



Date: August 10, 2012

Memo To: Members of the NECA Board of Governors

From: Traci M. Pickus  
Secretary-Treasurer

Subject: Proposal for the Board of Governors Meeting

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The enclosed proposal was properly submitted in accordance with Section 8.8 of the NECA Bylaws for review and action at the September 29, 2012 meeting of the Board of Governors. The meeting will be held at The Mandalay Bay Resort and Casino in Las Vegas, Nevada.

There is **one Ordinary Proposal**. If adopted, the proposal provides direction to NECA regarding the subject of the proposal. The actual amendment of the NEBF Agreement requires concurrence by the IBEW.

Additional information pertaining to the Board of Governors meeting can be found at:  
<http://www.necanet.org/about/about-neca/governance/?fa=meeting>.

## **Ordinary Proposal #1**

Regarding NEBF's Definition of Gross Labor Payroll  
Submitted by NECA's District IV Council, NECA

**WHEREAS**, Section 6.2.1 of the Restated Employees Benefit Agreement and Trust For The National Electrical Benefit Fund, dated January 1, 2000, defines gross labor payroll as *"all wages and other compensation paid to, or accrued by the Covered Employees in the Brotherhood bargaining unit or the Local Union bargaining unit for services performed for the Covered Employer"*;

**WHEREAS**, in a letter dated November 30, 1990, and recently confirmed in a communication dated, December 29, 2011, the NEBF Executive Secretary-Treasurer defined "gross labor payroll" as *"all wages and other compensation paid or accrued to employees in the IBEW bargaining unit for services performed for the employer."* The communications confirmed that *"paid vacations, paid holidays, and paid sick days are cash fringe benefits and may not be excluded from Gross Labor Payroll."* In addition, *"bonuses, whether or not expressly set forth in the labor agreement, are considered Gross Labor Payroll unless they are bona fide bonuses of an "extraordinary" nature."*

**WHEREAS**, the December 29, 2011 communication stated *"whenever there is any question about NEBF contributions being due on any type of wages or other compensation paid to or accrued by the employees, it is to be resolved in favor of inclusion in Gross Labor Payroll."*

**WHEREAS**, many contractors provide incentive pay, outside the terms and conditions of their local labor agreements, such as vacation, holiday and bonuses as both a reward and incentive for good work, and as an extra benefit to keep good employees;

**WHEREAS**, union employing contractors are already excessively burdened with fringe benefit payments that are not paid by their nonunion counterparts, and requiring NEBF contributions on certain incentive payments that are outside the terms and conditions of the labor agreement, just adds to that burden;

**WHEREAS**, many local benefits paid under the terms and conditions of local labor agreements are based on hours worked and working wages;

**WHEREAS**, NECA service charges are based on a member's *"productive electrical payroll"* which is defined in the National NECA Bylaws *"as total wages, including overtime wages, paid for all hours worked by all classes of electrical labor for which a rate is established in the prevailing labor agreement where the labor was performed..."*;

**WHEREAS**, to be compliant with most local benefit obligations, contractors report working wages and working hours on their monthly payroll reports and to be compliant with NEBF's definition of gross labor payroll, they also need to report gross wages in a separate column;

**WHEREAS**, reporting gross wages on monthly reports, that include vacation, holiday, sick, per diem, and bonus pay, which are outside the scope of the labor agreement, results in local IBEW unions, fund administrators and NECA Chapters knowing the added benefits that employers pay to some of their key employees. This knowledge has caused added stress at the bargaining table and resentment by IBEW members who do not receive such incentive pay;

**THEREFORE, be it resolved,** that NECA will work with the IBEW to replace the wording of “Gross Labor Payroll” with the words “Productive Electrical Labor Payroll” in the NEBF standard Category 1 labor agreement language and will direct the NEBF Trustees and National Employees Benefit Board to replace the wording of “Gross Labor Payroll” wherever it appears in any NEBF plan and trust documents with the words “Productive Electrical Labor Payroll” and specifically reword Sections 6.1 and 6.2 of the NEBF Restated Employees Benefit Agreement and Trust as follows:

**Section 6.1 Covered Employer Contributions.** Each Covered Employer shall pay by the fifteenth of each calendar month (except as provided herein) to the NEBF’s designated local collection agent an amount equal to 3% of the gross productive electrical labor payroll for the preceding calendar month paid to, or accrued by, the Covered Employees, as described in this Article. The Covered Employer agrees that such contributions shall constitute a legally binding, absolute obligation to the NEBF, and such obligation shall not be subject to set-off or counterclaim which the Covered Employer may have for any liability of the NEBF, the Brotherhood, a Local Union, the Association, any Local Chapter thereof, or any Covered Employee.

**Section 6.2 3% of the Gross Productive Electrical Labor Payroll.** The term 3% of the gross productive electrical labor payroll shall mean:

**6.2.1** as to Covered Employees who are in a bargaining unit represented by the Brotherhood or Local Union, 3% of all working wages ~~and other compensation~~ paid to, or accrued by the Covered Employees in the Brotherhood bargaining unit or the Local Union bargaining unit for services performed for the Covered Employer, or

**6.2.2** as to Covered Employees who are not in a bargaining unit represented by the Brotherhood or Local Union, either (a) 3% of all working wages ~~and other compensation~~ which the Covered Employer would pay, or which the Covered Employees would accrue, if the Covered Employees were receiving the wage rate received by the highest number of employees in the appropriate Brotherhood bargaining unit or the Local Union bargaining unit and working the normal straight time hours provided for in the appropriate labor agreement, or (b) 3% of all working wages ~~and other compensation~~ paid to, or accrued by, the Covered Employees for services performed for the Covered Employer, if such amount is less than subsection (a).

**6.2.3** the term working wages shall pertain to total wages earned, including overtime wages, paid for all hours worked by all classes of electrical labor for which a rate is established in the prevailing labor agreement where the labor was performed ~~and other compensation~~ and shall exclude: the value of non-cash fringe benefits, bona fide contributions made by the Covered Employer to: (a) a trust fund established under 302(c) of the Taft-Hartley Act; ~~or~~ (b) a separate entity or fund which provides retirement benefits or medical benefits; ~~and, bona fide bonuses of an extraordinary nature (i.e., lump sum year-end bonuses, not ordinarily paid as part of a regular payroll period)~~ or (c) compensation paid by the Covered Employer that is outside the scope of the bargaining unit agreement and designed as an incentive for employees, such as vacation, holiday, sick, or bonus pay.

**Comment from NECA National Office:**

While the NEBF contribution of 3% of gross labor payroll is simple in concept, as this proposal illustrates, the definition of gross labor payroll has led to confusion and inconsistency when applied across the hundreds of labor agreements in our industry. Gross labor Payroll has been properly defined by the NEBF administration to include paid vacations, paid holidays, and other compensation for “time not worked,” but such compensation was probably not very common and therefore not even considered when this language was first adopted. Basing the NEBF contribution on productive payroll, i.e. time worked, would seem to be a more equitable and a more universal standard than gross labor payroll, although there would still be some inconsistencies.

Of course, implementing such a change must not be done without full consideration of the impact that the lost contributions will have on the financial status of the NEBF. Nonetheless, this proposal is recommended **FOR** approval.”