

Victory! (cont.)

For once, and for the first time in awhile, the amount of available work grew as opposed to shrank. This decision and future decisions could mean an influx of work and capital for landscape contractors. We made a decision to stay in the fight and won.

The symbolic value is how this victory came to be. Landscape contractors, the labor unions, the ILCBA the ILCA, green roof suppliers, green roof plant growers all helped keep green roofs green. It is amazing what can happen when we set aside professional differences and work as one industry. The landscape contractors supplied over one hundred project description sheets and over 300 photos. The labor union sent word out to its members about the importance of this work and gathered the materials for the grievance hearings. ILCBA helped fund portions of the 10K and provided legal assistance. Green roof suppliers and plant growers demonstrated that a significant percentage of their products are sold to landscapers. Finally, ILCA organized meetings, kept the industry up to speed, collected and organized the green roof project book, and set up a green roof safety seminar for contractors. If we remove any one of these groups, it all comes tumbling down.

Thank these contractors for agreeing to go the distance. For once, the industry stood up for itself when no other group would oblige. This is a victory for any landscape contractor who realizes strength lies in numbers and that **industry** can always triumph over self-interest. **—PL—**

Quick Bites

The Employee Free Choice Act

And you thought it would go away? Senator Arlen Specter, of Pennsylvania, a new Democrat, told the A.F.L.-C.I.O. convention in Pittsburgh that he predicted the Employee Free Choice Act would pass this year. After Specter turned Dem, he still said he would not change his stance on the current version of EFCA. Apparently, that stance is softening.

Last July, leading Senate Democrats abandoned the central provision of the card check bill. This bill allows workers to unionize by collecting signatures from 50% of their coworkers. This received major push back from Big Box retailers, the National Federation for Independent Business and U.S. Chamber of Commerce.

The bill still requires the support of moderates to overcome a Republican filibuster. Many Senate Democrats are convinced they are bridging the gap between labor and business. I find that hard to believe as many groups have stated they will oppose EFCA in any form.

Bottom Line: the issue is not dead. Far from it. EFCA is being massaged to garner enough support from moderate democrats. It is important to stay on top of this issue and ramifications could be severe for non-union companies.

Village of Libertyville Specifies the Certified Landscape Technician (CLT) Program

In response to a letter drafted to the City Administrator, Mayor, and Public Works Director of the Village of Libertyville, ILCA advocated that the City put the CLT into their bid specifications for all municipal landscape projects. ILCA sent packets of information about the CLT with a letter that detailed the benefits of the program and how it impacts quality and safety.

Libertyville responded and says it sees positive impact in the CLT in installation and maintenance contracts.

Libertyville joins St. Charles, Lincolnshire, Northbrook, and others who have added the CLT to bid specifications and requests for proposals.

The next written examination is October 16, 2009 at ILCA Headquarters. The next field examination is February 27, 2010 at Joliet Junior College. Candidates may register for either examination online.

How Furlough Can You Go?

ILCA Member Julie Proscia of SmithAmundsen cautions members about work furloughs.

Furloughs have become increasingly popular among landscape contractors during the last six months. They reduce payroll and allow for many employees to avoid layoffs. If implemented properly, furloughs are an extensive stop gap solution that maintains employee morale and confidence. Unfortunately, if implemented improperly furloughs may cost employers more than any potential savings in class action wage and hour law suits.

When a company decides to implement a furlough it must develop a plan that protects the exemption status of its employees and maintains the record keeping and payment requirements of the Fair Labor Standards Act (FLSA). For nonexempt hourly employees, this means keeping diligent records of work performed

during the furlough period.

Employers are only required to pay non-exempt hourly employees, assuming a collective bargaining agreement is not governing the unit, for the actual time worked. As such, employers may furlough non exempt hourly employees on a daily or weekly basis.

The scheduling of furloughs is slightly more complex when it comes to exempt employees. Under the FLSA a company is required to pay exempt employees their full predetermined salary “free and clear” for any week in which the employee performs any work without regard to the number of days or hours worked. The safest and most effective way to implement the furlough is in a complete week period.

If a company is going to require a partial workweek furlough it needs to ensure that the employee is paid his or her full salary. In order to do this a business can require an employee to use accrued paid time off, such as vacation, for time not worked during that partial workweek, or even put the worker into a negative paid leave balance, as long as the worker receives the same dollars for the workweek that he or she would have received in salary.

Again, the employee cannot be given time off without pay for periods of less than one week without running the risk of breaking the exemption status. Companies must restrict and prevent employees from performing any work during the furlough in order to save the exemption status of the employee and avoid paying the employee for the whole week. Exempt employees that answer an email or even answer a work related telephone call have performed work and are required to be paid their full salary for the entire week. If an exempt employee does not follow this policy and performs work uninstructed, they should be disciplined but not docked in salary.

If you have any questions on how to implement a furlough or would like sample policies and procedures please contact Julie Proscia at jproscia@salawus.com