bay Transportation Authority) train line as well, making it a really tricky location to navigate for construction."

"Air rights" refers to the ability to develop the vertical space above a property, which, in this case, referred to the state-owned turnpike.

Adam Lannan, Vice President of Operations at United HVAC, notes that the development was one of many projects delayed by the COVID-19 pandemic in early 2020. "I don't think they even had one piece of steel in the ground, and work stopped," he says.

Once the project was cleared to continue, United workers at the company's 40,000-square-foot sheet metal shop fabricated 107,000 pounds of 16- and 24-gauge galvanized duct for the hotel.

"This project was a lot of rectangular," Lannan says. "Each hotel unit had a real small air handler, and it had a supply and return plenum on both sides. Those all got prefabricated in our shop."

That kind of preparation was key to keeping the project moving, he added. "We spent a lot of time prefabricating in our shop so we could just be ready to ship right out on carts and the guys could put them right up with the hangers that we already had laid out," Lannan says.

SHOP EFFICIENCY WAS KEY

Brian Harrington, a United HVAC project manager, says the company's sheet metal shop was critical to the project's success.

"The fact that we manifolded a lot of the materials and stock in our own shop really saved us on the field install," he says. "That was something big."

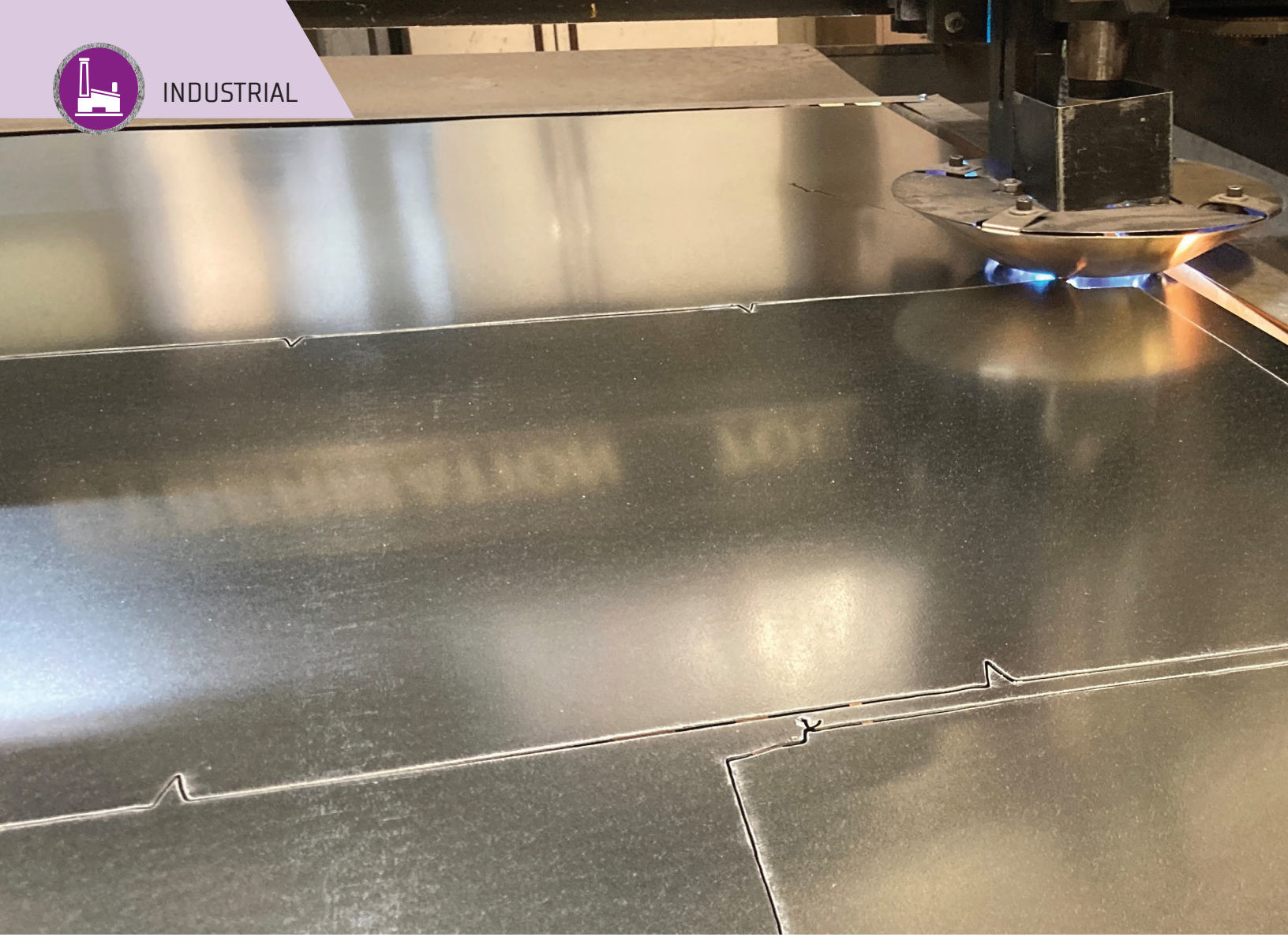
Another big help, according to Harrington: The Gripple Fast Trak hanger that was used to attach the Swegon grilles to the ceiling. The prefabricated trapeze-style hanger makes installing duct in tight spaces much easier.

Something else different about the project, Lannan says, was that the pressurization duct installed was under the hotel staircase as part of the hotel's fire control system. "They actually had to put the staircase in, paint the staircase, then our duct was hung, exposed, just under the staircase," he says. "So you're walking underneath the pressurization duct instead of it being in a riser. Definitely very different."

The CitizenM project was the first time United HVAC had installed Swegon grilles. These Sweden-made grilles were imported and shipped to Boston via barge — which was stuck in Boston Harbor for a couple weeks due to pandemic-related supply chain problems.

Harrington says the grilles are not like the units they typically work with. "These grilles are unique in that the pitot tube is built-in for balancing purposes," he says, adding that the European design had to be retrofitted to work with an American HVAC system. "They fit into the plenum box directly above the ceiling and have an open-face grille."

United HVAC's three years of work on the CitizenM hotel is finishing now. The hotel is scheduled to open to the public in October. The development of the area around the hotel is well underway. Stores are scheduled to open this fall. And while the area was called Parcel 12 during construction, it's been given a new name: Lyrik. The name is a homage to the nearby Berklee College of Music and Boston Symphony Hall. ▼



Fabricate and Chill(er)

SMACNA member C&S Cos. coordinated with other trades to install exhaust system ductwork used by three chillers on the campus of Syracuse University.

From car washes and factories to playgrounds and airports, SMACNA member C&S Cos. has long been involved in commercial, civil, industrial and architectural projects — big and small — across the country. Its services range from construction planning to engineering and sustainability guidance.

A recent addition (since June 2023) to that service list is sheet metal fabrication and installation. C&S Cos. has opened a sheet metal shop near its corporate headquarters in Syracuse, New York. One of its recent industrial sheet metal projects was at nearby Syracuse University.

