NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction
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• Outline

  – Introductions
  – NRCA’s Union Roofing Contractors Council
  – Purpose of Industry Discussion
  – Jurisdiction Industry Discussion
    • Roof Removal
    • Metal
    • Green – Vegetative, PV, Pavers, Ballast
      Waterproofing, Air Barriers
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Industry Discussion - Jurisdiction

—**Bill Good, NRCA**

—**Jim Hadel, International Union or Roofers, Waterproofers and Allied Workers**

—**Bill Callahan, Ph.D** — Associated Roofing Contractors of the Bay Area Counties

—**Rich Harvey, Roofing Contractors Assoc. PA**

—**Bill McHugh & Chris Adler**
  - Chicagoland Roofing Council
  - Chicago Roofing Contractors Association
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

Bill Good, CAE,
Executive Vice President, NRCA
Jurisdictional Issues in
Vegetative, PV Roofing

& Bill McHugh, Executive Director,
Chicagoland Roofing Council &
Chicago Roofing Contractors Association
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

• NRCA’s Union Roofing Contractors Council?
  – *Low Slope, Steep Slope*
    • Single Ply, BUR, Vegetative Roofs, Cool Roofs, Ballasted Roofs, Photovoltaics
  – *Waterproofing & Dampproofing, Air Barriers?*
  – *Discuss & Advance Industry Nationally*
    • Common Issues – Union / Non Union
    • Learn about Best Practices
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• Jurisdiction = Opportunity & Choices
  – Roofing
    • Vegetative & Photovoltaics
  – Other Businesses
    • Waterproofing, Air Barriers
  – Challenged by other trades/specialties?
    • Yes, BOTH Union...and Non-Union
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Industry Discussion - Jurisdiction

• Jurisdiction = Opportunity
  – Challenged by other trades & specialties?
    • Carpenters
    • Laborers
    • Operating Engineers
    • Others
  – Union? Who’s work is it?
  – Non-Union - Prevailing Wage Worker
    Classifications WC, Pay
  – Solutions?
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• Jurisdiction = Opportunity
  – Understand Issues...Union & Non Union
    • Roof Removal
    • Metal
    • Rooftop Vegetative Overburden, Photovoltaics
  – Understand Process
    • Standard Working Agreements – Contracts
    • Process used to Determine Jurisdictional Claims
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• Jurisdiction = Opportunity
  – Understand Jurisdictional Decision Process
    • Joint Conference Boards – Trades
      – Chicago, New York, Boston
    • National Labor Relations Board – 10k Hearings
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• Technical & Other Merits to Claim...
  – Building & Fire Codes
  – Specs - MasterFormat 2004, 2010
  – Licensing
  – NRCA Manuals
  – Collective Bargaining Agreements
  – O-Net Codes & SIC Classifications
  – Past History of Work Awarded
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• Technical & Other Merits to Claim...
  – Competitive
  – Warranty
  – Insurance
    » WC Classifications
    » GL Insurance ‘Finished Product’
  – Employer of Employee’s on project
  – Understands the Function of the ROOF...
    » Watertightness
    » Roof is the ‘shop floor’
    » Wind, Weight, Insulation, Drainage, Water,
NRCA Union Roofing Contractors Council Industry Discussion - Jurisdiction

Jim Hadel, International Vice President & Washington Representative, International Union of Roofers, Waterproofers & Allied Workers
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Industry Discussion - Jurisdiction

• Technical & Other Merits to Claim...
  – 2011 National Jurisdiction Statistics
    • 34 Cases
    • 14 Arbitrations
    • None related to Roofing...
Session Goal

To advance the concept that a professional roofing contractor with a trained, skilled work force is always the best contractor to use for anything involving your building’s roof system.
WHAT IS THE ISSUE?

The intentional misclassification and payment of workers removing existing roof systems as “laborers” rather than “roofers” on publicly funded roof replacement projects.
WHO/WHAT/WHEN/WHERE/WHY

- WHO IS AFFECTED?

