



Labor Relations Bulletin

FROM THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

March 4, 2024

Tri-Trade Solar Agreement Q&A

On October 10th, 2023, the IBEW became party to the National Tri-Trade Solar Agreement with the International Union of Operating Engineers (IUOE) and Laborers International Union of North America (LIUNA). The NECA Field team collected the following questions from NECA Chapters and NECA-IBEW signatory contractors and the IBEW Construction Department has provided the answers.

The IBEW Construction Department and the NECA Labor Relations Department will be holding a virtual follow-up discussion with each NECA Region's Chapter Executives soon. NECA members are encouraged to send any additional questions they have to their Chapter Executives as soon as possible. If a Chapter Executive is unable to attend, they should send any questions to their respective Field Representative and Regional Director.

Meeting dates and times will be as follows:

- Eastern Region, March 18, 2024, 11:00am ET
- Midwestern Region, March 18, 2024, 3:00pm ET
- Southern Region, March 19, 2024, 11:00am ET
- Western Region, March 19, 2024, 3:00pm ET

Meeting link details will be sent directly to the Chapter Executive.

NECA sincerely thanks the IBEW for their assistance in providing clarity on these questions as NECA members work to navigate the new National Tri-Trade Solar Agreement.

Questions submitted to the IBEW

Preamble

This Paragraph indicates that a General Contractor (and presumably, an EPC (Electrical Prime Contractor) acting as a General Contractor) is responsible for ensuring compliance with this Agreement for any of their subcontractors on the project. Does such responsibility result in the Employer incurring liability for non-compliance and/or possible delinquencies incurred by said subcontractors?

No. The Preamble language intends to require contractors and subcontractors of ALL tiers to comply with the Agreement. If the EPC subcontracts racking or post work to a company signatory to LIUNA or IUOE under this agreement and the LIUNA or IUOE subcontractor violates, for example, the prevailing wage law the subcontractor is liable.

Article 2—Recognition

If site conditions require the performance of craft work not specifically enumerated in Article 3 or Appendix A, but still necessary for the completion of the project, must employees performing such work be represented by one of the three signatory Unions?

Yes. The employee performing said work must become a member of the appropriate union. In RTW states the employee must be offered membership.

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Article 3—Scope

Section 1 states that “Covered work also includes work done in yards or facilities where the output of which is exclusively reserved for this project.” Does this refer to ad hoc pre-fab staging areas?

Yes, if it is onsite.

If so, can it be assumed that this Agreement does not apply to other prefabrication or manufacturing facilities that produce products for use on other projects?

It does not apply to offsite fabrication.

Section 3 indicates that this Agreement does not apply to supervisors. For purposes of clarification, under this Agreement, are Foremen considered supervisors?

No. Foreman is a bargaining unit classification covered in the local CBA and not a “supervisor” under the intent of this agreement.

Will outside locals be subject to or a party to the national tri-trade agreement?

An outside local could be party to and use this Agreement however, the “IBEW Outside work” is intentionally excluded from this agreement as per Art. 3.

“Covered work does not include work performed on high voltage transmission lines and infrastructure, distribution lines, substations, switch yards or ground grids.”

There is no scope of work under this agreement that would be the work of the IBEW Outside branch.

The load side of the transformer is outside work not covered but the work is that of the IBEW.

Will all trenching, excavating, and conduit installation for the collectors in the solar farm be performed by outside IBEW workers?

No. Solar facility construction work is the same work as any power generation facility. It’s inside work to the property line or final point of termination.

Will crane operation to lift 34.5kv conductors and other equipment necessary to perform outside line work be operated by IBEW workers as they have in the past?

No. Solar facility construction work will be performed along the lines of a normal building trades project.

Will IBEW workers operate the water trucks as they have in the past for outside construction contractors?

No. Dust control is assigned to LIUNA as per #31 of Appendix A. The construction of solar projects is the work of the INSIDE branch of the IBEW.

Article 4—Application and Administration of Agreement

Is this Agreement optional for Employers with existing signatory obligations to any or all of the Trades party to this Agreement?

This agreement may be used no matter the signatory status with any union.

Is this Agreement optional for Union EPC’s for both self-performance of work designated as covered by this Agreement and for sub-contracting the same?

Yes.

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Is this Agreement applicable to jobs bid but not awarded or projects in process?