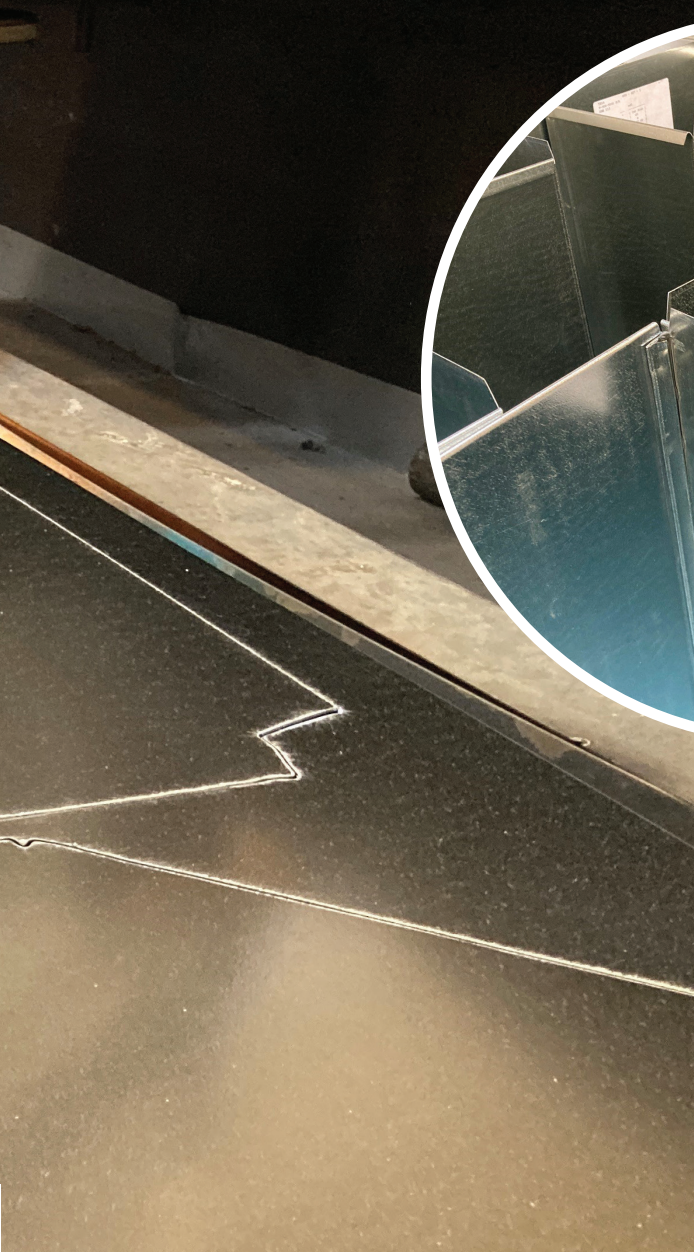
Syracuse University is a private research institution that dates back to 1870. Thirteen schools and colleges are part of its campuses and satellite locations. Famous alumni include U.S. President Joe Biden, New York state Gov. Kathy

Hochul, “American Bandstand” host Dick Clark, “Columbo” actor Peter Falk, and sports broadcaster Bob Costas.

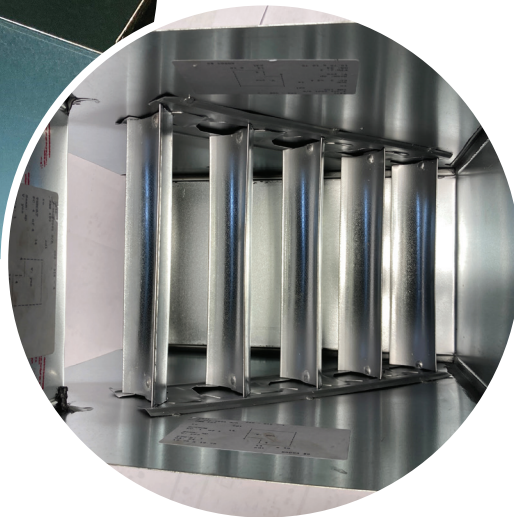
As part of a multimillion-dollar, multiyear modernization effort, the university is replacing three chillers on its campus. C&S Cos. was awarded a \$150,000 contract to fabricate the chillers’ exhaust system ductwork, as well as make and install the duct for two air handlers. One is a rooftop air handler that distributes air throughout the structure and another serves the building’s basement.

C&S Cos. is working as a subcontractor under Riggs Disler, a 116-year-old New Jersey-based construction firm. Riggs Disler is one of the largest mechanical, electrical and utility contractors in the country.

Besides the sheet metal work, C&S Cos.’ general construction division also secured a contract to perform some concrete foundation work as part of the project.



Ductwork made in C&S Cos.' Syracuse, New York, sheet metal shop. The industrial HVAC contractor added duct fabrication services in June 2023.



Don Young, a Senior Project Estimator at C&S Cos., says the university sheet metal work requires careful coordination due to the size of some of the piping.

"There's some large chilled water piping on this job: 30-inch diameter," Young says. "That's going to be installed in the same space we're installing the duct system."

BIM WAS IMPORTANT

With many subcontractors on the project, Young says building information modeling (BIM) coordination was extensively used before any duct was made or installed. It was critical to avoiding clashes and slowdowns.

The only real problem, Young says, involved penetration issues in the floors. And those "we worked through," he adds. "Our piece of the project is fairly simple."

A major university client is nothing new for C&S Cos., which has 20 locations across the country and counts automotive, industrial and pharmaceutical companies, schools and even governments as among its clients.

Eric Taylor, P.E., a Senior Project Manager who worked on the project, says C&S Cos. performs industrial work.

"We do a lot of general construction work for private industrial clients," Taylor says. "A large portion of our

business is process piping and sheet metal for private industrial clients."

The Syracuse University project is using 25,000 to 30,000 pounds of 20-gauge sheet metal, Young says. Most of it was turned into rectangular duct, but some spiral was purchased from an outside contractor for the project. Fabrication was done at C&S Cos.' 25,000-square-foot Syracuse sheet metal shop. The shop is equipped with a full coil line and two plasma tables. Four C&S Cos. employees — two on-site and two in the shop — worked on the job.

COORDINATING SUCCESS

When asked what was the most interesting thing about the project, Taylor and Young thought about it for a few moments. "Coordination with the chillers and the rooftop unit," Young says. "The sequencing. Coordinating access and logistics was probably the most important part."

"And the physical size," Taylor adds. "These are very large chillers."

Working with chillers that were 2,500 tons required in-depth planning by the C&S Cos. team. "So after the chillers were set (in place), then the rooftop units could be scheduled," Young says. From there, C&S Cos. workers could start the process of installing the ductwork. "Just get our duct system installed and then through the building, exterior into the interior."

As of summer 2024, C&S Cos.' part of the Syracuse University project is wrapping up. The whole project was set to be completed by the end of September, as of presstime. ▼



Elevating Customer Service in Residential HVAC

Follow these insights from a service strategist.

In the competitive world of residential HVAC services, exceptional customer service can be the key differentiator that sets a business apart.

John Tschohl, a Service Strategist from the Service Quality Institute, provides invaluable advice on creating a service-oriented culture that can transform an HVAC business. Tschohl spoke at the SMACNA Convention in Phoenix, Arizona, on “Making Customer Service Your Core Principle.”