- The issue has the potential to affect *all* professional roofing contractors and work forces pursuing federal and state public work.

- The issue also has the potential to affect the jurisdictional agreement between the UURWAW and the Laborers’ International Union.
  - This agreement is recognized by professional union roofing contractors.
WHEN IS THIS AN ISSUE?

- On federal projects subject to the Davis-Bacon Act.

- On state projects in areas where wage rates for all crafts have been determined by union collective bargaining agreements.

  - Examples: Public schools; police barracks; municipal buildings
WHO/WHAT/WHEN/WHERE/WHY

• WHERE IS THIS AN ISSUE?

• This has been an issue in eastern PA and southern NJ.

• In reviewing US DOL Wage Appeals Board and State Wage & Hour Board decisions, this has been an issue in states such as:

  Michigan    Delaware    California    New Mexico
  Minnesota    Massachusetts  Illinois    Washington
WHERE IS THIS AN ISSUE?

Anywhere you find good sized municipalities, large school districts, and clusters of military installations this has, and will continue to be, an issue.
WHO/WHAT/WHEN/WHERE/WHY

• WHY IS THIS AN ISSUE?

• For Professional Union Roofing Contractors:

• Article II (Jurisdiction) Section 5 of the UURAW Constitution:

“All tear off and/or removal of any type of roofing, all spudding, sweeping, vacuuming and/or clean up of any type where a roof is to be relaid…”
WHO/WHAT/WHEN/WHERE/WHY

• For Professional Union Roofing Contractors:

• Local CBAs (Scope of Work) RCA/Local 30:

  “All work in connection with the removal of roofing materials covered under this agreement and resultant debris, in connection with the application of a new roof at the same deck location.”
Jurisdictional Agreement between UURAW and Laborers’ International:

“All removal of roofing materials on a roof deck where roofing material is to be re-applied is the work of the roofer.”

“Removal of roofing materials on a roof deck where no new roofing material is to be applied and demolition of the roof decking is the work of laborers.”
WHO/WHAT/WHEN/WHERE/WHY

• For Professional Open Shop Roofing Contractors:

• Definitions: NRCA Roofing Manual 2010

Roof system: “A system interacting roof components generally consisting of a membrane ... and roof insulation (not including the roof deck) designed to weatherproof and sometimes improve the building’s thermal resistance.”
WHO/WHAT/WHEN/WHERE/WHY

• For Professional Open Shop Roofing Contractors:

  • Definitions: NRCA Roofing Manual 2010

  Roof assembly: “A system of interacting roof components including the roof deck, vapor retarder (if present), insulation and membrane ... Designed to weatherproof.”
WHO/WHAT/WHEN/WHERE/WHY

• For Professional Open Shop Roofing Contractors:

• Definitions: NRCA Roofing Manual 2010

Deck: “A structural component of the roof of a building, the deck must be capable of safely supporting the designed dead and live loads, including the weight of the roof system, and additional live loads required by governing building codes and provide the substrate to which the roofing or waterproofing system is applied.”
LEGAL PRECEDENTS

• “The Davis-Bacon Act was intended to protect the rights of the laborers and mechanics employed on the projects ...” (New York)

• “The sole and exclusive goal of the prevailing wage act is to protect the workmen employed on a government project from payment of substandard wages, keeping in mind that the lowest bidder is customarily awarded public contracts.” (Pennsylvania)
LEGAL PRECEDENTS

• “It is incumbent on the contractor to be certain its employees are properly classified when performing a Davis-Bacon Act job.” (W.A.B. Tele-Sentry Security)

• “By misclassifying and underpaying workers, respondents proceed at their own peril.” (W.A.B. Tele-Sentry Security)

• “Federal acquisition regulations (FAR) unambiguously place the burden squarely on contractors shoulders to properly classify and pay employees. DOL regulations are also unambiguous concerning this matter.” ((FAR 52.222-6 and 8) (29CFR 5.5(a)(3)(ii)(B)(3) and (29CFR 5.6 (A)(1)))
LEGAL PRECEDENTS

