



# The Management Rights Clause

American Line Builders Chapter NECA

September 22, 2022

# Agreement Language – The Pattern Agreement Guide

## Preface

In this file you will find the revised version of three different pattern agreement guides and the Construction Wireman/Construction Electrician Addendum:

- (1) Inside Agreement;
- (2) Outside Agreement; and
- (3) Residential Agreement.

This revision replaces the 2008 version of the Pattern Agreement Guides. This year, as in the past the documents are provided in both PDF and Word formats. The PDF file is a secure document that cannot be changed; it can serve as a permanent reference. The Word files can be easily used in developing your local agreements.

The revisions include additional language to the explanation of Category I and II language located in the Foreword of the Guide, and minor typographical corrections.

All language changes are indicated by the insertion of a black bar to the left of those lines that have been changed both in the table of contents and affected article.

The Pattern Agreement Guides have been generally well-received and have led to the submission of better local agreements and more rapid internal analysis. Each guide includes a foreword consisting of definitions for Category I language, Category II language, Optional Language and common provisions, as well as information regarding the submission of agreements.

## OUTSIDE – FOREWORD

There are currently 18 Category I provisions – as identified in red in the Table of Contents and in the body of this Guide – which are considered Standard Agreement Language by the IBEW International Office and NECA National. By joint recommendation and in written agreement, all Outside Construction Agreements between IBEW Local Unions and NECA Chapters must contain all Category I Language verbatim, i.e., no deviations or changes to these clauses are permitted. Likewise, the agreement may not contain language that is contrary to the intent of the Category I language or circumvents provisions contained in the Category I Language. Additional language that pertains to but does not conflict with the Category I language may follow the language, but is not to be inserted within the language. ( This would also apply to Category II and any other verbatim language.) There are also several places where Alternate Language is provided. This Alternate Language is to be used in lieu of, and not in conjunction with, Standard Language.

Category II Language, as identified in blue, reflects provisions which the IBEW International Office recommends but which NECA National has not endorsed. These provisions need to be negotiated locally. If adopted, this language must be inserted verbatim into the collective bargaining agreement.

Optional Language, as identified in purple, is language that is acceptable to the IBEW International and NECA National, is approvable, and may be included in the agreement if the local parties agree. In some cases, language other than the particular language illustrated may be used; however, some of these clauses must be used verbatim.

Sections identified in **black text** are common provisions listed for local labor management consideration. They must be locally negotiated and agreed upon and may be used as provided or modified as determined by the parties.

# Management Rights

Section 2.02. The Union understands the Employer is responsible to perform the work required by the owner. The Employer shall, therefore, have no restrictions except those specifically provided for in the collective bargaining agreement, in planning, directing and controlling the operation of all his work, in deciding the number and kind of employees to properly perform the work, in hiring and laying off employees, in transferring employees from job to job within the Local Union's geographical jurisdiction, in determining the need and number as well as the person who will act as Foreman, in requiring all employees to observe the Employer's and/or owner's rules and regulations not inconsistent with this Agreement, in requiring all employees to observe all safety regulations, and in discharging employees for proper cause.

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# Agreement Review

- Number of Agreements Reviewed – 72 (60 Inside, 12 Outside)
- Standard CIR – 62
- Modified CIR – 9
- No CIR - 1

# Category I - A Review

Category I provisions are considered Standard Agreement language by the IBEW and NECA. All Inside Construction Agreements between IBEW Local Unions and NECA Chapters must contain all Category I Language verbatim. No deviations or changes to these clauses are permitted. Additional language that pertains to but does not conflict with the Category I Language may follow the language, but is not to be inserted within the language.

# Category I – Right to Reject

## Referral Procedure

Section 4.03 – The Employer shall have the right to reject any applicant for employment.

# Category I – Right to Reject

- Mountain Pacific NLRB Hiring Hall Case Established Mgt. Right to Reject – 1958
- Parsons Electric Case Reaffirmed Right to Reject Without Furnishing a Reason – 8<sup>th</sup> Circuit Court of Appeals, 1992
- U.S. District Court for the District of Oregon in Kofoed v. Rosendin Electric, 2001 – “A unionized employer need not explain why anyone referred for work by a union hiring hall was rejected for employment if the pertinent CBA does not require an explanation.”



# Category I – Right to Reject

## Referral Procedure

Section 4.03 – The Employer shall have the right to reject any applicant for employment.

# Category I – Right to Reject Bargained Away

## Referral Procedure

Section 4.03 – The Employer shall have the right to reject any applicant for employment.

## Found in CBA

The Employer shall have the right to reject any applicant for employment, *provided just cause is shown.*

*Any applicant who is rejected by the Employer shall receive \$50.00 compensation. A written cause shall be supplied if requested.*

# Category I – Right to Reject Bargained Away

## Referral Procedure

Section 4.03 – The Employer shall have the right to reject any applicant for employment.

# Category I – Right to Reject Bargained Away

## Referral Procedure

Section 4.03 – The Employer shall have the right to reject any applicant for employment.

## Found in CBA

**The Employer shall have the right to reject any applicant for employment.** *Job applicants referred to an employer under the provisions of the referral procedure shall be paid no less than two hours pay at their prevailing rate of pay by the employer to compensate them for the necessary time spent at the referral location.*

# Category I – Favored Nations

Section 2.10. 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.

# Category I – Favored Nations Bargained Away

Section 2.10. 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. *For the purpose of organizing, the Business Manager shall, at his discretion, offer better terms and conditions on a limited basis when necessary.*

# Category II – A Review

Reflects provisions which the IBEW International Office recommends but which NECA National has not endorsed. If adopted, this language must be inserted verbatim into the collective bargaining agreement.

NECA does not recommend any of this language.