Here are some actionable tips residential HVAC contractors can use based on Tschohl’s expertise that can help HVAC companies enhance their customer service.

1. ADOPT A CUSTOMER-CENTRIC MINDSET

The foundation of outstanding customer service lies in adopting a customer-centric mindset. Tschohl emphasizes that every interaction with a customer is an opportunity to

create a positive experience. HVAC businesses should train their employees to prioritize customer satisfaction in every task, from answering phone calls to performing repairs and maintenance.

Tip: Encourage your team to see things from the customer’s perspective. Simple gestures, like a warm greeting or a follow-up call after a service visit, can leave a lasting impression.

2. EMPOWER YOUR EMPLOYEES

Empowering employees to make decisions that benefit the customer is crucial. Tschohl advocates for giving employees the authority to resolve issues on the spot, without always needing managerial approval. This not only speeds up service but also demonstrates trust in your team’s judgment.

Tip: Implement guidelines that allow employees to offer solutions, such as discounts or complimentary services



Establish a recognition program that celebrates outstanding customer service. This could include monthly awards, bonuses or public recognition. Highlight specific examples of excellent customer service to inspire the rest of the team." – JOHN TSCHOHL

when addressing customer complaints. This approach can turn a negative experience into a positive one.

3. IMPLEMENT CONTINUOUS FEEDBACK LOOPS

Continuous improvement is a hallmark of excellent customer service. Tschohl advises businesses to actively seek customer feedback and use it to refine their services. Regularly reviewing feedback helps identify patterns and areas needing improvement.

Tip: Create a simple, user-friendly feedback system. This could be an online survey sent after each service visit or a follow-up phone call. Make sure to act on the feedback and inform customers of the changes made based on their input.

4. PERSONALIZE THE CUSTOMER EXPERIENCE

Personalization can significantly enhance customer satisfaction. Tschohl highlights the importance of making customers feel valued and understood. Knowing and addressing customers by name, remembering their service history and understanding their preferences can create a more personalized experience.

Tip: Use a customer relationship management (CRM) system to track service history and preferences. Share technician profiles with customers before their appointments, including a photo and a brief biography, to create a sense of familiarity and trust.

5. RECOGNIZE AND REWARD EXCEPTIONAL SERVICE

Recognition and rewards are powerful motivators. Tschohl recommends acknowledging and rewarding employees who go above and beyond in delivering excellent customer service. This not only boosts morale but also reinforces a culture of service excellence.

Tip: Establish a recognition program that celebrates outstanding customer service. This could include monthly awards, bonuses or public recognition in team meetings. Highlight specific examples of excellent service to inspire the rest of the team.

6. INVEST IN ONGOING TRAINING

Consistent training is essential to maintain high standards of customer service. Tschohl advises that businesses should invest in regular training sessions to keep employees updated on best practices and new techniques in customer service.

Tip: Schedule quarterly training sessions focused on different aspects of customer service, such as communication skills, conflict resolution and empathy. Encourage employees to share their own tips and experiences to foster a collaborative learning environment.

7. FOSTER A CULTURE OF ACCOUNTABILITY

Accountability ensures that everyone takes responsibility for their role in delivering exceptional service. Tschohl stresses the importance of holding employees accountable for their actions and ensuring they understand the impact of their performance on customer satisfaction.

Tip: Set clear expectations and performance metrics for customer service. Conduct regular performance reviews and provide constructive feedback. Celebrate successes and address areas for improvement promptly.

TRANSFORMING HVAC SERVICES THROUGH EXCEPTIONAL CUSTOMER CARE

By following Tschohl's advice, residential HVAC businesses can create a service-oriented culture that prioritizes customer satisfaction. Implementing these tips can lead to improved customer retention, positive word-of-mouth and a stronger reputation in the market. ▼



H.T. Lyons is a \$160-million mechanical design, construction, maintenance and energy services firm with offices in Pennsylvania, New Jersey, New York and South Carolina.

'Living Here in Allentown' – New Lyrics for a Historic Urban Center

Billy Joel sang it, and H.T. Lyons is helping reinvent the Lehigh Valley, Pennsylvania, community with a rich history in skilled trades and now a reinvigorated economy.

For more than a century and up until the late 1990s, the Lehigh Valley region of Pennsylvania, home to headquarters of rust belt empires like Bethlehem Steel and Mack Trucks, was heavily industrialized much like many blue-collar based cities across the country with economies that relied on committed work ethic and skilled trades.

Its county seat, Allentown, is where the American Liberty Bell was famously stashed away for nine months during the Revolutionary War. Its streets of historic homes are a nod to the city as one of the country's first urban centers.

And, of course, most who are from town or out-of-town identify Allentown by the eponymous 1982 hit by Billy Joel. (He never lived there, by the way.)

Allentown is also home to H.T. Lyons, an Equans Co. and \$160-million mechanical design, construction, maintenance and energy services firm with offices in Pennsylvania, New Jersey, New York and South Carolina. At any given time, more than 100 of its service trucks are on the road.



Its heart is in Allentown.

H.T. Lyons President Roeland Hoeke recounts the shift to offshore manufacturing Lehigh Valley faced and decline in industry. “That was tough for the economy here,” he relates, teeing up a comeback story that ultimately showcases Allentown and surrounding communities as an example of vision, progress and committed skilled trades that take a 21st Century approach to design-build in mechanical, electrical and plumbing (MEP) services.

H.T. Lyons has been behind the scenes — literally in the ductwork — and equally front and center of a renaissance of large-scale development projects that have reinvigorated Allentown. Its portfolio includes transformative projects like the 10,000-seat PPL Center indoor sports arena, home of the Lehigh Valley Phantoms of the American Hockey League, which is the primary development team for the Philadelphia Flyers.

"WE WERE INVOLVED IN THE DESIGN AND DEPLOYED PREFABRICATION MODULARIZATION STRATEGIES FOR THE BUILDINGS."

— ROELAND HOEKE

H.T. Lyons also played an integral role in PPL Plaza, which includes a LEED Gold, 8-story office building, Renaissance Allentown Hotel and array of shops and restaurants.

One of H.T. Lyons' first redefining projects was one of the City Center buildings, where the team practiced its industrialized, preassembly process in-house with modularized mechanical units. “We build the mechanical penthouse in our shop in four pieces,” Hoeke relates.

Proud of the positive footprint H.T. Lyons has made in the community and beyond, Hoeke says, “We like to think of ourselves as a premier contractor in the area, and we have our own very innovative engineering department. I know these projects bring a great sense of pride to our people in the shop and out in the field. They are excited about making a difference in their community.”

GROUNDBREAKING MOMENTUM

The mixed-use development City Center Lehigh Valley in downtown Allentown included an 11-story Two City Center building project by North Star Construction Management Inc., which named H. T. Lyons as its mechanical contractor. One of the team's charges was to create energy efficiencies that ultimately resulted in the building earning a Green Energy Star rating from the U.S. Department of Energy.