• “Where applicable wage determinations reflects collectively bargained rates ... the classifications of work used by contractors signatory to collective bargaining agreements are to be followed.” (New Mexico)

• “Where the prevailing wage rate for roofer is derived from a CBA, the department should look to the jurisdiction rules in such CBA in determining the correct classification for this work.” (Pennsylvania)

• “Where the prevailing wage rate does not reflect CBA rates, classifications of work established by area practice surveys are to be followed.” (New Mexico) (Michigan)
LEGAL PRECEDENTS

• “A worker is to be classified according to the work that individual actually performs in accordance with custom and usage. Where a journeyman performs some work which could be considered laborer’s work, when viewed in isolation, but is performed as part of his whole assigned task as part of a roofing project, it is part of the roofer’s work.” (Pennsylvania) (New York)
SUMMARY

• On public work where contracts are awarded to the lowest responsible bidder, professional roofing contractors can only be competitive against other professional roofing contractors.

• Roofing contractors, whether union or open shop, submitting bids on public work intending to misclassify and pay employees as laborers for roof removal are cheating!

• **True professional roofing contractors do not cheat in order to win work!**
Jurisdictional Issues in Metal Roofing

William D. Callahan, Ph.D, Executive Director
Associated Roofing Contractors, Bay Area Counties, Inc.
Jurisdiction, in essence, means...

“Who can do the work?”
NRCA Union Roofing Contractors Council Industry Discussion – Metal Roofs

• CONTRACTORS LICENSE LAW

• The Rise of the C-14, Metal Roofing, License: Seeking Lower Workers’ Compensation Rates (1986)
NRCA Union Roofing Contractors Council Industry Discussion – Metal Roofs

• The Fall of the C-14 License: Seeking Exclusive Jurisdiction Over Metal Roofing (1998)

  Had SMANCA prevailed, roofing contractors would have been frozen out of this segment of work as a matter of law, quite independent of what either craft union claimed as its jurisdiction or scope of work.
NRCA Union Roofing Contractors Council Industry Discussion – Metal Roofs

- Moral victory: C-14 license holders who only had that license became C-39 Roofing contractors!
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Industry Discussion – Metal Roofs

- COLLECTIVE BARGAINING
- Expanding the Scope of Work in CBAs
  - Private Interests v. Public Policy: “Publish or Perish”
  - And the Survey Says, “Let’s Balkanize California”
NRCA Union Roofing Contractors Council
Industry Discussion – Metal Roofs

• WORKERS’ COMPENSATION

• Classification: Roofing is roofing

• Re-Classification: Metal roofing is not roofing

• Misclassification: Metal roofing is sheet metal

• Class Action: Roofing is roofing
NRCA Union Roofing Contractors Council
Industry Discussion – Metal Roofs

• PROJECT LABOR AGREEMENTS

• National Plan for the Settlement of Jurisdictional Disputes
NRCA Union Roofing Contractors Council Industry Discussion – Metal Roofs

• SUMMARY - WHO CAN DO THE WORK -
• What You Don’t Know Can Hurt You!
• What is the moral of the story?
  – Support your local, state and regional, national associations!
Jurisdictional Issues in Vegetative, PV Roofing

Chris Adler, Chair,
Chicagoland Roofing Council & Bill McHugh, Executive Director,
CRC & CRCA
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

• Being Green...