# Category II – A Review

- Age Ratio Clause – 55
- Reverse Layoff – 48
- Employer Safety Responsibility - 19



# Age Ratio and Management Rights

## MANAGEMENT RIGHTS:

“The Employer shall...have no restrictions except those specifically provided for in the CBA, in planning, directing, and controlling the operation of all his work, in **deciding the number and kind of employees to properly perform the work,** in hiring and laying off employees...”

# Age Ratio and Management Rights

## MANAGEMENT RIGHTS:

“The Employer shall...have no restrictions except those specifically provided for in the CBA, in planning, directing, and controlling the operation of all his work, in **deciding the number and kind of employees to properly perform the work,** in hiring and laying off employees...”

*Age Ratio: On all jobs requiring five or more Journeymen, at least every fifth Journeyman, if available, shall be 50 years of age or older.*

# Reverse Layoff and Management Rights

## MANAGEMENT RIGHTS:

“The Employer shall...have no restrictions except those specifically provided for in the CBA, in planning, directing, and controlling the operation of all his work, in deciding the number and kind of employees to properly perform the work, **in hiring and laying off employees...**”

# Reverse Layoff and Management Rights

## MANAGEMENT RIGHTS:

“The Employer shall...have no restrictions except those specifically provided for in the CBA, in planning, directing, and controlling the operation of all his work, in deciding the number and kind of employees to properly perform the work, **in hiring and laying off employees...**”

*Reverse Layoff: This language provides that employees be laid off from the highest referral group first, then the next group follows, and Group 1 individuals would be laid off last.*

# Safety Language and Management Rights

## MANAGEMENT RIGHTS:

“...in requiring all employees to observe all safety regulations...”.

## Employer Responsibility (Safety) Language

It is the Employer's exclusive responsibility to ensure the safety of its employees and their compliance with these safety rules and standards.

# Common Provisions – A Review

Is language for local labor management consideration. It must be negotiated locally and agreed upon and may be used as provided or modified by the parties.

# Foreman and Steward Language

## Management Rights Clause

...The Employer shall, therefore, have no restrictions except those specifically provided for in the CBA, ...**in determining the need and number as well as the person who will act as Forman**

# Foreman and Steward Language

Most restrictive common provisions for Management Rights:  
**Foremen and Steward language.**

Supervision Language is needed for these to be bargaining unit employees. Everything else restricts your ability to utilize them.



# Foreman Language

## Examples of Forman Language:

- *“There must be a Foreman on every job and on each shift on a job.”*
- *“A Foreman shall not work with the tools after being responsible for seven journeymen.”*
- *“Employers shall designate Journeymen as sub foreman, Foreman, and General Foreman on all jobs in accordance with the following schedule.”*
- *“On any job requiring more than two crews, the GF shall supervise Foremen only and shall not at any time supervise a crew.”*

# Steward Language

## Example of Good Steward Language:

*“The primary function and job of any worker appointed Steward shall be that of a journeyman wireman.”*

# Steward Language

## Examples of Steward Language:

- *“The Steward shall remain on the job until its completion unless sooner removed by the BM.”*
- *“When Stewards have been appointed on a job, they can only be removed by mutual consent of IBEW LU \_\_\_\_ and the Employer.”*
- *“When the project requires 4 or more JW’s the Code of Excellence Steward shall receive a premium of 10% per hour.”*
- *The Steward shall be the last employee to be laid off, provided he is qualified to perform the work.*

# Steward Language

Presenter Comment – This is not intended to say Steward Language shouldn't exist. Stewards can be an extremely useful industry partner when used correctly.

Contractors hire linemen, electricians, and all other IBEW classifications. Steward is not a CBA classification.

# Common Provisions

If agreement language exists, it applies to all signatory contractors.

If no language exists, it reverts to Management Rights.

More examples of bargained away Management Rights...

# Common Provisions

- *“No JW working under the terms of this agreement shall be subject to a physical examination as a qualification for employment.”*
- *“A once weekly safety meeting shall be conducted at all job sites and shops at the normal starting time of the first work day of the normal work week.”*
- *“Any worker laid off shall remain on the job site for the entire 8 hour work day.”*
- *“Employees shall not be subject to disciplinary action for drinking coffee during working hours.”*

# Common Provisions

- *“Any proposed changes to the starting & quitting times shall be submitted to the LM committee and may be changed according to their decision.”*
- *“In the event the workman’s clothing becomes damaged or ruined it shall be replaced by the employer.”*
- *“No work except in case of true emergency shall be performed outside of the regular working hours without prior notification to both parties to this Agreement.”*

# Company Policies

- As established, if it's not specifically addressed in your Collective Bargaining Agreement, it's covered under Management Rights.
- Be mindful when creating company policies to not impose more restrictive terms than your agreement.
- This is not meant to be a guide to establishing a Company Policy, but items to consider or review.



# Company Policies

## Management Rights

...in deciding the number and kind of employees to properly perform the work, **in hiring and laying off employees...**

Found in company policy:

*“...you may be terminated after three (3) written warnings.”*

# Company Policies

## Agreement Language

...During the established work week..

## Found in company policy

*Normal Company business hours are established between 8:00 AM and 5:00 PM Monday through Friday...*

# Company Policies

## Agreement Language

There is no break language in the agreement.

## Found in company policy

*Per the Local \_\_\_\_ Collective Bargaining Agreement you are required to take two (2) 15 minute rest breaks, one in the morning and one in the afternoon.*

**Parsons Break Case – Minneapolis / IBEW Local #292**

# Last Thoughts

- Termination for Cause (document!) vs Reduction in Force.
- Drug Testing Programs – Company Policy vs CBA vs Customer Requirement

# Questions & Discussion

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Thank you!