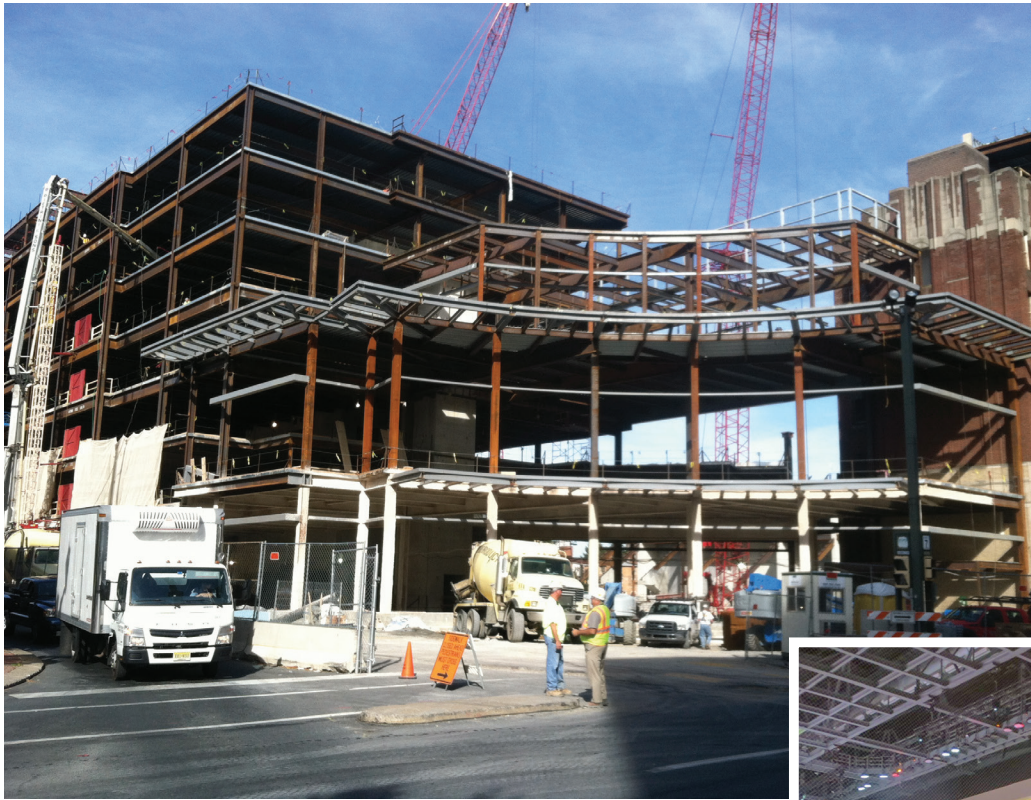
“As a developer, your customers who are tenants appreciate this because you are lowering their energy costs,” Hoeke points out.

H.T. Lyons deployed its turn-key fabrication process by designing and fabricating modules in its facility that were then installed on site. “This way, we can control the environment, it's more productive, it's safer and we can get to work first thing in the morning rather than in the field where you have to spread out your tools and set up before you can get started,” Hoeke explains. “We try to preassemble as much as possible.”

For the Two City Center project, a mechanical penthouse consists of fans, compressors and boilers — all built in the shop. “When we installed it, we had to shut down the street and install it with a crane in a

The eight-story Renaissance Allentown Hotel.





The PPL Center takes up an entire city block.

The 10,000-seat PPL Center indoor sports arena is home of the Lehigh Valley Phantoms of the American Hockey League.



The PPL Plaza includes a LEED Gold, 8-story office building, Renaissance Allentown Hotel, and an array of shops and restaurants.



H.T. Lyons was involved in all of the mechanical aspects of these buildings — from sheet metal to piping to plumbing.

matter of a few days,” Hoeke says. “If you installed it on site, the process would have taken several months.”

Hoeke says this time and efficiency savings vastly increased productivity and saved cost while elevating quality craftsmanship and mitigating safety concerns. Some of the highlights of this project include high-efficiency compressors and boilers. “We used fan walls so there are a lot of features that make this energy-efficient,” he points out.

REIMAGINING CITY CENTER ALLENTOWN

The state-of-the-art PPL Center Arena is one of the region’s largest events venues, packed with amenities from concessions to executive suites. The public/private larger-picture PPL Plaza project that includes the arena consumes an entire city block, an eight-story office building, an eight-story Renaissance Allentown Hotel, multiple

‘THERE IS A GREAT VIBE, YOUNG RESIDENTS, ATTRACTIVE RESTAURANTS, AND PEOPLE WANT TO LIVE IN ALLENTOWN.’

— ROELAND HOEKE

restaurants and a six-story parking garage.

H.T. Lyons designed and built a central utility plant consisting of three 700-ton chillers and three hot water boilers that provide temperature control via various air handlers throughout the arena facility.

“We were involved in the design and deployed prefabrication modularization strategies for their buildings along with

the mechanical infrastructure,” Hoeke relates.

A central plant in the lower-level parking garage next to the arena houses air handlers with chill water and hot waters oils. “An 84-inch diameter duct runs through the building trusses and does a loop all the way around the arena with diffusers that blow down to the floor,” Hoeke explains.

All of the ductwork was fabricated in the shop. “We trucked it out and lifted it into place with long boom lifts and cranes,” Hoeke says of the complex logistics. “We were involved in all of the mechanical aspects of the building, from sheet metal to piping to plumbing.”

The sheer size of the ductwork made PPL Center Arena a landmark project for H.T. Lyons.

“We had to decide, do we install it before the roof goes on or after?” Hoeke says of snaking the ductwork through ceiling trusses. Turns out, the



team installed the duct during and after the roof was completed. “That was probably one of the trickiest pieces of the project from a sheet metal perspective,” he says. “There was nothing straightforward about it. PPL Center is not your basic box building.”

As for the Renaissance hotel on campus, each guest room required an air conditioning fan coil system, and there were a number of large gathering spaces including ballrooms and conference areas that required mechanicals.

Meanwhile, PPL Plaza was designed with a target to earn the LEED Gold rating. “We immediately focused on pursuing integrated design solutions to reduce energy usage,” Hoeke says.

Incoming ventilation air is preconditioned by heat and humidity extracted from exhaust air by an enthalpy wheel. Sensors monitor carbon dioxide levels and control fresh airflow directly to each area of the building, as needed. Smart building controls help regulate systems for efficient operation.

Also, an ice thermal energy storage system employs load shifting and allows chillers to

operate at peak efficiency. This technology also allows the building’s cooling system to operate off the grid, supported by a backup generator.

Hoeke has been a LEED AP credentialed professional since 2002, and H.T. Lyons was on the forefront of sustainable and LEED-certified design and construction. PPL Plaza is just one example of its energy efficient work.

“We still provide the service work for these buildings,” he adds of the ongoing relationship, a common denominator in projects H.T. Lyons designs and builds.

EQUIPPING A ‘PLACE TO BE’

Archer Music Hall on Hamilton Street in Allentown is a two-level, 31,000-square-foot live performance event center that hosts a range of musical acts, conferences and expositions. Developer and construction manager Alvin H. Butz Inc. partnered with H.T. Lyons yet again to design and install an exposed-duct system in the theater.

