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OPINION, U.S. COURT OF APPEALS FOR THE TENTH CIRCUIT (AUGUST 6, 2024)

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRENT ELECTRIC COMPANY, INC.,

Plaintiff Counter Defendant-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 584,

Defendant Counter Plaintiff -Appellee.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION,

Amici Curiae.

No. 23-5108

Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. No. 4:21-CV-00246-CRK-CDL)

Before: PHILLIPS, KELLY, and MORITZ, Circuit Judges.

PHILLIPS, Circuit Judge.

Brent Electric Company appeals the district court's enforcement of an arbitration award that imposed on Brent a renewed three-year collective-bargaining agreement (CBA) with Local Union No. 584 of the International Brotherhood of Electrical Workers (the Union). Brent objects that the imposed CBA contains permissive subjects of bargaining, arguing that it did not clearly and unmistakably waive its purported statutory right to refuse the imposition of permissive subjects, and that such an award violates public policy.

This dispute requires us to consider two separate lines of cases carrying ostensibly contradictory standards: those applying the presumption of arbitrability absent forceful evidence of an intent not to arbitrate; and those requiring a party's clear and unmistakable waiver of a statutory right.

We reject Brent's invitation to confuse the two and agree with the Union that, by agreeing to the interest-arbitration clause in the 2018 CBA, Brent consented to submit both permissive and mandatory subjects of bargaining to arbitration if the parties could not agree on the terms of a new CBA. We therefore affirm the district court and hold Brent to its contractual obligations.[1]

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[1] We grant the motion submitted by the National Electrical Contractors Association and the International Brotherhood of Electrical Workers for leave to file an amicus brief, which this court provisionally granted on December 29, 2023.

BACKGROUND

I. Factual Background

Brent and the Union have a long-standing relationship dating back to 1996, when Brent signed a Letter of Assent authorizing the Eastern Oklahoma Chapter of the National Electrical Contractors Association (NECA) to negotiate with the Union on Brent's behalf. During the times relevant to this dispute, the Union's relationship with Brent was enabled by Section 8(f) of the Labor-Management Relations Act, which exempts employers in the building and construction industry from the general prohibition on making an agreement with a union before a union has majority-employee support.[2] *See* 29 U.S.C. §§ 158(f), 159(a); *Sheet Metal Workers' Int'l Ass'n, Loc. Union No. 2 v. McElroy's, Inc.* (*McElroy's*), 500 F.3d 1093, 1097 (10th Cir. 2007) ("Section 8(f) thus creates an exception to the NLRA's general rule prohibiting a union and an employer from signing a collective bargaining agreement recognizing the union as the exclusive bargaining representative before a majority of employees have authorized the union to represent their interests.").

During early 2018, NECA and the Union negotiated and agreed to the CBA at issue, which was effective from June 1, 2018, through May 31, 2021 (the 2018 CBA). Relevant to this appeal, the 2018 CBA included

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[2] In supplemental briefing, the Union informed us that "[o]n September 23, 2021, the NLRB certified Local 584 as the exclusive collective bargaining representative selected by a majority of Brent's bargaining unit employees" and so "[t]he parties' bargaining relationship now is one governed by Section 9(a) of the Labor Management Relations Act (LMRA)." Appellee Suppl. Br. at 5.

an interest-arbitration clause, Section 1.02(d), which was the same as the interest-arbitration clause included in the 2015 CBA:

> Unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations for the Electrical Contracting Industry (CIR) may be submitted jointly or unilaterally to the [CIR] for adjudication. Such unresolved issues or disputes shall be submitted no later than the next regular meeting of the [CIR] following the expiration date of this agreement or any subsequent anniversary date. The [CIR's] decisions shall be final and binding.

App. vol. I, at 48.

The negotiations also resulted in a memorandum of understanding (MOU) between the Union, NECA, and another electrical contractor, which detailed Brent's obligations to contribute to the Union pension plan. The 2018 CBA incorporated the MOU as Addendum Four.[3] *See* App. vol. I, at 46 (listing Addendum Four in the 2018 CBA's table of contents); *Brent Elec. Co., Inc. v. Int'l Bhd. of Elec. Workers Loc. Union No. 584*, No. 21-CV-00246, 2022 WL 16973249, at *5 n.9 (N.D. Okla. Nov. 16, 2022) ("The provisions at Addendum Four were no less a part of the 2018 CBA, despite being an addendum. . . . ").

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[3] Brent disputes that the 2018 CBA incorporated Addendum Four.

In September 2020, Brent wrote to NECA and the Union to provide notice of its termination and revocation of the Letter of Assent, including its authorization for NECA to act as its bargaining representative for matters related to the CBA. Two months later, Brent provided notice to NECA and the Union of its intent to stop making contributions to the Union pension fund under the MOU.

In February 2021, the Union responded by submitting a grievance to NECA's Labor Management Committee (LMC), claiming that Brent had violated Addendum Four of the CBA. The LMC agreed with the Union, ruling that Brent was "in violation of Addendum 4 of the CBA" and asking Brent to "correct December contribution monies . . . and any subsequent payments going forward." App. vol. I, at 114. In a still-pending related action, the Union filed a complaint in the Northern District of Oklahoma against Brent, asking the court to confirm and enforce the LMC decision, and Brent filed counterclaims.

Also in February 2021, Brent wrote to the Union, expressing its purported "desire[] to reach a prompt successor Agreement with the Union." App. vol. II, at 118. But in the letter, Brent listed twenty-one "Articles/ Sections from the expiring" 2018 CBA that it asserted were "permissive subjects of bargaining under established federal labor law" and thus beyond the Union's authority to "lawfully insist" be included in the 2021 CBA. *Id.* at 119. It also asserted that those subjects could not be imposed through interest arbitration. Among the objected-to sections were Section 1.02(c),

the evergreen clause,[4] and Section 1.02(d), the interest-arbitration clause. On that basis, Brent omitted the sections from its proposed agreement. Brent also listed three sections it asserted were "illegal subjects of bargaining," and it likewise omitted them from its proposed CBA. *Id.* Brent did not assert that the interest-arbitration clause was an illegal subject of bargaining.

On April 9, 2021, the Union sent a letter to Brent stating its intent to submit to the arbitrator, the Council on Industrial Relations for the Electrical Contracting Industry (CIR), "unresolved issues that remain between the parties" in accordance with the interest-arbitration clause in Section 1.02(d) of the 2018 CBA. *Id.* at 144. This was a unilateral submission and made over Brent's objection.

In May 2021, before the 2018 CBA expired, the CIR issued its preliminary decision, which included a new CBA. The CIR directed the parties "to sign and implement immediately the inside agreement which is attached hereto and hereby made a part of this decision." *Id.* at 195. Brent wrote to the CIR, objecting to the inclusion of what it asserted were permissive subjects of bargaining, including the evergreen clause. It also objected to the inclusion of the MOU on pension contributions as Addendum Four. Brent did not object to the 2021 CBA's new arbitration provision.

The next month, the CIR issued a second decision, including a revised version of the CBA, which corrected

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[4] The evergreen clause provides that "[t]he existing provisions of the Agreement, including this Article, shall remain in full force and effect until a conclusion is reached in the matter of proposed changes." App. vol. I, at 48.

only "a clerical error" and provided Brent no relief for "the numerous errors and omissions" Brent had raised in its May objection letter. App. vol. I, at 21. The CIR responded to Brent's letter, "not[ing] that Brent Electric's letter of May 30, 2021, requests the deletion of several other provisions, which that letter describes as permissive subjects of bargaining." App. vol. III, at 211. It explained: "Those provisions have not been deleted for two reasons: 1) In each case, they are among the '[u]nresolved issues or disputes' that your company explicitly agreed to submit to arbitration, and 2) the CIR does not agree that those provisions are permissive subjects of bargaining." *Id.* The CIR then imposed its award—the 2021 CBA.

The 2021 CBA contained a different interest-arbitration provision than the 2018 CBA. The 2021 version required mutual agreement before any future interest arbitration could be submitted to the CIR and removed the unilateral provision included in the 2018 CBA's interest-arbitration clause:

> (d). In the event that either party, or an Employer withdrawing representation from the Chapter or not represented by the Chapter, has given a timely notice of proposed changes and an agreement has not been reached by the expiration date or by any subsequent anniversary date to renew, modify, or extend this Agreement, or to submit the unresolved issues to the [CIR], either party or such an Employer, may serve the other a ten (10) day written notice terminating this Agreement. The terms and conditions of this Agreement shall remain in full force and

> effect until the expiration of the ten (10) day period.
>
> (e). *By mutual agreement only*, the Chapter, or an Employer withdrawing representation from the Chapter or not represented by the Chapter, may jointly, with the Union, submit the unresolved issues to the [CIR] for adjudication. Such unresolved issues shall be submitted no later than the next regular meeting of the [CIR] following the expiration date of this Agreement or any subsequent anniversary date. The [CIR's] decisions shall be final and binding.

