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Labor Relations Bulletin

FROM THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Favored Nations: Different is Not Better

Everyone knows the clause:

Favored Nations – The Union agrees that if, during the life of this Agreement, it grants to any other Employer in the Electrical Contracting Industry on work covered by this Agreement, any better terms or conditions than those set forth in this Agreement, such better terms or conditions shall be made available to the Employer under this Agreement, and the Union shall immediately notify the Employer of any such concession.

But what does it mean?

Put simply, if the Union concedes **better** terms or conditions to another employer performing work covered by the agreement containing this clause, the Union shall notify the other parties of this agreement of such concession and make them available. The astute reader will note the word “better” is used in both this description and the language above. Often, better is confused with different. Different is not the intent of the language. A demonstration of how the term or condition offered by the Union is **better** must be possible.

What is better?

When the Favored Nations clause finds its way before labor-management committees or even the Council on Industrial Relations, the typical method is to look at the economic impact.

- Does the term or condition give one employer a competitive, economic advantage over another?
- Is the wage or total package lower?
- Does the workday/workweek provide for a lower overall cost of labor?
- Is overtime applied differently to create a lower cost?
- Do the ratios provide for a more competitive composite crew?
- Are different classifications allowed to work on the scope of which they are normally excluded?

If the answer to any of these is yes, then the term or condition is better and subject to Favored Nations. It should be noted the above list is not exhaustive.

In these scenarios, the employer can clearly demonstrate how these provide an economic advantage to an employer operating under these terms.

What are some limitations?

Scope of work must be considered: Often, concessions are made to specific scopes of work. In this case, the Favored Nations claim is still valid, but it will only apply to that scope as it is the limitation placed on the employer to whom it was originally offered.

Project-specific concessions: The Local Union will sometimes offer more favorable terms to employers on a specific project to either attempt to regain or maintain market share. In these cases, Favored Nations is still applicable but only to the project.

How does the Chapter or employer claim Favored Nations?

By a strict read of the language, the burden is on the Local Union to notify the Chapter or employer when such better terms or conditions are offered. In practice, this does not always happen. If a Chapter becomes aware of the Union conceding better terms to another employer, they are within their rights to send correspondence to the Union noting the better terms and stating the employers covered by the NECA-IBEW Agreement will begin operating under these better terms until such time as they are no longer available to the employer to whom they were offered. Should there be a dispute over enacting the Favored Nations claim, the Chapter should pursue the Labor Management process prior to Employers simply enacting agreement terms and changes believed to be violations of the Favored Nations language.

The Favored Nations clause promotes a level playing field by requiring the Union to extend any demonstrably better terms offered to another employer to all employers under the agreement. This prevents any single employer from gaining an unfair advantage. However, it is crucial to remember that “different” does not equate to “better,” and the scope of the concession, whether project-specific or for a specific type of work, dictates how the clause applies. While the union technically has the notification responsibility, Chapters and employers should be proactive in claiming Favored Nations if they suspect more favorable terms are being offered for scopes of work covered by their Agreement. By understanding these nuances, the parties can maintain a harmonious relationship that promotes fair competition amongst signatory employers.

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