“You have to design it for a hot summer night in July when it’s 90 degrees at 3

p.m. and then two hours later, you fill the venue with 1,000 people,” Hoeke relates. “Your cooling system has to convert, just like that. It has to be controlled to take a big cooling load from hardly anything to a packed house.”

With exposed duct work and performance-minded design, the H. T. Lyons team also had to consider acoustics — big time. “The duct had to be designed with sound attenuation so you do not hear the HVAC system,” he says.

The key was correct sizing and a robust building automated control system.

Overall, Hoeke rewinds to the time before these projects broke ground and the committed hands-on stewardship of a dedicated team that realizes they are changing the face of a region and by every square foot of sheet metal, building opportunity.

The H.T. Lyons’ team is part of something so much bigger.

“There were empty storefronts,” Hoeke says. “Today, there is a great vibe, young residents, attractive restaurants, and people want to live in center city Allentown.” ▼

H.T. Lyons fabricated all of the ductwork in its shop. The company trucked it out and lifted it into place with long boom lifts and cranes.





FEATURE STORY

NAVIGATING CHANGE ORDERS

**Best practices for sheet metal
and HVAC contractors.**

Change orders are an inevitable aspect of contracting, particularly in the sheet metal and HVAC industries. For contractors, effectively managing change orders can make the difference between a profitable project and one that spirals into unexpected costs.

Guy Gast, Past President of Waldinger Corporation's Iowa Division, highlights change order challenges and offers insights into how contractors can better navigate this complex aspect of the job.

THE REALITY OF CHANGE ORDERS

In the construction industry, change orders often arise due to unforeseen circumstances such as design modifications, supply chain disruptions or labor shortages. While these changes are sometimes unavoidable, their impact on labor costs and project timelines can be significant.

Gast notes that, typically, only about 30% to 50% of project staff effectively recover the costs associated with change orders. A key reason for this is the underestimation of labor impacts. Even small changes, accounting for just 5% of the project, can lead to substantial losses if not carefully managed. Gast emphasizes the importance of bringing the project manager or foreman into discussions as soon as changes are identified to reassess the financial forecast and adjust labor estimates accordingly.

THE HIDDEN COSTS OF CHANGE ORDERS

Beyond the direct costs of additional work, change orders can significantly impact labor productivity. Gast references a study by New Horizons, which found that up to 7% of labor is lost simply in the process of adapting to new changes, with another 9% lost due to disruptions such as late deliveries or unexpected worker absences. These losses can quickly erode project margins, turning what appeared to be a profitable job into a financial burden.

One illustrative example Gast provides is a grocery store proj-

**"ONLY 30% TO 50%
OF PROJECT STAFF
EFFECTIVELY RECOVER
THE COSTS ASSOCIATED
WITH CHANGE ORDERS."**

— GUY GAST

ect with over 200 change orders. While the contractor was paid for each change, the cumulative effect led to a 40% overrun in plumbing labor hours and a 30% overrun in electrical labor hours. These figures underscore the need for contractors to closely monitor the cumulative impact of change orders on labor and overall project costs.

BEST PRACTICES FOR CHANGE ORDER RECOVERY

To navigate the complexities of change orders, Gast recommends several best practices:

1. Measured Mile Analysis: This is considered the gold standard in change order management. It involves comparing productivity on unaffected work with productivity on work impacted by change orders. This method relies on accurate labor tracking, detailed takeoffs of affected

areas, and clear documentation of productivity changes.

- 2. Accurate Documentation:** Gast stresses the importance of maintaining detailed records, including daily field reports, short interval schedules (SIS) and accurate job costing. These records provide the evidence needed to support claims for additional compensation due to labor inefficiencies or schedule impacts.
- 3. Early Notification:** Contractors should provide timely notice to clients when changes occur. This not only sets the stage for potential recovery of costs but also positions the contractor as a trusted advisor.
- 4. Relationships Matter:** Gast emphasizes the value of maintaining strong, trust-based relationships with clients. In situations where changes are extensive, a good relationship



can make the difference in securing fair compensation. Conversely, even when contractors do everything right, poor relationships can lead to disputes and financial losses.

THE IMPACT OF EXCESSIVE CHANGE ORDERS

Excessive change orders can severely impact project profitability, especially when they exceed 5% of the total project value, Gast warns. At this point, the risk of labor inefficiencies becomes significant, and contractors need to be proactive in addressing these challenges.

For instance, on a medical center project with a hard-bid contract, the absence of change orders allowed the contractor to significantly exceed the expected margin. In contrast, a job with 33% increases due to

change orders saw significant labor overruns, despite being compensated for the changes. This “disappearing margin” phenomenon is a common challenge in projects with high volumes of change orders.

COMBINING METHODS AND OVERCOMING BARRIERS

In some cases, contractors may need to combine different methods, such as the modified total cost method, to support their claims for additional compensation. However, this requires a solid foundation of accurate accounting, a clear narrative of the project’s challenges and, when necessary, a willingness to acknowledge any errors in the original estimate.

Gast also highlights common barriers to recovery, including failure to give timely notice, late

presentation of requests, and issues related to rework or delays. Contractors must be vigilant in addressing these barriers to protect their margins.

BE PROACTIVE WHEN IT COMES TO CHANGE ORDERS

Change orders are a fact of life for sheet metal and HVAC contractors. But by adopting best practices such as the measured mile analysis, maintaining accurate documentation and fostering strong client relationships, contractors can better manage the impacts of change orders and protect their profitability.

While challenges are inevitable, a proactive approach can make all the difference in navigating the complexities of change orders. ▼





FEATURE STORY

GOING NUCLEAR

SMACNA-endorsed nuclear power bill becomes law.

SMACNA applauds President Biden's recent signing of the Advance Act, which is legislation to accelerate the deployment of nuclear energy capacity, including by speeding up permitting and creating new incentives for advanced nuclear reactor technologies.



Plant Vogtle, located in Waynesboro, Georgia, is the largest generator of clean power in the United States. Photo: Georgia Power

The general purpose of the Advance Act is to support the deployment of U.S. advanced reactors both domestically and overseas. It includes a number of provisions aimed at the U.S. Nuclear Regulatory Commission's (NRC) licensing process, strengthening the workforce at the NRC and updating the NRC's export authority and processes. The Act would also amend the Atomic Energy Act to ensure fusion facilities continue to be regulated under a radioactive materials licensing framework.

What's more is bipartisan-ship on Capitol Hill is a rarity generally, says SMACNA CEO Aaron Hilger, "and that makes it all the more praiseworthy that

lawmakers from both parties and the Biden administration shelved their differences to overwhelmingly pass a major piece of legislation with the potential to reshape U.S. energy production, curtail greenhouse gas emissions and add thousands of jobs to the rolls."

Importantly for the industries with specialized skills required for constructing power plants, like sheet metal contractors, the legislation would reauthorize critical training programs to bolster an essential work force.

"Our member firms have advocated for this bipartisan landmark legislation for nearly a decade and had filed countless letters and hearing statements

in favor of its passage," Hilger says. "SMACNA firms have nearly a half century of experience constructing and maintaining nuclear-powered energy facilities and have special enthusiasm for the financing and training provisions in the U.S. nuclear infrastructure portfolio. These new nuclear technologies, including microreactors, are capable of radically reducing carbon emissions but represent just one of the high efficiency, low carbon energy solutions our firms construct and maintain."