App. vol. IV, at 272–73 (emphasis added).

II. Procedural Background

In June 2021, Brent filed a complaint in federal district court seeking to vacate and set aside the CIR award. In response to Brent's July 2021 amended complaint, the Union counterclaimed to enforce the award. Besides requesting confirmation of the award, the Union sought an audit of Brent's payroll records, as well as an award for the Union's attorneys' fees and costs.

On November 16, 2022, the district court granted the Union's motion to dismiss Brent's amended complaint. *See Brent Electric*, 2022 WL 16973249, at *6. The parties then cross-moved for summary judgment on the Union's counterclaim for enforcement. The district court partially granted the Union's motion for summary judgment on its counterclaim for enforcement: it confirmed the CIR award but denied the Union's requests for an audit of Brent's business

records and an award of attorneys' fees. *Brent Elec. Co., Inc. v. Int'l Bhd. of Elec. Workers Loc. Union No. 584*, No. 21-CV-00246, 2023 WL 5750484, at *11 (N.D. Okla. Sept. 6, 2023). But it ordered Brent to preserve its "payroll-related business records for work performed from June 1, 2021, through the pendency of any appeal taken from this Court's decision." *Id.* The district court denied Brent's motion for summary judgment.

On October 4, 2023, Brent filed a notice of appeal from both the dismissal of its complaint and the denial of its motion for summary judgment. Brent moved to stay enforcement of the 2021 CBA pending this appeal, which the district court denied. *See Brent Elec. Co., Inc. v. Int'l Bhd. of Elec. Workers Loc. Union No. 584*, No. 21-CV-00246, 2024 WL 66039, at *1, *7 (N.D. Okla. Jan. 5, 2024). The district court later reaffirmed its decision and reasoned that any harm Brent might suffer from the imposition of the 2021 CBA was not irreparable and that the public interest favored denial of a stay. *Id.* at *5–6. Brent then moved to stay enforcement of the award in this court under Federal Rule of Appellate Procedure 8(a)(2), which we also denied.

We exercise jurisdiction over the district court's disposition of the motion to dismiss and the cross-motions for summary judgment under 28 U.S.C. § 1291.

DISCUSSION

We review de novo "the district court's dismissal for failure to state a claim and the district court's grant of summary judgment, applying the same legal standard as the district court." *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1106–07

(10th Cir. 2005); *see also United Steel, Paper & Forestry, Rubber, Mnfg., Energy, Allied Indus. & Serv. Workers Int'l Union Loc. 13–857 v. Phillips 66 Co.* (*Phillips 66*), 839 F.3d 1198, 1204 (10th Cir. 2016) ("We review de novo the grant of summary judgment, including where the district court has ordered arbitration. . . . ").

Brent appeals the district court's dismissal of its complaint and its grant of the Union's motion for summary judgment on its counterclaim to enforce the CIR award. As a preliminary matter, we reject the Union's argument that this case might be moot given Brent's compliance with the 2021 CBA.[5] We next review the legal framework necessary to put Brent's arguments in context. Turning to the merits, we conclude that the presumption of arbitrability applies to Brent's dispute, and reject Brent's arguments that it has a statutory right to avoid having permissive subjects of bargaining imposed in interest arbitration and that such an imposition violates public policy or the Federal Arbitration Act.

I. Brent's appeal is not moot.

Article III of the Constitution limits our exercise of "judicial Power" to "Cases" and "Controversies." U.S. Const. art. III, § 2. The doctrine of constitutional mootness means that "the suit must present a real and substantial controversy with respect to which relief may be fashioned" and relevant here, "the controversy must remain alive at the . . . appellate stages of the litigation." *Jordan v. Sosa*, 654 F.3d 1012, 1024 (10th Cir.

[5] The 2021 CBA was set to expire at the end of May 2024, shortly after we heard oral argument in this case.

2011) (quoting *Fletcher v. United States*, 116 F.3d 1315, 1321 (10th Cir. 1997)). Constitutional mootness is therefore "grounded in the requirement that any case or dispute that is presented to a federal court be definite, concrete, and *amenable to specific relief*." *Id.* (cleaned up). "The crucial question is whether granting a *present* determination of the issues offered will have some effect in the real world." *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1110 (10th Cir. 2010) (citation omitted).

Voluntary cessation of challenged activity may moot litigation "if two conditions are satisfied: (1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) interim events have completely and irrevocably eradicated the effects of the alleged violation." *Id.* at 1115 (cleaned up). The party asserting mootness bears the "heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again." *Id.* at 1116 (cleaned up).

If a party requests only declaratory or injunctive relief, courts may also dismiss a case under the "prudential-mootness doctrine." *Id.* at 1121; *see id.* at 1122 ("This doctrine generally applies only to requests for injunctive or declaratory relief." (citations omitted)). Courts may dismiss a case because of prudential mootness if it "is so attenuated that considerations of prudence and comity for coordinate branches of government counsel the court to stay its hand, and to withhold relief it has the power to grant." *Id.* at 1121 (quoting *Fletcher*, 116 F.3d at 1321 (emphasis omitted)). Prudential mootness thus "arises out of the court's general discretion in formulating prospective equitable remedies" and is particularly appropriate when a

party requests injunctive relief against the government. *Bldg. & Const. Dep't v. Rockwell Int'l Corp.*, 7 F.3d 1487, 1492 (10th Cir. 1993). Under both the constitutional-and prudential-mootness doctrines, "the central inquiry is essentially the same: have circumstances changed since the beginning of the litigation that forestall any occasion for meaningful relief." *Rio Grande Silvery Minnow*, 601 F.3d at 1122 (quoting *S. Utah Wilderness All. v. Smith*, 110 F.3d 724, 727 (10th Cir. 1997)).

Though the Union's motion to cancel oral argument on mootness grounds was untimely, we still must consider the Union's arguments because Article III mootness is a jurisdictional issue.[6] *See Rivera v.*

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[6] In April 2024, the Union moved to cancel oral argument because it wanted to "bring to the Court's attention this matter's potential, imminent mootness." Mot. to Cancel at 2. It argued that "potential mootness arises from the approaching May 31, 2024 expiration date of the collective bargaining agreement at issue in this matter" and from Brent's "apparent compliance with that agreement," which the Union noted in its opposition to Brent's motion to stay enforcement of the award. *Id.* But in the Union's response to the motion to stay, the Union noted only that "Brent has been complying with most, if not all, of the 2021 CBA's terms." Mot. to Stay Resp. at 17. If the Union believed in January when it responded to Brent's motion to stay that Brent had complied with all the 2021 CBA's terms, it should have moved to cancel due to mootness in January and not waited until April, soon before oral argument. Indeed, under Local Rule 27.3, "a motion for summary disposition because of . . . mootness," 10th Cir. R. 27.3(A)(1)(b), must be filed "within 14 days after the notice of appeal is filed, unless good cause is shown," 10th Cir. R. 27.3(A)(3)(a). The Union has known the date of the 2021 CBA's expiration since early 2021. It therefore lacks good cause in delaying its motion beyond the time that it discovered Brent's compliance with the 2021 CBA, whether that was in January 2024 or earlier.

Bank of Am., N.A., 993 F.3d 1046, 1049 n.3 (8th Cir. 2021) ("[M]ootness goes to the very heart of Article III jurisdiction, and any party can raise it at any time. Indeed, it would be the Court's duty to raise and decide the issue on its own motion, if facts suggesting mootness should come to its attention. . . . " (quoting *In re Smith*, 921 F.2d 136, 138 (8th Cir. 1990)). Because "mootness, if it exists, would destroy our jurisdiction, we should address this issue first." *In re Smith*, 921 F.2d at 138.

A. Brent did not voluntarily comply with the 2021 CBA, and so its compliance does not moot this appeal.

The Union argues that Brent's compliance with the 2021 CBA moots this appeal. "The test of whether an appeal is moot is whether the party acted voluntarily or because of the actual or implied compulsion of judicial power." *Out of Line Sports, Inc. v. Rollerblade, Inc.*, 213 F.3d 500, 502 (10th Cir. 2000). "Showing that the party's compliance was a consciously performed voluntary act requires more than simple compliance with a court order or decree." *Id.* (citation omitted). In *Out of Line Sports*, a party complied voluntarily with an order enforcing a lien by jointly signing a motion to release the funds, by not moving to stay the judgment, and by not explicitly reserving its right to appeal. *Id.*

In its denial of Brent's motion to stay, the district court noted that "[t]he circumstances of this case are dissimilar from those cases where compliance with a judgment moots an appeal." *Brent Electric*, 2024 WL 66039, at *5 n.3 (citing *Out of Line Sports*, 213 F.3d at 503). We agree. Unlike the compliant party in *Out of Line Sports*, Brent filed a motion to stay enforcement

of the CIR award in district court, and when that motion was denied, it filed a motion to stay in this court. Brent has vigorously preserved its objections to the 2021 CBA at all stages of the litigation. And, unlike the party in *Out of Line Sports*, which had jointly moved for the release of funds, Brent refused to sign the 2021 CBA until the district court forced it to do so, fearing that signing it might indicate voluntary compliance. Brent's filing of a complaint in district court to vacate the CIR award, its later motion to stay enforcement, and its appeal suffice to demonstrate that any compliance was involuntary.