This agreement can be used for jobs bid but not awarded, for any future job and technically be used on a project that is already underway if that is what is desired. The intent is to utilize this agreement on projects going forward.

If an Employer becomes signatory to this Agreement on one project are they simultaneously obligating themselves to be bound by the Agreement on any other project requiring the performance of covered work as designated in Article 3?

An employer can sign onto use this agreement on all projects or just one project (PLA version).

Should an Employer become bound by the terms of this Agreement and subsequently make contributions to ERISA plans as specified by this Agreement for work performed on the project for which the Employer applied or was bound to by the terms of the subcontractor obligation, absent any other obligating documents, would they be required to make contributions on behalf of any employees they may have performing relevant covered work as per Article 3, on any other project not covered by this Agreement?

No.

Once the project for which the Employer applied is complete, would they need to reapply to the Agreement to use it for additional work on-site? (e.g. A new phase of the project is negotiated after the initial bid award, or the Employer is retained to provide ongoing service to the site)

This agreement intends to cover the construction of utility-scale solar projects, not maintenance. In the case of a new phase being awarded after the initial bid award, the contractor would simply contact the international unions and discuss the situation. We would work it out by either executing an expanded project scope for the “new phase” or agreeing to simply apply the existing agreement to the additional “phase.”

Article 5—General Savings Clause

If this Agreement is in conflict with state law, it is assumed the law will prevail, but will the trade still compete for the scope as written? If yes, is it the performing contractor’s (i.e. electrical) responsibility to enforce state law and risk a jurisdictional dispute?

The intent and understanding between the parties when this agreement was drafted was that anywhere “state law” such as electrical licensing conflicts with Appendix A, state law would prevail and the parties will honor that assignment.

Article 6—Referral of Employees

Article 6, Section 6 explicitly allows for the portability of LIUNA employees. Is portability permitted for IBEW and IUOE employees?

Standard portability rules apply to the IBEW.

Article 6, Section 1 begins, “The Employer shall have the unqualified right to select and hire directly all supervisors it considers necessary and desirable without such persons being referred by the Unions and/or their respective Local Unions.” Article 16, Section 2 says, “There shall be no limit on the production by employees nor restriction on the full use of tools and equipment.” As supervisors are employees, does this mean that the Employers are able to secure working supervision (i.e. working foremen) from any source with or without referral under this Agreement?

No. Art. 6 Sect. 1 as quoted means that an employer can hire supervisors without going through a referral. Foreman, General Foreman, and any other classification that are bargaining unit classifications covered in the LU CBA are NOT supervisors and must be referred through the local union hall or brought in under portability rules.

Article 8—Wage Scales and Benefits

Article 8, Section 11 requires the employer to pay the higher of the two applicable rates when one trade is unable to perform a task covered by their own scope and the work is then assigned to a different Trade who can perform the same. Can this provision be averted in the pre-job meeting process? For example, if the IBEW knows it might not have the resources in a particular market to do panels and the contractor assigns it to the Laborers instead at the pre-job meeting, is the Employer obligated to pay the IBEW rates or can they pay the Laborer's rates for that work? If IBEW rates, under which classification would a Laborer be compensated?

No. The assignment can't be changed—the language is clear on what happens when a union is unable to staff the project.

Article 8, Section 2—Does this remove a Local Union's ability to apply targeting/target funds to a project?

No. Section 2 has nothing to do with target funds.

Article 13—jurisdictional Dispute Resolution

In the instance of a jurisdictional dispute that arises in pre-job, can the Unions avail themselves of the dispute resolution process without the involvement of the employer?

The employer may participate as described in Art 13 Sec. 2.

In the instance of a disputed work assignment where the steward of two crafts lays claim to the same work, is there any way for the employer to avoid having to involve themselves in their dispute so as to not incur costs associated with defense?

The contractor is not required to participate in a jurisdictional dispute resolution process but will have to comply with the settlement of that dispute whether between the parties or as ordered by an arbitrator.

Article 16—General Working Conditions

Can employees from one trade work under the supervision of craft foremen from another trade?

Only in a situation where there is a composite crew structure as per Appendix A.

Article 22—Term of Agreement

If an employer is signatory to this Agreement over multiple projects, if they terminate this Agreement on one project (e.g. a subcontractor terminated from the project) can they continue to utilize it on other projects where they may have applied and become bound?

Yes.

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