The Advance Act also modernizes licensing requirements to address the needs of new technology and identifies regulatory barriers that limit the



safe deployment of new nuclear technologies. It also directs the NRC to create a pathway for conventional energy source sites to be repurposed in the future.

Among the numerous provisions in the Advance Act are the following directives to the NRC:

- Enhance preparedness and coordination to qualify and license advanced reactor fuel.
- Within 18 months, develop risk-informed, performance-based strategies and guidance to license and regulate microreactors.
- Within 180 days, submit a report to Congress on manufacturing and construction for nuclear energy projects.
- Within a year, update its mission statement to convey that licensing and regulation

of nuclear energy activities be conducted in a manner that does not unnecessarily limit “the benefits of nuclear energy technology to society.”

- Identify and report on regulations, guidance or policy necessary to license and oversee nuclear facilities at brownfield sites.

SMACNA also emphasized to Congress that expanding nuclear power, although stalled for many years from passing, has enjoyed broad bipartisan support, with a growing movement seeing it as critical to decarbonizing the power sector to fight climate change and as a way to ensure reliable electricity supply. A version of the Senate passed bill recently passed the House of Representatives, and when the Senate version arrived at the White House, President Biden, long a nuclear power advocate, signed it.

This “vote by the House sends the largest update in nuclear energy policy in decades back to the Senate for ratification before it goes to the President’s desk,” says Chair Jeff Duncan of the House Energy, Climate and Grid Security Subcommittee. “This legislation brings us one step closer to energy independence and being prepared for our coming nuclear renaissance.”

Sen. Tom Carper, D-Delaware, chair of the Senate committee responsible for shepherding the legislation through to completion, underscored what he called the “momentum” impact of the law on the climate and U.S. energy production.

“The urgency of the climate crisis demands a swift transition to cleaner energy sources, and fortunately the Advance Act helps us to do just that,” Carper says. “This bipartisan law will strengthen our energy and national security, lower greenhouse gas emissions and

"THESE NEW NUCLEAR TECHNOLOGIES ARE CAPABLE OF RADICALLY REDUCING CARBON EMISSIONS." – AARON HILGER

create thousands of new jobs, while ensuring the continued safety of this zero-emissions energy source.”

Nuclear power currently comprises 19% of electricity generation in the U.S., with fossil fuels at 60%, wind power at 10%, and solar at 4%. The law, which aims to boost nuclear power’s contribution, couldn’t come along soon enough, with demand for power rising faster now than at any time in the past five years, according to the non-profit North American Electric Reliability Corporation.

Demand is expected to grow. The Federal Energy Regulatory Commission says that nationwide electricity demand will climb 4.7% over the next five years. That rise is in part due to the increasing electrification of the automotive industry, heating systems and explosive growth in data centers. Data centers are the heart, soul and lungs of the internet, and many of its associated industries and technologies such as artificial intelligence, machine learning, cryptocurrency, the Internet of Things, ecommerce, content streaming and cloud computing. These all have huge power needs that are expected to double by 2030.

The necessity to meet power demands while producing emissions-free electricity translates into a greater reliance on nuclear power for the decades ahead. ▼



Top Priorities for the Final Months of 2024



Here are some of the top priorities from the SMACNA Government and Political Affairs team for the end of 2024.

EQUIPMENT TAX INCENTIVES EXTENDERS PACKAGE

We are giving our strongest support for expedited Senate passage of (House passed) H.R. 7024, the Tax Relief for America's Families and Workers Act, as passed by the House (357-70) Jan. 31.

The nation is seeing robust and record setting growth of construction activity following the enactment of major policy changes, especially the Infrastructure Act, CHIPS and Science Act and the Inflation Reduction Act's private sector tax incentives.

Therefore, we are asking the Senate's support for three essential tax incentive provisions:

- Retroactive Extension of the 100% Bonus Depreciation: This would restore the 100%

bonus depreciation for qualified property, instead of the current 20% annual phase down that went into effect on Jan. 1, 2023.

- Retroactive Extension and Permanence for 174 Research and Development Expenditures: This would allow companies to immediately deduct R&D expenses instead of amortizing over five years.
- Expand Section 179 expensing and interest deductibility for small businesses: This would increase the maximum eligible amount of equipment investment and extend the point at which the benefit phases out.

CHANGE ORDER REFORM

We are boosting efforts to pass H.R. 2726, The Small Business Payment for Performance Act, which is vital legislation sponsored by Rep. Pete Stauber (R-MN). The bill would make essential reforms to federal contracting practices to resolve change or-

der disputes that harm contractors and taxpayers more quickly. Original co-sponsors include Rep. Fitzpatrick (R-PA) and Rep. Veasey (D-TX). This critical proposal has already passed the House in the last Congress (117th). It continues to receive bipartisan support with nearly two dozen cosponsors in this Congress and broad business support from union and non-union organizations.

Under current federal procurement practices, builders like those who are members of SMACNA aren't paid for change orders until after the entire federal project is finished. The federal government can add millions of dollars to the cost of a project via a change order. It can take months or years of waiting to recoup those costs. H.R. 2726 would address this problem by requiring the federal government to pay 50% of the cost of a change order once those additional changes are completed and certified. ▼



CULTURE OF RESPECT

Dushaw Hockett

Making the Hard Case for Soft Skills

Over the past few months, there has been a lot of buzz regarding the topic of “soft skills.” The discussion came up again during an Aug. 28 webinar — *Beyond the Blueprint: Advancing in the Industry* — sponsored by the SMACNA and SMART RISE committees (Representation, Integrity, Support and Empowerment). This article seeks to make a hard case for the importance of soft skills and the idea that soft skills are a key ingredient for building a strong and respectful workplace culture.

Soft skills, also known as “people skills” or “interpersonal skills,” are foundational skills that allow us to build a respectful and collaborative work environment. We aren’t born with these skills, but we can build them over time.

Monique Danao wrote in a recent *Forbes Business* article that “In today’s fast-paced world, success in the workplace requires more than just technical expertise and knowledge.” Danao recommends working on these eleven soft skills to set yourself apart in the workplace, and lead to long-term success:

1. Communication

- Active listening
- Presentation skills
- Verbal and nonverbal communication

2. Leadership

- Coaching and mentoring
- Management

3. Teamwork

- Accountability
- Collaboration

4. Creativity

- Brainstorming
- Curiosity
- Experimentation

5. Time management

- Planning
- Goal setting
- Delegation

6. Adaptability

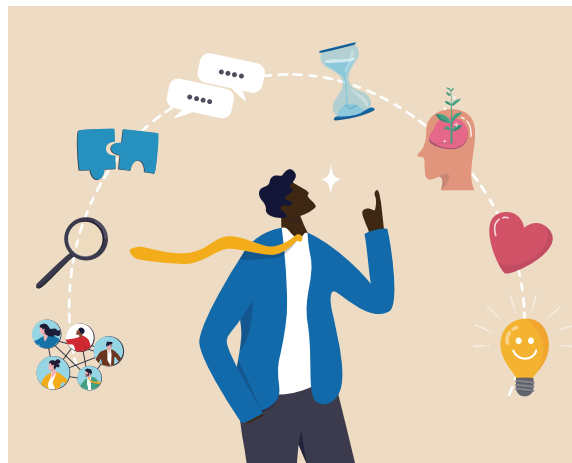
- Flexibility
- Growth mindset

7. Problem-solving

- Strategic thinking
- Analysis

8. Work ethic

- Punctuality
- Professionalism



9. Critical thinking

- Evaluation
- Deductive reasoning

10. Conflict management

- Mediation
- Conflict resolution

11. Emotional intelligence

- Self-awareness
- Empathy
- Social skills

Rebecca Knight wrote in an article for the *Harvard Business Review* that “soft skills are essential, even in the digital age.”