Typically, the "party asserting mootness" bears the burden of showing that "the challenged conduct cannot reasonably be expected to start up again." *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (citation omitted). But here, we need not determine whether "the allegedly wrongful behavior could not reasonably be expected to recur" because that test applies only when a defendant *voluntarily* complies with a request for prospective relief and then challenges the relief on mootness grounds. *Unified Sch. Dist. No. 259 v. Disability Rts. Ctr. of Kansas*, 491 F.3d 1143, 1149 (10th Cir. 2007) (cleaned up). Brent's involuntary compliance makes the recurring-conduct test a poor fit for this case. And it is the Union that is raising a mootness challenge, not Brent, so the Union's assertion that Brent's compliance is voluntary rings hollow. But even if the Union were correct that Brent voluntarily complied with the 2021 CBA, its mootness challenge would still fail because, if successful in this appeal, Brent could seek remedies that would have real-world consequences. We address those consequences next.

B. Brent could seek monetary damages or reimbursements if we decide this appeal in Brent's favor.

Though this appeal comes too late to affect Brent's compliance with the 2021 CBA, Brent may still try to recover reimbursements or monetary damages stemming from its compliance if we rule in its favor and invalidate the CIR award. If we invalidate the 2021 CBA, Brent could claim reimbursement of a $750 premium for a surety bond, plus interest. Brent could also seek reimbursement of around $5,156.48 in contributions it has made to the Labor-Management Cooperation Committee (LMCC) and National Labor Management Cooperation Committee (NLMCC) funds "pursuant to unlawfully imposed permissive provisions" in the 2021 CBA. Appellant Suppl. Br. at 5.

The Union counters that any "purported, potential damages or other harm do not constitute live controversies." Appellee Suppl. Br. at 9. The Union argues that the surety-bond provision in the 2021 CBA is a mandatory subject of bargaining, and so "any effort Brent makes to seek reimbursement for premiums would subject it to the NLRB's enforcement authority." *Id.*; *see id.* at 6 (citing *Scapino Steel Erectors, Inc.*, 337 NLRB 992, 993–94 (2002)). Second, the Union argues that Brent's claims to a refund for contributions it made to the LMCC and NLMCC do not refute its mootness argument, because "these funds are not parties to this lawsuit, so there is no federal court jurisdiction in this matter over either of them." *Id.* at 9.

But all of Brent's avenues for potential relief depend on the outcome of this appeal, meaning our decision carries real-world consequences. True enough, Brent may have to initiate an NLRB proceeding to

vindicate its right to a remedy under any of the 2021 CBA's mandatory provisions, but it may only do so if we invalidate the CBA. Likewise, Brent's ability to proceed against LMCC and NLMCC for reimbursement of its contributions hinges on our decision here.

The Union adds that "if separately sued by Brent, both [the LMCC and NLMCC] may be able to successfully defend." *Id.* According to the Union, these committees could defend against such an action because "Brent has adopted the 2021 CBA by its conduct, and is as bound as it would have been had it signed that CBA at its inception." *Id.* at 5. Further, the Union argues, the liquidated-damages and interest provisions attached to contributions to those committees' funds are "triggered only by a delinquency in contributions, and Brent has identified no such delinquency arising under the 2021 CBA." *Id.* at 9–10.

None of these uncertainties—regarding the forum before which any remand proceedings may occur, the likelihood of success of such proceedings, or what the most appropriate remedy would be—affect our jurisdiction over this appeal. *See Litton Fin. Printing Div. v. N.L.R.B.*, 501 U.S. 190, 202 (1991) ("We have accorded the Board considerable authority to structure its remedial orders to effect the purposes of the NLRA and to order the relief it deems appropriate."). If we decide in Brent's favor, then Brent may seek such relief and initiate those proceedings; without such a decision, Brent may not. This is enough of a real-world consequence to persuade us that Brent's appeal is not moot. *See Rio Grande Silvery Minnow*, 601 F.3d at 1110.

C. We decline to exercise our discretion to dismiss the appeal under the prudential-mootness doctrine.

Finally, the Union invites us to dismiss this case under the prudential-mootness doctrine because the relief sought here is "arguably" "declaratory in nature," Appellee Suppl. Br. at 2, and urges us to decide "whether granting a *present* determination of the issues offered will have some effect in the real world," *id.* (quoting *Rio Grande Silvery Minnow*, 601 F.3d at 1110). Having decided that we have Article III jurisdiction, we choose not to dismiss this case under the prudential-mootness doctrine for two main reasons: First, Brent does not seek injunctive relief against the government, so considerations of comity are inapposite. Second, Brent's request for relief, though framed in declaratory or injunctive terms, still has real-world consequences—a decision in its favor would result in remand proceedings in which Brent could claim monetary damages, or at least reimbursement, as discussed above. *See Rio Grande Silvery Minnow*, 601 F.3d at 1110.

For these reasons, we retain jurisdiction over this appeal.

II. Legal Framework

We start with a brief survey of three interrelated topics that are implicated in this appeal: the presumption of arbitrability, interest-arbitration clauses, and the distinction between mandatory and permissive subjects of bargaining.

A. The Presumption of Arbitrability

In a set of three cases referred to as the "Steelworkers trilogy," the Supreme Court articulated a framework by which to determine whether a collective-bargaining dispute is arbitrable. *See generally United Steelworkers of Am. v. Enter. Wheel & Car Corp.* (*Enterprise Wheel*), 363 U.S. 593 (1960); *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.* (*Warrior & Gulf*), 363 U.S. 574 (1960); *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564 (1960). The Court has summarized four main principles from the Steelworkers trilogy. *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648–50 (1986). First, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Id.* at 648 (quoting *Warrior & Gulf*, 363 U.S. at 582); *see Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) (quoting same). Second, the "question of arbitrability" is "an issue for judicial determination." *AT&T*, 475 U.S. at 649. That is, "[u]nless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." *Id.* (citing *Warrior & Gulf*, 363 U.S. at 582–83). Third, "in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." *Id.* at 649; *see id.* at 650 ("[C]ourts . . . have no business weighing the merits of the grievance . . . or determining whether there is particular language in the written instrument which will support the claim." (quoting *Am. Mfg. Co.*, 363 U.S. at 568)). Fourth, and most importantly here, "where the contract contains an arbitration clause, there is a pre-

sumption of arbitrability." *Id.* at 650. This means that "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Id.* (quoting *Warrior & Gulf*, 363 U.S. at 582–83).

The presumption of arbitrability arises from "congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration." *Warrior & Gulf*, 363 U.S. at 582. This is because, in the labor context, "arbitration is the substitute for industrial strife." *Id.* at 578; *see* 29 U.S.C. § 151 (recognizing that "[t]he denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest" and declaring "the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce"). The presumption of arbitrability thus "reconciles the principle that a party cannot be required to submit to arbitration any dispute that he has not agreed so to submit, with the federal policy and presumption favoring arbitration in the labor context." *Int'l Bhd. of Elec. Workers, Loc. No. 111 v. Pub. Serv. Co. of Colorado*, 773 F.3d 1100, 1108 (10th Cir. 2014) (cleaned up).

But the presumption applies where "arbitration of a particular dispute is what the parties intended because their express agreement to arbitrate was validly formed and (absent a provision clearly and validly committing such issues to an arbitrator) is legally enforceable and best construed to encompass the dispute." *Granite Rock Co. v. Int'l Bhd. of Teamsters*,

561 U.S. 287, 303 (2010). So, "as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985).

The Court directs us to apply the following framework to determine whether the presumption applies and, if it does, whether it is rebutted:

> [E]xcept where the parties clearly and unmistakably provide otherwise, it is the court's duty to interpret the agreement and to determine whether the parties intended to arbitrate grievances concerning a particular matter. [Courts] then discharge this duty by: (1) applying the presumption of arbitrability only where a validly formed and enforceable arbitration agreement is ambiguous about whether it covers the dispute at hand; and (2) adhering to the presumption and ordering arbitration only where the presumption is not rebutted.

Granite Rock, 561 U.S. at 301 (cleaned up).

And so, "[i]n the absence of any express provision excluding a particular grievance from arbitration, . . . only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad." *Warrior & Gulf*, 363 U.S. at 584–85; *see Phillips 66*, 839 F.3d at 1204 (quoting same).