Yesterday

Today

McHugh Photo
NRCA Union Roofing Contractors Council Industry Discussion - Jurisdiction

For UHI & Water Drainage Issues

Veggie Green Roofs for Chicago
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

• Jurisdiction reasons presented to decision-makers...Veggie, PV
  – Technical Issues – Comply with...ROOFING SCIENCE
    • Wind, Weight, Ventilation, Underlayment, Insulation, Drainage
  – International Building Code – Chapter 15
  – International Residential Code – Chapter 9
  – International Fire Code - 2012
  – Specification Sections – Division 07
  – Installed Cost – Competitive Market
  – Workforce Education & Safety – ‘Culture’
  – Insurance Required – WC, GL ... FOR ROOFING WORK
  – Warranty
  – Licensing – Limited / Unlimited

• NRCA & Affiliate Members - Experience, Safety Culture, Value
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Industry Discussion - Jurisdiction

• **ICC Building & Fire Code Requirements**
  
  – **2012 International Building Code – Veggie, PV**
    • **IBC Chapter 15, Roofing & Rooftop Structures**

  – **2012 International Fire Code – Veggie, PV**
    • Refers to Chapter 15, Roofing & Rooftop Structures for wind, etc.
    • “Immediate removal of Dry Plants”
    • Fire Breaks every Approx. 15,000SF
    • NOTE: Chicago Municipal Code – 10,000 SF
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Industry Discussion - Jurisdiction

• Vegetative Roofs - IBC 2012, Section 1507.16--Roof Gardens and Landscaped Roofs

• 1507.16 Roof gardens and landscaped roofs. Roof gardens and landscaped roofs shall comply with the requirements of this chapter and Sections 1607.12.3 and 1607.12.3.1 and the International Fire Code.

• 1507.16.1 Structural fire resistance. The structural frame and roof construction supporting the load imposed upon the roof by the roof gardens or landscaped roofs shall comply with the requirements of Table 601.

• Table 601-Fire-resistance Rating Requirements for Building Elements (Hours)
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Industry Discussion - Jurisdiction

• **Vegetative Roofs – International Fire Code**
  • IFC 2012, Section 317--Rooftop Gardens and Landscaped Roofs

• **317.1 General. Rooftop gardens and landscaped roofs shall be installed and maintained** in accordance with Sections 317.2 through 317.5 and Sections 1505.0 and 1507.16 of the *International Building Code*.

• **317.2 Rooftop garden or landscaped roof size.** Rooftop garden or landscaped roof areas shall not exceed 15,625 square feet (1,450 m²) in size for any single area........
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Industry Discussion - Jurisdiction

• Rooftop Photovoltaic - IBC 2012, Section 1505--Fire Classification

• 1505.8 Photovoltaic systems. Rooftop installed photovoltaic systems that are adhered or attached to the roof covering or photovoltaic modules/shingles installed as roof coverings shall be labeled to identify their fire classification in accordance with the testing required in Section 1505.1.
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Industry Discussion - Jurisdiction

- **1509 – IBC – International Building Code**
- **1509.7 Photovoltaic systems.** Rooftop mounted photovoltaic systems shall be designed in accordance with this section.
- **1511.1 Solar photovoltaic panels/modules.** Solar photovoltaic panels/modules installed upon a roof or as an integral part of a roof assembly shall comply with the requirements of this code and the *International Fire Code*.

605 – Structural...
- **605.11 Solar photovoltaic power systems.** Solar photovoltaic power systems shall be installed in accordance with Sections 605.11.1 through 605.11.4, the *International Building Code and NFPA 70*. 

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*People Helping People Build a Safer World™*
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- Vegetative Roof Spec Issues
  - Specification Sections- MasterFormat ’04, ‘10
  - Division 7 – 07 55 00 – Protected Membrane Roofing;
    - Includes roofing assemblies with protective insulation and other surfacing materials, covering, membranes, applied directly to the structural substrate
    - Alternative Terms, Abbreviations: vegetated, landscaped protected membrane roofing, green roof, sustainable design roof, alternate terms for Protected Membrane Roofing
  - Division 7 - 07-55-63 – Vegetative Roofing has it’s own section!!
  - Division 7 – 07 33 00 – Natural Roof Coverings
    - Sod, Thatched, Vegetated Roof Coverings ‘Organic Special Roof Coverings’
    - Division 7, reference to Division 2 – Plants, Irrigation
    - Division 31 Definitions

