

# URCA Viewpoint

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NEWS AND VIEWS FOR THE UNION ROOFER

VOLUME 8, ISSUE 1, SUMMER 2011

## URCA Members Provide Expertise to the 2011 Q Award Recipient

The Alliance for Quality Construction, a Southern California association of union contractors and building trades unions, presented the ninth annual "Q" Award to the Los Angeles Unified School District (LAUSD) for the construction of the Robert F. Kennedy Community Schools on June 28, 2011. The award honors the LAUSD for its recently constructed 6 pilot schools comprising an 83,000 sq feet, 840 seat elementary school, 438,000 sq ft, 3,440 seat middle school/high school and 1/3 acre parking lot along Wilshire Boulevard, which cost approximately \$571 million. Construction for the schools began in December 2007 and opened September 2010. The design architect was Gonzalez Goodale Architects and built by Hensel Phelps Construction Co.

URCA member contractors providing services to the RFK project included **Anning Johnson**, metal decking, **BEST Contracting Services**, roofing and sheet metal, and **Courtney Waterproofing**, waterproofing/joint sealants.

The Robert F. Kennedy Community Schools exceed strict environmental standards for high performance schools reflecting the latest "green" building methods and materials. It is the first in California

*Continued, page 3*

## Labor Law Attorney Discusses Unfair Business Practice Issues at URCA Member Dinner

Unfair business competition is not only frustrating, it is illegal. Union contractors are continuously squaring off on job bidding with contractors who are unscrupulously undercutting bids; hence, begging the question, how could they bid the job at such a low price? Undercutting job bids, as a result of illegal ploys or cheating, creates unfair competitive advantages while breaking state labor laws.

Labor attorney Ellyn Moscovitz addressed URCA contractor members and roofing consultants about unlawful, unfair or deceptive business practices in the construction industry and how contractors can

fight back. Using California's Unfair Competition Laws (Bus. & Prof. Code section 17200 et seq.), Ms. Moscovitz demonstrated the various ways unscrupulous contractors circumvent state mandates to posture themselves into unfair competitive advantages. In addition, Moscovitz discussed specific labor laws that protect the rights of employees who have had their labor rights denied by these contractors.

Attorney Moscovitz, who has spearheaded many lawsuits for businesses and organizations, discussed various types of lawsuits, including Private Rights of Action, which allow private citizens or organizations to bring a class action suit against those who allegedly denied

*Continued, page 3*



LAUSD's Robert F. Kennedy Community Schools

Photo Courtesy of magnus stark / photography



**Ronald D. Johnston, Ph.D.**  
Executive Director

As your Executive Director, I was directed by the URCA board to closely track any State legislation that dealt with indemnity provisions in commercial construction contracts, retention payments and subcontractor bond/lien rights.

The following two bills meet that criteria and have been closely monitored by the Executive Director as well as several other subcontractor associations.

The first bill, SB 293 (Padilla) includes several provisions that would have both a positive and negative impact on our industry. From a positive standpoint, Section 7108.5 of the Business and Professions Code has been amended to read "a prime contractor shall pay to any subcontractor, not later than seven (7) days after receipt of each progress payment" as opposed to the current ten (10) days. Secondly, under Section 5 of the bill, Section 7201 is added to the Public Contract Code and mandates that "retention proceeds withheld from any payment by a public entity from the original contractor, by the original contractor from any subcontractor, and by subcontractor, from any subcontractor thereunder shall not exceed 5 percent of the payment." This section would remain in effect until January 1, 2016. On the negative side, Section 2 of this bill would

amend Section 3252 of the Civil Code to read, "if the 20-day public work preliminary bond notice was not given as provided in Section 3098, a claimant may enforce a claim by giving written notice to the surety and bond principal prior to completion of the project, or recordation of Notice of Completion.

As a result of Section 2, URCA has maintained a position of OPPOSE unless this section is amended to keep intact Section 3252 of the Civil Code as amended by the State Legislature in 1995, which preserves a subcontractor's right, albeit the filing of a 20-day public work preliminary notice, to file a claim fifteen (15) days after NOC recordation, or, if no NOC recorded, within seventy-five days after completion of the project.

URCA and ASAC have been working closely with the author and we are "cautiously optimistic" that the author will amend the bill to keep intact Section 3252, as amended in 1995.

The second bill is SB 474 (Evans). Currently, commercial construction contracts contain "total liability" indemnity provisions (Type 1) that are passed along to subcontractors who have the least control over the construction project or authoritative control over the acts of negligence of others on the job site. SB 474 would

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**Ron Johnston with CA State Senator Alex Padilla** during a Los Angeles Business Council meeting.