A challenge to the scope of an interest-arbitration clause is therefore construed as an arbitrability issue because it challenges whether a particular dispute

was rightly before an arbitrator—it does not challenge the arbitration agreement's existence. *See Dumais v. Am. Golf Corp.*, 299 F.3d 1216, 1220 (10th Cir. 2002) (" The presumption in favor of arbitration is properly applied in interpreting the scope of an arbitration agreement; however, this presumption disappears when the parties dispute the existence of a valid arbitration agreement.").

B. Interest-arbitration Clauses

CBAs often include what courts have called "interest arbitration clause[s]" or provisions. *Sheet Metal Workers' Int'l Ass'n, Loc. 14 v. Aldrich Air Conditioning, Inc.* (*Aldrich Air Conditioning*), 717 F.2d 456, 456 (8th Cir. 1983). Interest-arbitration clauses usually function by allowing one party to submit unresolved disputes to arbitration if negotiations for a renewed agreement stall or are unproductive. *See id.* ("An interest arbitration clause is one in which the parties agree to arbitrate disputes over the terms of a new collective bargaining agreement in the event of deadlock."). The resulting arbitration then leads to the imposition of a set of "new contract terms." *McElroy's*, 500 F.3d at 1095 n. 1.

Interest-arbitration clauses are often paired with so-called "extension clauses" or "evergreen clauses," which, when combined, provide for the continuation of a current agreement until a successor agreement is reached, either by mutual agreement or by arbitration, unless both parties agree to terminate. *Id.* at 1098 ("Read together, these articles provide two options upon the expiration of the agreement: automatic renewal" or "negotiation of a renewal agreement." But if "the parties fail to negotiate a renewal of the

agreement . . . either party may submit the dispute to the [arbitrator] for arbitration. While the dispute is pending resolution before the [arbitrator], [the extension clause] prevents the original agreement from expiring." (cleaned up)).

C. Mandatory and Permissive Subjects of Bargaining

The distinction between mandatory and permissive subjects of bargaining stems from the National Labor Relations (Wagner) Act of 1935 (NLRA), 29 U.S.C. §§ 151–169. As amended by the Labor-Management Relations (Taft-Hartley) Act of 1947 (LMRA), Pub. L. No. 80–101, 61 Stat. 136, Section 8 of the NLRA outlines both employers' and labor organizations' "[o]bligation[s] to bargain collectively" "with respect to wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(d); *see id.* § 158(a)(5) (making it an unfair labor practice for employers to refuse to bargain collectively); *id.* § 158(b)(3) (same for labor organizations). The Court refers to "wages, hours, and other terms and conditions of employment," *id.* § 158(d), as "subjects for mandatory bargaining," *Allied Chem. & Alkali Workers of Am., Loc. Union No. 1 v. Pittsburgh Plate Glass Co.* (*Allied Chemical*), 404 U.S. 157, 178 (1971). By contrast, nonmandatory or "permissive subjects cover[] all other areas." *Facet Enters., Inc. v. N.L.R.B.*, 907 F.2d 963, 975 (10th Cir. 1990). So, "[a]lthough parties are free to bargain about any legal subject, Congress has limited the mandate or duty to bargain to matters of 'wages, hours, and other terms and conditions of employment.'" *First Nat. Maint. Corp. v. N.L.R.B.*, 452 U.S. 666, 674 (1981) (quoting 29 U.S.C. § 158(d)). This means that "parties to labor negotiations are not obligated to

negotiate over permissive bargaining subjects." *Facet Enterprises*, 907 F.2d at 975.

To enforce the duty to bargain collectively over mandatory subjects, Section 8(a)(5) makes an employer's "refus[al] to bargain collectively with the representatives of his employees" an unfair labor practice, § 158(a)(5), while Section 8(b)(3) makes a labor organization liable for the same behavior, *id.* § 158(b)(3). When agreement about mandatory subjects is conditioned upon agreement about permissive subjects of bargaining, such insistence is "in substance, a refusal to bargain about the subjects that are within the scope of mandatory bargaining." *N.L.R.B. v. Wooster Div. of Borg-Warner Corp.* (*Borg-Warner*), 356 U.S. 342, 349 (1958). And such a refusal constitutes an unfair labor practice for labor organizations as well as employers. *See N.L.R.B. v. Bartlett-Collins Co.*, 639 F.2d 652, 655 (10th Cir. 1981) (" The Court specifically stated in *Borg-Warner* that good faith does not entitle a party to insist upon nonmandatory subjects as a precondition to agreement."); *Newspaper Printing Corp. v. N.L.R.B.*, 625 F.2d 956, 963 (10th Cir. 1980) ("[I]t is equally well established that insistence to impasse upon a non-mandatory subject of bargaining violates § 8(a)(5).").

In practice, the distinction means that if an impasse is reached after good-faith bargaining over *mandatory* subjects, the other party may lawfully take unilateral action to resolve the impasse.[7] *See Aggregate*

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[7] "An impasse exists when parties to a labor negotiation exhaust all possibility of reaching an agreement and further negotiations would be fruitless. Once a valid impasse is reached, an employer may take reasonable unilateral action without violating the

Indus. v. N.L.R.B., 824 F.3d 1095, 1099 (D.C. Cir. 2016) ("If the union refused to bargain, or if negotiations reached an impasse, then the company could make the change unilaterally."). By contrast, "[a] unilateral change to a permissive subject of bargaining is illegal" so that "if negotiations stall, the company has no choice but to maintain the status quo." *Id.*

In conclusion, "[t]he duty [to bargain in good faith] is limited to [wages, hours, and other terms and conditions of employment], and within that area neither party is legally obligated to yield. As to other matters, however, each party is free to bargain or not to bargain, and to agree or not to agree." *Borg-Warner*, 356 U.S. at 349 (citation omitted). Importantly, for nonmandatory or permissive provisions, "[e]ach would be enforceable if agreed to by the unions." *Id.*

With that background in mind, we proceed to the merits.

III. The presumption of arbitrability applies because the interest-arbitration clause was validly formed and covers the dispute.

Applying the Court's directive in *Granite Rock*, we note first that neither party contests that it is the court's duty to interpret the 2018 CBA and to determine whether the parties intended to arbitrate permissive subjects of bargaining. *See* 561 U.S. at 301 ("[E]xcept where the parties clearly and unmistakably provide otherwise, it is the court's duty to interpret the agreement and to determine whether the parties intended to arbitrate grievances concerning a particular

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[NLRA]." *Facet Enterprises*, 907 F.2d at 975 n.9 (10th Cir. 1990) (citations omitted).

matter." (cleaned up)); *Dumais*, 299 F.3d at 1220 ("The presumption in favor of arbitration . . . disappears when the parties dispute the existence of a valid arbitration agreement."). We also note that Brent does not challenge the validity of the 2018 CBA as a whole, or contest that it agreed to the interest-arbitration clause in Section 1.02(d). *See Brent*, 2023 WL 5750484, at *4 (stating that it is "undisputed that the parties agreed to the 2018 CBA" and that the 2018 CBA includes Section 1.02(d)); Op. Br. at 5 ("During early 2018, NECA and the Union negotiated and entered into a multi-employer collective bargaining agreement . . . [including] Section 1.02(d)."); Resp. Br. at 16 ("Brent does not dispute that it validly entered into the 2018 CBA, including its Section 1.02(d), an interest arbitration provision authorizing the CIR to adjudicate unresolved bargaining issues.").[8]

Brent argues instead that it did not intend by its agreement to the 2018 CBA and Section 1.02(d) to submit permissive subjects of bargaining to arbitration. So by challenging the scope of the interest-arbitration clause and asserting that it does not cover permissive subjects of bargaining, Brent raises an arbitrability issue. *See McElroy's*, 500 F.3d at 1096 (stating that the "ultimate question thus posed is whether the agreement bound McElroy's to engage in interest arbitration" and construing that question as a "question of arbitrability" for the court to decide (citation omitted)).

We therefore conclude that, because the arbitration clause was validly formed, the presumption of

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[8] Brent's objections relate to the CIR proceedings in 2021 and the 2021 CBA—Brent does not identify any objections it made to the 2018 CBA or the 2018 CBA's interest-arbitration clause.

arbitrability applies unless the arbitration clause does not "encompass the dispute." *Granite Rock*, 561 U.S. at 303. To make that determination, we turn next to the application of *Granite Rock*'s enumerated steps: first, we determine whether the interest-arbitration clause in the 2018 CBA unambiguously covers permissive subjects of bargaining; and second, if any ambiguity exists, we discuss whether Brent rebutted the presumption of arbitrability here.

A. The interest-arbitration clause unambiguously covers all subjects in the 2018 CBA, including permissive subjects.

As an initial matter, "[w]hen deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally . . . should apply ordinary state-law principles that govern the formation of contracts."[9] *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995); *see Dish Network L.L.C. v. Ray*, 900 F.3d 1240, 1246 (10th Cir. 2018)

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[9] The Court qualified this rule by noting that "Courts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that they did so." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (quoting *AT&T*, 475 U.S. at 649). It explained: "In this manner the law treats silence or ambiguity about the question '*who* (primarily) should decide arbitrability' differently from the way it treats silence or ambiguity about the question '*whether* a particular merits-related dispute is arbitrable because it is within the scope of a valid arbitration agreement'—for in respect to this latter question the law reverses the presumption." *Id.* at 944–45.