Specify Vegetative in Division 7....
Roofing Contractor responsible for ALL, sub if required.
- Irrigation Piping, Mechanical Insulation
- Planting
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• **Vegetative Roof Spec Issues**
  – Technical Issues – NRCA Manuals
    • Weight Distribution at placement
    • Water Testing
    • Serviceability...it leaks, who digs?
    • Placement Importance
      – Cost if damaged, then covered
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• Vegetative Roof Spec Issues
  – Insurance Required
    • General Liability – Finished Product = ROOF
    • Workers Compensation Classification - ROOFER
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Industry Discussion - Jurisdiction

• Vegetative Roof Spec Issues
  – Warranty
    • Single Source – What if it Leaks?
      – Why?
      – Who’s responsible?
    • Manufacturer Preferences
      – Roofing Contractor?
      – Landscaper sub?
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• Vegetative & PV Roof Issues
  – Roofing Contractor Licensing – Illinois Dept. of Professional Regulation
    • Roofers are licensed to protect the building owner and manager, building engineer
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Industry Discussion - Jurisdiction’

• Definitions - **Roofing**
  • ‘to construct, reconstruct, alter, maintain and use materials and items used in the construction, reconstruction, alteration and repair of all kinds of **roofing and waterproofing**.'
Definitions - **Roofing Contractor**

Roofing Contractor is one who has the experience, knowledge and skill to construct, reconstruct, alter, maintain and repair roofs and use materials and items used in the **construction, reconstruction, alteration, maintenance and repair** of all kinds of roofing and waterproofing **as related to roofing**, all in such manner to comply with all plans, specifications, codes, laws, and regulations applicable thereto, but does not include such contractor's employees to the extent the requirements of Section 3 of this Act apply and extend to such employees...
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Industry Discussion - Jurisdiction

• IL Roofing License Law: Is the contractor:
  – Licensed – State of IL ... it’s the law
    • Limited - 8 Units or LESS, *Residential Only*
      – Steep or Low Slope
    • Unlimited
      – All types & sizes
      – Residential, Commercial, Industrial, Institutional
      – Steep or Low Slope
NRCA Union Roofing Contractors Council Industry Discussion - Jurisdiction

• Vegetative Roof Contracting Issues
  – Joint Conference Board
  • Roofers Won two hearings...
    – Roosevelt Collections = Built in Place
    – Lowes – Trays

After a review of all the parties’ presentations and relevant facts, I find that the work in question properly belongs to the Roofers and Laborers as indicated below:

<table>
<thead>
<tr>
<th>Roofers</th>
<th>Laborers</th>
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<tbody>
<tr>
<td>1) Membrane</td>
<td>1) Retaining walls</td>
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<tr>
<td>2) Moisture Guard</td>
<td>2) Planting of plants</td>
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<td>3) Growing Media</td>
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<td>4) Flat Pavers</td>
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<td>5) Drainage Mat</td>
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<td>6) Insulation</td>
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Industry Discussion - Jurisdiction

• Vegetative Roof Contracting Issues
  – National Labor Relations Board – Another Project
    • Determined work awarded to employees of contractor with contract ...

  – NLRB Ruling is for EMPLOYEES, ONE JOB ONLY
  – No National Jurisdiction Ruling
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

• Vegetative Roof Contracting Issues
  • **General Contractors and SWA Agreements**
  • The Operators 150/ Teamsters 703 have an Illinois Landscape Contractors Bargaining (ILCBA) agreement with their signatory landscape contractors.
  • ILCBA agreement is not enforceable against a General Contractor who is signed to a MARBA agreement with Operators 150.
  • Subcontracting clause cannot be enforced on General Contractors selecting Roofing Contractors to install their Vegetative Roof System
  • Grievance threatened, and withdrawn.
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Industry Discussion – Jurisdiction

- North American Industry Classification Codes (NAICS)
- May 2010 - NAICS Code - 238160
- Roofing Contractors
The General Services Administration (GSA), New England Region is seeking qualified small business contractors for the Design Build of an **Building Integrated Photovoltaic (PV) Roof (Cleveland) / Green Vegetative Roof** (Rudman) as well as the replacement of the existing roofs with new high performance (R 50) roof (TBD) at the Cleveland Federal Building and the Rudman Federal Courthouse in Concord NH.