**Ron Johnston**, a panelist at the LABC Solar Round Table held at Los Angeles City Hall.



**Ron Johnston with Dave Stefko of Eberhard Contracting** at the URCA Membership Dinner.

## URCA and The 2011 Roofing Consultants Golf Tournament



**Ron Johnston** accepting \$1,000 from the Roofing Consultants Institute on behalf of URCA's Don Banks Memorial Scholarship Fund.





## 2011 Q Award Continued

to use a technology called 'thermal displacement ventilation' in which air is delivered from the lower portion of the walls, rather than from the ceiling, thus resulting in energy efficiency while reducing the amount of germs that travel through the air.

The Pilot Schools are part of the six that make up the Robert F. Community Schools: Ambassador School of Global Education (K-5), Ambassador School of Global leadership (6-12), New Open World Academy (K-12), UCLA Community School (K-12), Los

Angeles High School of the Arts (9-12), and School for the Visual Arts and Humanities (9-12)

The site rests upon the once historic Ambassador Hotel, where Senator Robert Kennedy was assassinated in 1968. The park within the school serves as a memorial to Robert Kennedy.

URCA's Ron Johnston said, "The craftsmanship provided by our roofers and waterproofers is a testament to the quality of this extraordinary project."



(l to r) Stephen Kimball,-Project Mgr, Hensel Phelps Construction, Pam Ackrich-AQC Chair, Kelly Schmadler-Interim LAUSD Chief Facilities Exec, Gordon Crowht-BEST Contracting, Monica Garcia-President LAUSD Board of Education, (standing in back) Paul Schrade-RFK Com Schools Task Force, Robbie Hunter-Executive Secretary-LA/OC Bldg & Construction Trades Council

## Executive Director Continued

define liability on the basis of proportionate responsibility, not total liability. In essence, this bill would mirror the language of AB 758, which was signed into law in 2005 and mitigated the impact of unfair indemnity clauses in construction contracts of residential projects.

It should be noted that, as a result of strong public agencies' opposition, public agencies would be exempt from this bill. Hence, this bill would be applicable only

to private commercial construction contracts. Nevertheless, the passage of this bill would provide significant relief to our industry and the subcontractor community as a whole. URCA's position is a strong SUPPORT.

For legislative updates on the aforementioned bills, please visit the URCA website [www.urca.org](http://www.urca.org).

## Labor Law Continued

the rights of her clients.

Under the Unfair Competition Law, "any unlawful, deceptive or unfair business practice" is against the law.



Attorney Elyn Moscowitz, guest speaker at the URCA Dinner Meeting with Executive Director Ron Johnston.

For our purposes, the law looks for "unlawful predicate acts such as:

- Failure to pay the prevailing wage on public works jobs;
- Misclassification of work done;
- Failure to pay for all hours worked (such as time spent in the yard loading and unloading materials);
- Failure to reimburse for tools or equipment;
- Failure to provide a 30 minute uninterrupted meal period after 5 hours and a second one after 10 hours;
- Failure to provide 2-10 minute rest periods per day;
- Failure to pay overtime after 8 hours in a day;
- Safety violations;
- Workers' compensation fraud.

Legal action can be brought against any employer who violates state or federal wage and hour laws. Legal action may be promulgated by individual employees or by class action, or by unions or labor-management trust funds. The party bringing the lawsuit must prove that they sustained injury as a result of the unlawful conduct. Union contractors can also bring these lawsuits against their

*Continued on back page*



## Labor Law continued

non-union competitors who break the law, especially in the bidding process.

Under Labor Code section 2810, a property owner, developer, general contractor or any other entity that contracts with a sub for work may also be liable if they enter into a contract that they know or should know does not have funds sufficient to meet all labor laws. This applies to public and private jobs. It does not apply to UNION contractors, however, under 2810 (c). There are requirements in the written contract that are important such as listing the total number of workers to be employed on the project and their actual rate of pay (see 2810 (d)). This is important because listing "\$500,000" for labor costs may be sufficient to meet labor laws for 10 workers, but not for 100. If the contract does not contain this information the burden shifts to making the entity liable for the sub-contractor's violations.

All of these laws allow for restitution of wages for the workers and severe penalties. Moscovitz explained how

these penalties can really add up. She also advised employers to keep good track of records, particularly on meal and rest periods taken, because if records are not kept, the burden falls on the employer as "labor laws are to be construed in favor of the employee" as a matter of public policy.

The bottom line is, when employers are not sure whether they are in compliance with labor laws, they should consult their attorneys. Also, they should read IWC-Order 16 carefully as it applies to all labor laws for construction work on all jobs, public and private. She said, "You should also mark the DIR website page [www.dir.ca.gov](http://www.dir.ca.gov) as a favorite on your computer and check it often. You can't run a construction business without familiarizing yourself with these laws."



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**The mission of the Union Roofing  
Contractors Association is to promote  
quality construction utilizing highly  
trained and skilled employees. The  
URCA is dedicated to the highest  
standards of professional integrity.**

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