But the "clear and unmistakable" standard does not apply here, because, as discussed above, the parties do not dispute that the scope of the interest-arbitration clause was properly submitted to the court, not the arbitrator.

(quoting same). CBAs are also interpreted "according to ordinary principles of contract law." *M & G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 435 (2015). Because the signatories to the 2018 CBA are based in Oklahoma and the work was performed there, we determine that Oklahoma law applies to the interpretation of the 2018 CBA's terms. *See* Okla. Stat. Ann. tit. 15, § 162 ("A contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.").[10]

Under Oklahoma contract law, "[i]f the terms of a contract are unambiguous, clear and consistent, they are accepted in their plain and ordinary sense and the contract will be enforced to carry out the intention of the parties as it existed at the time it was negotiated." *Whitehorse v. Johnson*, 156 P.3d 41, 47 (Okla. 2007). "Unless some technical term is used in a manner meant to convey a specific technical concept, language in a contract is given its plain and ordinary meaning." *K & K Food Servs., Inc. v. S & H, Inc.*, 3 P.3d 705, 708 (Okla. 2000); *see also Pitco Prod. Co. v. Chaparral Energy, Inc.*, 63 P.3d 541, 545 (Okla. 2003) ("If language of a contract is clear and free of ambiguity the court is to interpret it as a matter of law, giving effect to the mutual intent of the parties at the time of contracting." (footnotes omitted)). Further, "[c]ontractual intent is determined from the entire agreement." *Whitehorse*, 156 P.3d at 47.

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[10] "Oklahoma statutes provide a comprehensive scheme which governs contractual agreements." *Pitco Prod. Co. v. Chaparral Energy, Inc.*, 63 P.3d 541, 545 n.16 (Okla. 2003).

With these state-law contract principles in mind, we examine the interest-arbitration clause at issue. Section 1.02(d) of the 2018 CBA reads:

> Unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement that remain on the 20th of the month preceding the next regular meeting of the [CIR] may be submitted jointly or unilaterally to the [CIR] for adjudication. Such unresolved issues or disputes shall be submitted no later than the next regular meeting of the [CIR] following the expiration date of this agreement or any subsequent anniversary date. The [CIR's] decisions shall be final and binding.

App. vol. I, at 48. The key language of this clause is in the first sentence: "Unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement. . . . " *Id.* We discern that this is a "broad" arbitration clause, *see Warrior & Gulf*, 363 U.S. at 585, because the terms "[u]nresolved issues or disputes" are limited only by the qualification that they "aris[e] out of the failure to negotiate a renewal or modification" of the CBA, App. vol. I, at 48. Section 1.02(d) therefore provides that any disputes arising from the eleven articles (each with several subsections), and five addenda contained in the 2018 CBA may be unilaterally submitted to arbitration. And, according to Brent, those eleven articles and five addenda include both permissive and mandatory subjects of bargaining. *See* App. vol. II, at 118–19 (objecting that twenty-one subsections in the 2018 CBA were permissive subjects and should not be imposed in the 2021 CBA). *But see* App. vol. III, at 211

("[T]he CIR does not agree that those provisions are permissive subjects of bargaining.").[11]

The arbitration clause's breadth does not render it ambiguous. We agree with the district court that the term "'unresolved issues or disputes' is unambiguous." *Brent Electric*, 2023 WL 5750484, at *4 (quoting App. vol. I, at 48). The district court properly consulted a dictionary to confirm its understanding of the plain meaning of that term, noting that the word "[u]nresolved" means "not settled, solved, or brought to resolution," and that the word "[d]isputes" means a "controversy." *Id.* (citations omitted); *see Cherokee Nation v. Lexington Ins. Co.*, 521 P.3d 1261, 1267 (Okla. 2022) ("Our Court has relied on dictionary definitions to provide the common, ordinary usage of terms. A common dictionary is helpful here." (citation omitted)); *see also McAuliffe v. Vail Corp.*, 69 F.4th 1130, 1145 (10th Cir. 2023) ("When determining the plain and ordinary meaning of words, we may consider definitions in a recognized dictionary."

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[11] The Union seems to accept Brent's premise that the objected-to provisions in the 2021 CBA were "permissive subjects of bargaining" despite the CIR determining otherwise. *See* Resp. Br. at 10 (quoting CIR Letter). When the CIR responded to Brent's objections to the award, it wrote that "[t]hose provisions have not been deleted for two reasons: 1) In each case, they are among the '[u]nresolved issues or disputes' that your company explicitly agreed to submit to arbitration, and 2) the CIR does not agree that those provisions are permissive subjects of bargaining." App. vol. III, at 211.

Because we are cautioned by the Court not to reach the merits of an arbitral award, we do not question the CIR's determination. *See AT&T*, 475 U.S. at 649 ("[I]n deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims.").

(citation omitted)). The district court determined that the "language of § 1.02(d) captures a dispute over any provision arising from the negotiation of a successor agreement to the 2018 CBA." *Brent Electric*, 2023 WL 5750484, at *4. It therefore concluded that the agreement to arbitrate "extends to all subjects of negotiation among the parties including those created by contract," and is not limited to mandatory subjects of bargaining. *Id.* at *5.

The district court also properly looked to the surrounding subsections in Article I to conclude that Section 1.02 "refers to the agreement as a whole and does not limit itself to disputes arising from obligations imposed by the NLRA." *Id.*; *see Whitehorse*, 156 P.3d at 47 ("Contractual intent is determined from the entire agreement."); *cf. Marcantel v. Saltman Fam. Tr.*, 993 F.3d 1212, 1235 (10th Cir. 2021) (applying Utah principles of contract interpretation and considering "natural meaning" of words "in context of the contract as a whole"). For example, it noted that Section 1.02(a) "refers to withdrawal from the agreement as a whole," that Section 1.02(b) "speaks of changes to the agreement without distinction between the mandatory and non-mandatory subjects contained within the agreement," and that Section 1.02(f) discusses "terminating the agreement, not parts of the agreement." *Brent Electric*, 2023 WL 5750484, at *5. We see no flaw in the district court's plain-language and contextual analysis and conclude that it tracks state-law principles governing the formation of contracts. That Section 1.02(d) is broadly worded and does not distinguish between

mandatory and permissive subjects of bargaining does not make it ambiguous as to either.[12]

Brent disputes the district court's conclusion that Section 1.02(d) contains "no language of limitation" and that such an interpretation would give the CIR "free reign [sic]" to consider and make "award[s] as to any and every permissive subject of bargaining." Op. Br. at 28–29. But any authority that the CIR has—to which Brent now objects—is authority which Brent gave the CIR when it renewed the 2018 CBA, and with it, Section 1.02(d)'s interest-arbitration clause. *See* Discussion § IV(B), *infra*; *McElroy's*, 500 F.3d at 1097 ("Nothing in the NLRA, the NLRB's decisions, or this Court's precedent releases McElroy's from this bargained-for contractual obligation."). Brent argues that Section 1.02(d) "must be construed in light of the 'important goal of national labor policy' to

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[12] On appeal, Brent asserts that Section 1.02(d) is "unquestionably ambiguous," and claims that the district court's "act of consulting a source outside of the specific language for its meaning"—*i.e.*, a dictionary—"demonstrates that the language is in fact ambiguous." Op. Br. at 24. Brent argues that the term "unresolved issues or disputes" is ambiguous about whether a party may unilaterally submit to the CIR *both* mandatory and permissive subjects of bargaining, or only mandatory subjects of bargaining. *Id.* But as the Union notes, Brent did not argue below that this provision is ambiguous; rather, it referred to the provision as having a "plain meaning." Resp. Br. at 19 (quoting App. vol. IV, at 501 n.4, 502; App. vol. VIII, at 1222). Because Brent did not present the argument it now makes on appeal—that Section 1.02(d) is ambiguous as to permissive subjects of bargaining—and does not argue for plain-error review, it has waived that argument. *See Ball v. United States*, 967 F.3d 1072, 1078 (10th Cir. 2020) ("Because Plaintiffs failed to preserve their argument below and have not argued for relief under plain-error review, we consider the argument waived.").

preserve the 'freedom to exclude nonmandatory subjects from labor agreements.'" Op. Br. at 30 (quoting *Sheet Metal Workers Loc. Union No. 54 v. E.F. Etie Sheet Metal Co.* (*E.F. Etie*), 1 F.3d 1464, 1476 (5th Cir. 1993)). But Brent relies on out-of-circuit authority for this proposition—*E.F. Etie* is not binding on us. Brent's attempt to shoehorn its public-policy argument into a contract-interpretation argument is unavailing.