Knight quoted a recent LinkedIn survey that said 72% of U.S. executives place more value on soft skills than AI-related skills, and that organizations that prioritize the development of soft skills see greater productivity and better employee performance.

How do we develop our soft skills? Knight suggests that we think about our own strengths and weaknesses and ask friends for their honest opinions. To enhance your soft skills, create a development plan that includes activities that stretch and engage different parts of your personality. Practice active listening and demonstrate that you care about the people you work with. And don’t be afraid to seek feedback, so we avoid missed opportunities for improvement.♥

For more information on this initiative and for Culture of Respect Toolbox Talks, visit www.smacna.org.



FINANCIAL STEWARDSHIP

Ronald J. Eagar

Measuring Success: The Role of KPIs in Construction

The construction industry faces many obstacles today, from workforce scarcity to unpredictable material expenses. In this challenging landscape, the use of Key Performance Indicators (KPIs) has become essential for companies aiming to excel. These measurable metrics provide critical insights into a firm's operations, empowering decision-makers to guide their organizations effectively.

KPIs serve as vital navigational tools for construction enterprises, offering clarity in decision making, opportunities for continuous improvement, an accountability framework, enhanced internal communication, sharper organizational focus, and improved operational efficiency.

By consistently evaluating KPIs and comparative data, construction companies can craft robust strategies for growth, track progress toward objectives, ensure team alignment with specific targets, facilitate ongoing performance discussions, identify core organizational priorities, and boost overall productivity.

Essential KPIs for construction companies include:

Profitability Ratios:

1. Return on Assets (ROA): This ratio indicates the profit generated by total assets employed. A benchmark of >10% is considered good.
2. Return on Equity (ROE): A healthy ROE is typically >20% of stockholders' return on investment.
3. Gross Profit Margin: While benchmarks vary by industry segment and location, this ratio is crucial for assessing operational efficiency.
4. Net Profit Margin: This varies widely but is essential for understanding overall profitability.

Liquidity Ratios:

1. Current Ratio: A benchmark of >1.1 indicates a company's ability to meet short-term obligations.
2. Quick Ratio: A more stringent measure of liquidity, with a benchmark of >1.0.
3. Working Capital Turnover: This ideal ratio is <30; high numbers show a need for increased working capital.

Leverage Ratios:

1. Debt-to-Equity Ratio: A ratio of <3.0 is acceptable.
2. Equity to G&A Expenses: A ratio of >1.0 is desired.
3. Fixed Asset Ratio: Should be <1.0 to ensure sufficient funds for current operations.
4. Underbillings to Equity: A ratio of <30% is acceptable.
5. Backlog to Equity: Generally, a ratio of <20 is preferred.
6. Revenue to Equity: A ratio of <15 is acceptable.

RECENT TRENDS AND CHALLENGES

The construction industry advisors at Grassi study these KPIs regularly and have observed significant shifts in recent years, including:

- Liquidity challenges: Current and quick ratios have deteriorated since 2020, partly due to the end of PPP and ERC programs and inefficiencies from COVID protocol compliance.
- Working capital pressure: The working capital turnover ratio has steadily declined over the past five years, indicating longer payment cycles and project timelines.
- Leverage fluctuations: While debt-to-equity ratios improved in 2021 and 2022, underbillings to equity increased due to pending change orders and billing challenges.
- Backlog concerns: The backlog-to-equity ratio has trended upward, potentially straining liquidity in an environment of slower collections and higher costs.

FINANCIAL STATEMENT RED FLAGS

Construction companies and their strategic partners should be vigilant for warning signs in their financial statements, including:

- Recurring operating losses.
- Working capital deficiencies.
- Negative cash flows from operations.
- Significant over-90-day contract receivable balances.
- Growing underbillings on projects not being recovered.
- Consistent gross profit fades on projects.
- Inability to remit payroll taxes and union dues.

External factors such as legal proceedings, losing key customers or suppliers, and highly competitive bidding environments can also signal potential financial difficulties.

PREPARING FOR TOMORROW'S CHALLENGES

As the construction landscape transforms, businesses must evolve their KPI strategies to maintain their competitive edge. Future-focused KPIs will likely reflect emerging industry trends, including sustainable building practices, technological advancements and shifting workforce dynamics. ▼

For more information, please contact Ronald J. Eagar, CPA, CCIFP Partner at Grassi, at reagar@grassiadvisors.com, through www.grassiadvisors.com or 516-336-2460.



LEGAL

Grant Collins

The Ever-Changing Legal Landscape of Non-Compete Agreements

Over the summer, federal regulators set their sights on employment agreements that contain promises by employees to refrain from competing with their employer after they leave (i.e., “non-competition” or “non-compete” provisions) or promises by employees to refrain from soliciting their coworkers to leave the company (i.e., “anti-raiding” provisions). Importantly, these prohibitions generally do not apply to employer efforts to protect confidential information — such as via non-disclosure, confidentiality, trade secret or non-solicitation agreements — and, as a result, these types of agreements remain valid and enforceable.

With respect to non-compete and anti-raiding provisions, however, the Federal Trade Commission (FTC) issued a final rule effectively banning all existing non-compete agreements and prohibiting new non-competes. At the same time, the National Labor Relations Board (NLRB) has sought to invalidate non-compete and anti-raiding provisions by prosecuting unfair labor practice charges against employers who include these provisions in their employment agreements.

Following the Supreme Court’s recent decision limiting federal regulatory power, federal judges have been at odds with federal regulators over whether regulators have the authority to issue expansive new workforce rules. To help SMACNA contractors stay on top of these new developments, we have provided a summary of these new rules targeting non-compete and anti-raiding provisions as well as the status of any legal challenges.

THE FTC BAN ON NON-COMPETES IS “ON HOLD”

On April 23, the FTC issued a final rule effectively banning all existing non-compete agreements and prohibiting new non-competes. Employers were also required to notify all affected employees that their existing non-competes were no longer enforceable. The FTC Rule was scheduled to go into effect on Sept. 4.

The FTC Rule defined a “non-compete clause” as “a term or condition of employment that prohibits a worker from, penalizes a worker for or functions to prevent a worker from (A) seeking or accepting work in the U.S. with a different person where such work would begin after the conclusion of the employment that includes the term or

condition; or (B) operating a business in the U.A. after the conclusion of the employment that includes the terms or condition.” It further defined “term or condition of employment” as including but not limited to “a contractual term or workplace policy, whether written or oral.” Non-solicitation of an employer’s clients or employees was not explicitly included in the definition of “non-compete clause.”

