

URGENT—NECA National Recommends Caution

As the economy dips, we have noticed an increase in activity by other crafts to try to claim work that has historically been performed by NECA contractors and IBEW bargaining units. Much of this mischief has been instigated by the Laborers.

In addition to other methods being employed, the Laborers have negotiated agreements with general contractors that require the general contractor to include language in its contracts with subcontractors that arguably require that the subcontractor (such as an electrical contractor) recognize and agree to be bound to the Laborers' collective bargaining agreements with the general contractor. In effect, an electrical contractor could unintentionally become signatory to a Laborers' agreement simply by signing a contract with a general contractor and without signing anything with the Laborers.

One such subcontract clause that we have been made aware of reads as follows:

29. LABOR RELATIONS. SUBCONTRACTOR agrees to be bound and to comply with all the terms and conditions of the labor agreements to which CONTRACTOR is a signatory to the same degree and extent as if SUBCONTRACTOR were a party to those agreements, including payments into the employee benefit trust funds required by said labor agreements, and including SUBCONTRACTOR's submission to, and SUBCONTRACTOR's compliance with, the arbitration and other dispute resolution requirements of said labor agreements. SUBCONTRACTOR agrees to comply with the terms and provisions contained in said agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, SUBCONTRACTOR agrees, at its own cost and expense, upon request of CONTRACTOR to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

SUBCONTRACTOR acknowledges that terms and conditions of the labor agreements to which CONTRACTOR is a signatory may require that SUBCONTRACTOR comply with additional labor agreements with unions affiliated with the AFL-CIO. When the terms and conditions of the labor agreements to which CONTRACTOR is a signatory so require, SUBCONTRACTOR shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO.

Should there be picketing on CONTRACTOR's job site, and CONTRACTOR establishes a reserved gate for SUBCONTRACTOR's purpose, it shall be the obligation of SUBCONTRACTOR to continue the proper performance of its work without interruption or delay.

SUBCONTRACTOR further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements in which CONTRACTOR is a signatory to agree to all of the foregoing promises and undertakings, in the same effect as herein provided with respect to it.

SUBCONTRACTOR acknowledges that Contractor has entered into the following labor agreements covering work at the construction jobsite with the Southern California District Council of Laborers and its affiliated Local Unions. Southern California Laborers Master Labor Agreement, effective July 1, 2006 to June 30, 2009 ("Master Labor Agreement").

SUBCONTRACTOR acknowledges that the Southern California District Council of Laborers and its affiliated Local Unions are the intended third party beneficiaries of the contractual provision and may enforce this provision directly against Subcontractor.

This particular clause is the subject of litigation involving one of our members. Our member did not sign any agreement, letter or assent with the Laborers' union; however, this language which was in the agreement between the electrical and general contractor not only seeks to bind our member to the specific work being performed by the general contractor regarding the project that is the subject of this subcontract, but actually also seeks to bind our member to the terms and conditions of Laborers Master Agreement "on all covered work performed in the geographic area of the Master Labor Agreement, whether or not the work is performed for the (General) Contractor."

We strongly recommend that no NECA contractor agree to such language. While there are good arguments why such a clause is unenforceable under Federal law, each state has its own rules regarding the enforcement of contracts. Our attorneys cannot state with any certainty that such a clause would not be found lawful under some states' contract laws. Moreover, at the least, if an electrical contractor signs such a clause, it will be faced with competing claims by the Laborers and the IBEW over work that we normally do that the Laborers also claim, or may claim, resulting in great legal and financial exposure to the contractor.

We also strongly recommend that you carefully review all language in any subcontract offered by a general contractor for this or similar language. If you see such language, strike it from the contract before sending it back to the general contractor. At the minimum have it reviewed by labor counsel before finalizing any contractual language in connection with that subcontract. Please contact NECA's Labor Relations office with any questions.