B. Even if Section 1.02(d) were ambiguous, the presumption in favor of arbitrability would still apply because Brent has not rebutted it with forceful evidence.

Because we conclude that Section 1.02(d) unambiguously covers both permissive and mandatory subjects of bargaining, the presumption of arbitrability arising from a validly formed agreement to arbitrate is not defeated. But even if we agreed with Brent's waived appellate argument that Section 1.02(d) is ambiguous about whether it includes permissive subjects of bargaining, *see supra* n.12, we "adher[e] to the presumption and order[] arbitration" where, as here, "the presumption is not rebutted." *Granite Rock*, 561 U.S. at 301. "To rebut the presumption, the party opposing arbitration must provide 'forceful evidence' that the parties intended to exclude the dispute from arbitration." *Phillips 66*, 839 F.3d at 1204 (quoting *Warrior & Gulf*, 363 U.S. at 584–85). Such "forceful evidence" of an exclusion may come from the CBA itself. *See Loc. 5-857 Paper, Allied-Indus., Chem. & Energy Workers Int'l Union v. Conoco, Inc.*, 320 F.3d 1123, 1127 (10th Cir. 2003) (considering and rejecting company's assertion that language in the agreement provided positive assurance that the arbitration clause was not susceptible to an interpretation covering the

dispute). Or it may come from "facts beyond the agreement" such as "the terms of an employee medical plan" or "the parties' 'bargaining history.'" *Nat'l Nurses Org. Comm. v. Midwest Div. MMC, LLC*, 70 F.4th 1315, 1327 (10th Cir. 2023) (Rossman, J., dissenting) (first citing *Phillips 66*, 839 F.3d at 1207; and then citing *Loc. 7 United Food & Com. Workers Int'l Union v. Albertson's Inc.*, 963 F.2d 382 at *2 (10th Cir. 1992) (unpublished table decision)); *cf. Paper, Allied-Indus., Chem. & Energy Workers Int'l Union Loc. No. 4-2001 v. ExxonMobil Ref. & Supply Co.*, 449 F.3d 616, 620 (5th Cir. 2006) ("[E]vidence of bargaining experience can be introduced only where the contract language is ambiguous as to arbitrability." (emphasis omitted)).

So Brent would need to show "the most forceful evidence of a purpose to exclude [permissive subjects of bargaining] from arbitration." *Phillips 66*, 839 F.3d at 1204 (quoting *Warrior & Gulf*, 363 U.S. at 584–85). Brent does not point to such evidence. Other than Brent's real-time objections to the Union's unilateral submission of the dispute to CIR in the spring of 2021, Brent offers no evidence to refute its intent in the spring of 2018 to submit "[u]nresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement" to arbitration, as memorialized in the 2018 CBA. App. vol. I, at 48. Brent has not attempted to show that the 2018 CBA's terms provide evidence of an intent to exclude permissive subjects of bargaining from interest arbitration, or that any evidence beyond the CBA's four corners, such as the parties' bargaining history, does so. Without such evidence, the district court correctly concluded that, even if Section 1.02(d) were ambiguous

as to permissive subjects of bargaining, the presumption of arbitrability would still apply.

IV. Brent asserts no statutory right that allows it to avoid its contractual obligations.

Brent argues that it has a statutory right to "refuse to bargain over and accept . . . permissive subjects of bargaining" in the 2021 CBA, Op. Br. at 27, and that because the Union can identify no "clear and unmistakable" waiver language in the 2018 CBA, Brent did not waive that statutory right, *id.* at 25–26 (quoting *Metro. Edison Co. v. N.L.R.B.*, 460 U.S. 693, 708 (1983)).[13] But requiring a waiver in these circumstances would effectively "reverse[] the presumption" that *should* apply. *First Options of Chicago*, 514 U.S. at 945. As described above, the presumption of arbitrability applies in this case and Brent did not present forceful evidence to rebut it. Because the statutory rights Brent would need to assert to prevail in this argument do not exist, and because the statutory rights Brent *does* have were not infringed, we decline to reverse the presumption. Instead, we hold Brent to its contractual agreement to submit unresolved issues to arbitration.

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[13] We note that the Court also uses the "clear and unmistakable" waiver standard to determine whether parties have agreed to submit the "gateway" issue of arbitrability to an arbitrator—but that is a different situation than here. *See Dish Network*, 900 F.3d at 1243–44 ("The question whether the parties have submitted a particular dispute to arbitration, *i.e.*, the *question of arbitrability*, is an issue for judicial determination unless the parties clearly and unmistakably provide otherwise." (cleaned up)).

A. The "clear and unmistakable" waiver standard is inapplicable here.

Brent's "clear and unmistakable" waiver argument is misplaced because where there is no infringement of a statutory right, no waiver is necessary. In support of its statutory-rights argument, Brent relies on Sections 8(a)(5), 8(b)(3), and 8(d) of the NLRA, 29 U.S.C. § 158, which together make it an unfair labor practice for an employer or labor organization to refuse to bargain collectively and in good faith about mandatory subjects of bargaining. These statutory provisions allow either party to charge the other with an unfair labor practice before the NLRB if that party refuses to bargain over mandatory subjects or insists on or bargains to impasse over permissive subjects. *See* 29 U.S.C. § 160(a) (empowering the NLRB "to prevent any person from engaging in any unfair labor practice" listed in § 158); *Newspaper Printing Corp.*, 625 F.2d at 963 (stating that "it is the Board's duty to make the final determination as to whether an unfair labor practice has occurred" and that "insistence to impasse upon a non-mandatory subject of bargaining violates § 8(a)(5)").

To bring its argument into alignment with the NLRA and caselaw, Brent frames its statutory right as the right to "refuse to bargain over permissive subjects." Reply Br. at 10. But Brent's articulation of that right is deceptive: Brent's asserted right is not as broad as the right it would *need* to assert for its argument to work, which is the purported right to not have permissive subjects of bargaining imposed in arbitration under an interest-arbitration clause to which it agreed.

Brent cites *Edison* in support of its assertion that any "contractual waiver of a protected right must be 'clear and unmistakable.'" Op. Br. at 25 (quoting *Edison*, 460 U.S. at 708); *see also Capitol Steel & Iron Co. v. N.L.R.B.*, 89 F.3d 692, 697 (10th Cir. 1996) ("Waivers of statutory bargaining rights must be 'clear and unmistakable' in order for courts to enforce them." (quoting *Edison*, 460 U.S. at 708)). In *Edison*, the Court reviewed a decision by the NLRB that "the imposition of more severe sanctions on union officials for participating in an unlawful work stoppage violates § 8(a)(3)," meaning that such conduct evinced anti-union discrimination and violated the right to strike. 460 U.S. at 710; *see id.* at 702, 705. Indeed, the right to strike is affirmatively stated in the NLRA. 29 U.S.C. § 163. And anti-union discrimination is prohibited as an unfair labor practice under § 158(a)(3).

The Court recognized that "a union could choose to bargain away this statutory protection to secure gains it considers of more value to its members." *Edison*, 460 U.S. at 707. But any such waiver must be "established clearly and unmistakably." *Id.* at 709. The Court was not convinced by the company's position that "the union's silence manifested a clear acceptance of the earlier arbitration decisions"—which imposed a "higher duty on union officials" than other employees—because the Court did not agree "that two arbitration awards establish a pattern of decisions clear enough to convert the union's silence into binding waiver." *Id.*

We emphasize here that *Edison*'s procedural posture was the review of an NLRB decision: the union had charged the company with an unfair labor practice, and the company asserted waiver (by the

union) of the specific statutory right as a defense. *Id.* at 697, 700. This procedural posture is a common scenario for a court's review of clear-and-unmistakable-waiver claims under the NLRA. *See, e.g.*, *Int'l Bhd. of Elec. Workers, Loc. 803 v. N.L.R.B.*, 826 F.2d 1283, 1285, 1287–88 (3d Cir. 1987) (finding clear-and-unmistakable waiver of union's right to strike in general no-strike clause and upholding NLRB's dismissal of union's unfair labor practice claim); *Gen. Motors Corp. v. N.L.R.B.*, 700 F.2d 1083, 1088–91 (6th Cir. 1983) (enforcing NLRB decision holding that company committed an unfair labor practice by withholding time-study data that was "relevant and necessary to the Union's bargaining function" because the CBA was silent on time-study data and so the union did not clearly and unmistakably waive that right).