In the months before the Sept. 4 effective date, there were dueling court decisions regarding the validity of the FTC Rule.

Then, on Aug. 20, a federal judge in Texas held that the FTC lacked the statutory authority to issue the FTC Rule and that it was arbitrary and capricious. Importantly, the federal judge held that the FTC Rule needed to be “set aside” in its entirety and “the Rule shall not be enforced or otherwise take effect on its effective date of Sept. 4.”

It is expected that the FTC will appeal the decision to the Fifth Circuit and it may eventually end up before the U.S. Supreme Court. However, at this point, the FTC Rule did not go into effect on Sept. 4, and contractors are not yet impacted by the rule.

NLRB TARGETS NON-COMPETE AND ANTI-RAIDING PROVISIONS

Rather than issue an administrative rule, back in May of 2023, the NLRB General Counsel issued Memorandum 23-08 (GC Memo), which focused on the legality of non-compete and anti-raiding provisions under the NLRA.

The GC Memo argued that, with few exceptions, non-compete agreements should be deemed unlawful because they can “chill” employees from engaging in activities protected under Section 7 of the National Labor Relations Act (NLRA). Section 7 guarantees employees, whether unionized or not, the right to organize, bargain collectively and participate in other concerted activities for mutual aid or protection.

The GC Memo emphasized that non-compete agreements could deter employees from leaving their jobs to seek better working conditions, organizing or joining unions or even discussing job opportunities with competitors — all actions protected by the NLRA. While the GC Memo primarily targeted non-compete agreements, it left open questions regarding the status of anti-raiding provisions. Generally speaking, anti-raiding provisions

Continued on page 28

Continued from page 27

prohibit employees from “soliciting” or “recruiting” their other co-workers for a different employer.

In a recent case, an NLRB administrative law judge (ALJ) found that, under the NLRA, specific non-compete and anti-raiding provisions in an employment contract were unlawful for employees who were not “supervisors” or “managers” as defined by the NLRA. The decision is significant because it applied the NLRB’s new Stericycle framework, which evaluates work rules from the perspective of an employee who is economically dependent on their employer.

The ALJ concluded that the non-compete and anti-raiding provisions in the employment agreement unlawfully “chilled” employees from engaging in protected activities because the provisions were overly broad. The decision was limited to the specific provisions at issue in the case and the ALJ did not conclude that all non-compete and anti-raiding provisions are unlawful.

The ALJ ordered the employer to rescind the unlawful non-compete and anti-raiding provisions and notify current and former employees that they were no longer enforceable. The provisions were:

- An anti-raiding provision intended to prevent “pirating” by prohibiting employees during their employment and for twenty-four months after separation from “solicit[ing], encourag[ing], or attempt[ing] to persuade any other employee of [the] Employer to leave the employ of [the] Employer.”
- A non-compete provision that prohibited former employees for 12 months following separation from “directly or indirectly” engaging in or working for “any other business similar or competitive with [the] Employer’s business.”
- A provision that required the employee to report “any and all offers or solicitations of employment that [the] Employee may receive from third-parties” and that did not include a limitation for union or other protected activity.

It is important to note that the ALJ’s decision is not final. The case is still pending on appeal before the NLRB in Washington, D.C., which has yet to issue a decision.

After the NLRB issues its decision, the employer will have the opportunity to challenge the decision in a federal court of appeals. The appeals court will examine the NLRB’s decision in light of the Supreme Court’s recent decision and determine whether the NLRB acted in accordance with federal law.

This appeal process could last more than one year. In the interim, though, employers will likely continue to face unfair labor practice charges from their former employees arguing that the employer’s non-compete or anti-raiding provisions violate the NLRA.

DON’T FORGET STATE LAW

Lost in the back-and-forth between federal courts and

federal regulators is the fact that many states have laws restricting the use of non-compete provisions. Like the federal regulations outlined above, these state prohibitions generally do not apply to employer efforts to protect confidential information — such as via non-disclosure, confidentiality, trade secret or non-solicitation agreements.

Specifically, four states have near total bans on non-compete agreements:

- California,
- Minnesota,
- North Dakota, and
- Oklahoma

There are some exceptions, such as in the sale-of-business context, but regardless of the FTC Rule or the NLRB’s position, employers are still subject to state laws prohibiting non-compete agreements.

Ten more states have laws significantly restricting the use of non-compete agreements:

- Colorado
- Illinois
- Maine
- Maryland
- Massachusetts
- Nevada
- New Hampshire
- Oregon
- Virginia
- Washington

Each law is different, but these states generally permit non-compete agreements with employees who earn a certain amount of income, those who are non-exempt (vs. hourly), and those who perform certain job duties.

Because each state law is different, it is important to engage with local counsel to ensure that any non-compete agreement is lawful and enforceable under the contractor’s state requirements.

BOTTOM LINE

There is a growing intolerance for non-compete and anti-raiding provisions in employment agreements. Federal regulators have targeted new enforcement initiatives and federal rules to combat what they view as provisions that limit employees’ rights.

For contractors, these developments are a clear signal to re-evaluate any use of such provisions.

If a contractor still wants to move forward with an employment agreement that includes a non-compete or anti-raiding provision, it is important to engage with competent counsel to ensure that your agreement can withstand any potential legal challenge. ▼

Grant Collins is a specialist in labor and employment law at Felhaber Larson. Reach him at gcollins@felhaber.com.

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SMACNA CALENDAR

2024

OCTOBER

October 27-30

2024 SMACNA Annual Convention
Palm Desert, California

NOVEMBER

November 4-5

Navigating Your Exit Strategy
San Diego, California

November 10-13

Project Managers Institute
Austin, Texas

DECEMBER

December 8-10

Council of Chapter Representatives Meeting
New Orleans, Louisiana

2025

JANUARY

January 8-9

Collective Bargaining Orientation
Tempe, Arizona

January 14-16

2025 Safety & Health Conference
Fort Lauderdale, Florida

January 27-30

MEP Innovation Conference
Los Angeles, California

FEBRUARY

February 2-5

Chapter Executives Institute
Honolulu, Hawaii

Welcome New SMACNA Members

Aero Testing and Balancing Inc. dba Aero Performance Group	Franklin Park, Illinois
Circulating Air Inc.	North Hollywood, California
CrimsonRidge Sheet Metal.	Chilliwack, British Columbia
Custom Metal Innovations	Isanti, Minnesota
Evergreen Sheet Metal	Maple Ridge, British Columbia
G&G Mechanical Inc.	Lancaster, California
Kendall HVAC Ltd.	Abbotsford, British Columbia
Major Mechanical	Waukesha, Wisconsin
Murray Co.	Rancho Dominguez, California
Schmitt Refrigeration, Air Conditioning & Heating Inc.	Evansville, Indiana
South Philly Custom Sheet Metal	Westville, New Jersey
Walker Sheet Metal	Burnaby British Columbia
Westco Service Co.	Shadow Hills, California

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