The NAICS code is **238160**. (Size Standard in Millions of $'s is $14.0 M) These buildings are located in a central downtown venue with adjacent thickly-settled residential housing. The Cleveland Federal Building and the Rudman Federal Courthouse buildings consist of multiple floors containing office spaces currently occupied by a variety of federal tenant agencies including courtrooms and offices of the federal Judiciary.
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• **O-Net Classifications – Workforce**
• **Summary Report for: 47-2181.00 - Roofers**
• **Cover roofs of structures** with shingles, slate, asphalt, aluminum, wood, or related materials. May spray roofs, sidings, and walls with material to bind, seal, insulate, or soundproof sections of structures.
• **Sample of reported job titles:** Roofer, Roof Mechanic, Roof Service Technician, Roofing Technician, **Metal Roofing Mechanic, Sheet Metal Roofer**, Industrial Roofer, Residential Roofer
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

• **O-Net Classifications – Workforce**
  
  • Summary Report for: 47-2181.00 – Roofers
  
  • Install, repair, or replace single-ply roofing systems, using waterproof sheet materials such as modified plastics, elastomeric, or other asphaltic compositions.

  • Cover roofs or exterior walls of structures with slate, asphalt, aluminum, wood, gravel, gypsum.

  • Waterproof or damp-proof walls, floors, roofs, foundations, or basements by painting or spraying surfaces with waterproof coatings or by attaching waterproofing membranes to surfaces.
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Industry Discussion - Jurisdiction

- **O-Net Classifications – Workforce**
- **Green Occupation: 47-2181.00 - Roofers**
- **Apply modular soil- and plant-containing grids** over existing roof membranes to create green roofs.
- **Attach solar panels to existing roofs**, according to specifications and without damaging roofing materials or the structural integrity of buildings.
- **Install layers of vegetation-based green roofs**, including protective membranes, drainage, aeration, water retention and filter layers, soil substrates, irrigation materials, and plants.
- **Install solar roofing systems that have energy-collecting photovoltaic panels** built into roofing membranes, shingles, or tiles.
- **Spray roofs**, sidings, or walls to bind, seal, insulate, or soundproof sections of structures, using spray guns, air compressors, or heaters.
- Install **vapor barriers** or layers of insulation on flat roofs.
- Apply **reflective roof coatings**, such as special paints or single-ply roofing sheets, to existing roofs to reduce solar heat absorption.
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

• **O-Net Classifications – Workforce**

• **Summary Report for: 47-2231.00 - Solar Photovoltaic Installers**

• **Assemble, install, or maintain solar photovoltaic (PV) systems on roofs** or other structures in compliance with site assessment and schematics. May include measuring, cutting, assembling, and bolting structural framing and solar modules. May perform minor electrical work such as current checks.

• **This title represents an occupation for which data collection is currently underway.**
NRCA Union Roofing Contractors Council
Industry Discussion - Jurisdiction

• **Why Professional Roofing Contractor for Veggie, PV???:**
  • **Wind, Weight, Ventilation, Underlayment, Insulation, Drainage**
    – International Building Code – Chapter 15 – PV, Veggie
    – International Residential Code
    – International Fire Code - 2012
    – Specification Sections – Division 07
    – Installed Cost – Competitive Market
    – Workforce Education & Safety – ‘Culture’
    – Insurance Required – WC, GL … *FOR ROOFING WORK*
    – Warranty
    – Training & Safety
    – Licensing – Limited / Unlimited

• **NRCA & Affiliate Members - Experience, Safety Culture, Value**
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- NRCA & Affiliate Members...
- One Call, Single Source Responsibility
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Industry Discussion - Jurisdiction