The Court has since applied *Edison*'s clear-and-unmistakable waiver standard to examine whether a union has waived a judicial forum for its members' individual claims under other statutes, not just the NLRA, by agreeing to arbitration clauses or other alternative-dispute-resolution provisions. *See, e.g.*, *Livadas v. Bradshaw*, 512 U.S. 107, 125 (1994) (noting that the CBA in a grocery store wages dispute did not clearly and unmistakably waive store clerk's right to bring state-law wage claims in court); *Wright v. Universal Mar. Serv. Corp.*, 525 U.S. 70, 72, 80 (1998) (finding that a general arbitration clause did not meet clear-and-unmistakable waiver standard for employee to waive judicial forum for claims under the Americans with Disabilities Act, 42 U.S.C. §§ 12101–12213); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 274 (2009) (holding that CBA's arbitration clause requiring union members to arbitrate claims arising from

the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634, is enforceable where the waiver is clear and unmistakable).[14]

We and other circuits have continued to apply the clear-and-unmistakable waiver standard to assess a union's waiver of its individual members' statutory rights. *See, e.g.*, *Mathews v. Denver Newspaper Agency LLP*, 649 F.3d 1199, 1205–07 (10th Cir. 2011) (citing *14 Penn Plaza* and *Wright* for "clear and unmistakable" standard and finding that CBA did not explicitly waive judicial forum for employee's Title VII claims even though CBA empowered arbitrator to resolve similar but contract-based anti-discrimination rights); *Abdullayeva v. Attending Homecare Servs. LLC*, 928 F.3d 218, 222–23 (2d Cir. 2019) (finding that CBA's arbitration provision clearly and unmistakably waived judicial forum for home-healthcare worker's Fair Labor Standards Act, 29 U.S.C. §§ 201–219, and state labor-law claims); *Darrington v. Milton Hershey Sch.*, 958 F.3d 188, 191 (3d Cir. 2020) (finding that CBA's arbitration provision clearly and unmistakably waived judicial forum for discrimination claims under Title VII, 42 U.S.C. §§ 2000e–2000e-17, and state anti-discrimination act); *Ibarra v. United Parcel Serv.*, 695 F.3d 354, 357, 359–60 (5th Cir. 2012) (finding that CBA's arbitration provision did not clearly and un-

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[14] *14 Penn Plaza* established a "two-prong test" to determine when a "court may compel arbitration of a plaintiff's federal statutory claim": "(1) the arbitration provision clearly and unmistakably waives the employee's ability to vindicate his or her federal statutory right in court; and (2) the federal statute does not exclude arbitration as an appropriate forum." *Jones v. Does 1-10*, 857 F.3d 508, 512 (3d Cir. 2017) (citing *14 Penn Plaza*, 556 U.S. at 260).
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mistakably waive judicial forum for Title VII claims and remarking that, "courts have concluded that for a waiver of an employee's right to a judicial forum for statutory discrimination claims to be clear and unmistakable, the CBA must, at the very least, identify the specific statutes the agreement purports to incorporate or include an arbitration clause that explicitly refers to statutory claims"). As the Second Circuit noted, "the [clear and unmistakable] standard ensures that employees' right to bring statutory claims in court is not waived by operation of confusing, 'very general' arbitration clauses." *Abdullayeva*, 928 F.3d at 223 (quoting *Wright*, 525 U.S. at 80).

Understanding the waiver standard's application in these cases helps us see the contrast here. Unlike the plaintiffs in these statutory-claims cases, Brent is not asserting a right under which it *would have* sought a remedy but for its agreement to an overly broad or vague arbitration clause, nor is it challenging the forum in which it would have vindicated such a right. And unlike parties charging an unfair labor practice violation before the NLRB, Brent is not countering a defense of waiver. As far as we can tell, Brent did not bring a statutory claim before the NLRB charging the Union with an unfair labor practice.[15] Nor does Brent claim that the 2018 CBA prevented it from doing so.

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[15] Brent insinuated below and implied in its appellate briefing that the Union insisted on or bargained to impasse over permissive subjects. *See* App. vol. I, at 19 ("[N]either party can lawfully insist on the Article/Section being included in a successor [CBA]."); Op. Br. at 21 ("The [NLRB] . . . has ruled that insisting on permissive subjects of bargaining constitutes bad faith and violates the NLRA."); Reply Br. at 10 ("This Court has likewise

In *West Coast Sheet Metal, Inc. v. N.L.R.B.*, the D.C. Circuit grappled with a similar argument: the company in that case argued that the NLRB's decision "allowed a 'fundamental' statutory right to be relinquished without requiring a showing that it was 'clearly and unmistakably waived.'" 938 F.2d 1356, 1362 (D.C. Cir. 1991). The company had charged the union with an unfair labor practice, alleging that the union's "declaration of a deadlock and submission of the dispute to [arbitration] violated the union's duty

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held that bargaining to impasse over a permissive subject constitutes an unfair labor practice under the NLRA.").

Brent complained in the proceedings below about the Union's uncooperative behavior in 2021—the period between Brent's proposing a new CBA and the Union's referral to the CIR. *See generally* App. vol. II, at 150–57 (Brent's Brief to CIR). Brent told the CIR that the Union was still not "ready to negotiate" in December 2020, three months after Brent notified the Union of its intent to terminate the 2018 CBA. *Id.* at 150. The Union apparently stalled the negotiations, and in March 2021 made it "clear that the Union intended to seek CIR to resolve the negotiations." *Id.* at 151. The parties exchanged some emails with proposed agreements but could not come to an agreement. In April 2021, the Union notified Brent of its intent to unilaterally invoke interest arbitration. The parties eventually met after the Union's invocation of interest arbitration, apparently to little avail. Brent summarized it thus: "[T]he Company believes that the Union's conduct, including its March 25, 2021 letter, demonstrates the Union never intended to negotiate an agreement but rather intended to bypass negotiations and proceed directly to CIR. The Union's conduct makes a sham out of the bargaining process and improperly attempts to make CIR party to its sham bargaining." *Id.* at 155.

But Brent does not directly accuse the Union of insisting on or bargaining to impasse over permissive subjects of bargaining and nothing in the record suggests that Brent charged the Union with an unfair labor practice before the NLRB.

under section 8(b)(3) of the NLRA to bargain in good faith, and coerced and restrained [the company] in the selection of its representatives for the purposes of collective bargaining, thus violating section 8(b)(1)(B)." *Id.* at 1359 (cleaned up). The NLRB rejected the company's accusation that the union bargained to impasse on the inclusion of a new interest-arbitration clause and held that a "union does not commit an unfair labor practice by submitting deadlocks to interest arbitration," so long as the interest-arbitration clause arguably covers an employer who has withdrawn from a multi-employer association in the middle of the contract's term, and so long as the union bargained in good faith before submitting unresolved issues to arbitration. *Id.* at 1359–60. The district court enforced the NLRB's decision, and the company appealed. *Id.* at 1360.

Affirming the NLRB's decision in *International Brotherhood of Electrical Workers, Local No. 113* (*Collier Electric*) as a reasonable interpretation of the right in question, the D.C. Circuit rejected the company's framing of its "'fundamental' statutory right." *Id.* at 1362 (citing *Collier Electric*, 296 NLRB 1095, 1097 (1989)). The D.C. Circuit concluded that the purported right "does not bestow upon an employer, who has withdrawn midterm from a multiemployer association, any right to be free from a union's invocation, after bargaining in good faith to impasse, of an at least arguably applicable interest arbitration provision." *Id.* The D.C. Circuit determined that *Collier Electric* "in effect decided that the employer's right at issue is not so sweeping as [the company] conceives it to be." *Id.* So because the NLRB did not find that the statutory right was infringed, it "had no occasion to deter-

mine whether [the company] had 'waived' its section 8(b)(1)(B) right, 'clearly and unmistakably' or otherwise." *Id.* "[I]nstead, the key question is simply whether [the union] infringed that right, either by unreasonably invoking the interest arbitration clause, or by bargaining in bad faith before invoking the clause." *Id.* at 1363.

The D.C. Circuit called the company's argument "misguided" and rejected its reliance on *Edison*. *See id.* at 1362 & n.16. It explained that "'[w]aiver' is a concept that operates to counter claims that a recognized right has been infringed; it does not apply beyond the scope of the right that has allegedly been invaded." *Id.* at 1362. In other words, because the NLRB found that the company's alleged statutory right had not been infringed, and the D.C. Circuit agreed, the court declined the company's invitation to broaden that right and then look for waiver of such right in the CBA. *Id.*

Brent's clear-and-unmistakable-waiver argument would make more sense if the arbitration clause prevented Brent from bringing an unfair labor practice charge against the Union or if the NLRB had decided against Brent on such a charge. But without an infringement of a statutory right, or even an alleged infringement of such a right, it makes no sense to search for a clear-and-unmistakable waiver. Like the employer's asserted right in *West Coast Sheet Metal*, Brent's asserted statutory right sweeps far more broadly than the statute and caselaw on which Brent bases its alleged right. *See* 938 F.2d at 1360. We therefore reject Brent's waiver argument.

B. Brent's statutory rights do not excuse it from its contractual obligations.

Any statutory rights Brent has under 29 U.S.C. § 158(d) or § 158(f) do not excuse Brent from complying with its contractual agreement.[16] Our governing precedent, *McElroy's*, reinforces *Borg-Warner*'s rule that a party's contractual agreement is binding and enforceable even if that party is not under a statutory obligation to negotiate those terms. *See Borg-Warner*, 356 U.S. at 349 ("Each of the two controversial [nonmandatory] clauses is lawful in itself. Each would be enforceable if agreed to by the unions." (footnote omitted)). In *McElroy's*, a company challenged the imposition of a renewed pre-hire agreement where, as here, the parties' relationship was governed by Section 8(f) of the NLRA, § 158(f). 500 F.3d at 1097. The company argued that it had no statutory obligation to negotiate

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[16] The Union and amici NECA and International Brotherhood of Electrical Workers dispute whether Brent has any statutory rights under § 159(a) and § 158(d) because Brent and the Union had a bargaining relationship under § 158(f) for "employees engaged . . . in the building and construction industry. . . ." § 158(f); *see* Resp. Br. at 50–51; Amicus Br. at 18– 20. Parties with a Section 8(f) relationship have no statutory duty to negotiate a successor agreement. *McElroy's*, 500 F.3d at 1097. So because Brent had no statutory § 158(d) duty to bargain over mandatory subjects, the Union argues that Brent had no statutory § 158(d) right to not bargain over permissive subjects. Brent replies that the evergreen clause kept their statutory relationship and thus their § 158(d) rights alive past the 2018 CBA's expiration. We need not decide this issue here because the parties' status under § 159(a) or § 158(f) does not change the parties' contractual agreement in the 2018 CBA. And even assuming Brent is correct that it had § 158(d) rights throughout the duration of the 2018 CBA, Brent does not demonstrate that those rights were infringed. *See* Discussion § IV(A), *supra*.

the new pre-hire agreement. *Id.* at 1096–97. The union sought enforcement of an arbitration award directing the parties to renew the agreement. *Id.* at 1095. The previous agreement had an "extension clause" (like the evergreen clause here, Section 1.02(c)), and an interest-arbitration clause (like Section 1.02(d)). *Id.* The district court confirmed the arbitrator's award of the new agreement and the company appealed. *Id.* at 1096. We framed the ultimate question on appeal as "whether the agreement bound [the company] to engage in interest arbitration." *Id.* The company made parallel arguments[17] to those Brent makes here, which we rejected:

> While we agree that [the company] is under no statutory obligation to negotiate a renewal contract, we conclude that the terms of the pre-hire agreement—specifically the extension and interest arbitration clauses—create a contractual obligation to do so when one party timely gives notice of reopening. Nothing in the NLRA, the NLRB's decisions, or this Court's precedent releases [the company] from this bargained-for contractual obligation.

Id. at 1097.

We explained that "while unilateral termination of a pre-hire collective bargaining agreement prior to expiration is prohibited, nothing in the NLRA prohibits either party from repudiating a pre-hire obligation

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[17] Though the company in *McElroy's* argued that it had no statutory duty to negotiate, Brent argues that it has a statutory right to not negotiate. We see these arguments as two sides of the same coin.

upon its expiration. Whether the contract itself permits repudiation, however, is another matter." *Id.* We also rejected the company's argument that because it had not engaged in active negotiations to renew the agreement, no "deadlock" triggered the interest-arbitration clause. *Id.* at 1099. We reasoned that "[t]his argument is valid only if the parties have no obligation to negotiate a renewal agreement in the first place." *Id.* We therefore affirmed the district court's enforcement of the renewal agreement. *Id.*

Here, as in *McElroy's*, the interest-arbitration clause in the 2018 CBA was a bargained-for contractual obligation that Brent freely agreed to and that, by its own terms, either party could trigger unilaterally if renewal negotiations broke down. As the Union points out, *McElroy's* "is in harmony with other Circuit Courts, which similarly have held employers to interest-arbitration awards where employers have asserted the absence of a statutory bargaining duty as justification for refusing to comply with them." Resp. Br. at 34. Indeed, most circuits and the NLRB have distinguished statutory from contractual obligations and held employers to their contractual agreements to arbitrate.[18]

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[18] *See, e.g.*, *Coca-Cola Bottling Co. of New York v. Soft Drink & Brewery Workers Union, Loc. 812, Int'l Bhd. of Teamsters*, 39 F.3d 408, 410 (2d Cir. 1994) ("If the parties elect to include in their agreement a provision governing a matter not subject to mandatory bargaining and also adopt a broad arbitration clause, nothing in [*Local No. 38*], labor law, or the Arbitration Act precludes arbitration of a dispute concerning the meaning or application of that provision"); *Loc. Union No. 666, Int'l Bhd. of Elec. Workers v. Stokes Elec. Serv., Inc.*, 225 F.3d 415, 422, 425 (4th Cir. 2000) (distinguishing statutory and contractual obligations and enforcing CIR award after union invoked interest-arbi-

tration clause despite the NLRB finding that the company's refusal to bargain was based on good-faith doubt about the union's majority status and no unfair labor practice occurred); *Sheet Metal Workers Int'l Ass'n Local 110 Pension Tr. Fund v. Dane Sheet Metal, Inc.*, 932 F.2d 578, 582 (6th Cir. 1991) (observing that, though "[a]rbitration does not create a bargaining obligation, . . . the contract itself may create a bargaining obligation, just as the contract may provide for interest arbitration if the bargaining breaks down"); *Sheet Metal Workers Loc. Union No. 20 v. Baylor Heating & Air Conditioning, Inc.*, 877 F.2d 547, 551 & n.4 (7th Cir. 1989) (distinguishing contractual and statutory duties to bargain and holding that "when the underlying controversy is primarily contractual, the Board should defer to the courts"); *Local Union 257, Int'l Bhd. of Elec. Workers v. Sebastian Elec.*, 121 F.3d 1180, 1185–86 (8th Cir. 1997) (discussing distinction between contractual and statutory duty to bargain and holding that the interest-arbitration clause under a Section 8(f) pre-hire agreement was binding and enforceable); *Beach Air Conditioning & Heating v. Sheet Metal Workers Int'l Ass'n, Loc. Union No. 102*, 55 F.3d 474, 477 (9th Cir. 1995) (observing that the company had a "statutory right to walk away from the agreement upon its expiration, without submitting to arbitration" but that "[t]he contract is another matter" and affirming prior rulings enforcing interest-arbitration clauses "because the contract imposes not only a duty to accept a settlement imposed by the arbitrators once negotiations fail, but also a duty to negotiate in the first place"); *see also Rd. Sprinkler Fitters Loc. Union No. 669 v. N.L.R.B.*, 676 F.2d 826, 831 (D.C. Cir. 1982) ("This statutory duty to bargain is independent of any obligation the employer may incur under his contract with the union."); *Collier Electric*, 296 NLRB at 1098 (holding that a union is "free to seek enforcement of its contractual rights by submitting the unresolved bargaining issues to interest arbitration, and by pursuing a Section 301 suit in court, without violating Section 8(b)(3) or Section 8(b)(1)(B) of the Act" so long as the arbitration provision "arguably binds the employer to the arbitration provision" and does not "contain[] language explicitly stating that an employer who has withdrawn from the multiemployer association is not bound to interest arbitration").

Brent does not attempt to distinguish or grapple with *McElroy's* in its reply brief. Nor does it wrestle with the vast weight of authority holding parties to their contractual agreements to arbitrate. Instead, it dismisses the Union's contractual-obligation arguments as "inconsequential where it must be determined whether a protected right has been waived." Reply Br. at 16. But as explained above, Brent's waiver arguments are misplaced, and Brent points to no statutory right that trumps its contractual agreement to arbitrate.

We turn next to Brent's public-policy arguments.

V. Imposing permissive subjects of bargaining in interest arbitration does not violate public policy.

Brent urges us to join a minority of circuits that have held that imposing permissive subjects of bargaining in arbitration violates public policy. We first consider the Court's guidance for when an arbitral award may be void for violating public policy. In general, "courts are not authorized to consider the merits of an award," because "[t]he federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *United Paperworkers Int'l Union v. Misco*, 484 U.S. 29, 36 (1987) (citation omitted). Rather, "arbitral decisions" are typically "ins ulat[ed] . . . from judicial review." *Id.* at 37. This highly deferential standard means that an arbitral award is legitimate if it "draws its essence from the collective bargaining agreement" and if "the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority." *Loc. No. 7, United Food &*

Com. Workers Int'l Union v. King Soopers, Inc., 222 F.3d 1223, 1227 (10th Cir. 2000) (first quoting *Enterprise Wheel*, 363 U.S. at 597; and then quoting *Misco*, 484 U.S. at 38).

But this deference to the merits of an arbitral award is subject to one narrow exception: courts may set aside an award when it contravenes "some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Id.* at 43 (cleaned up). In *Misco*, the Court refused to vacate an arbitral award on public-policy grounds where the award reinstated a drug-user employee. *Id.* at 32–33. Examining *Misco* in a later opinion, the Court framed the inquiry as not "whether [the worker's] drug use itself violates public policy, but whether the agreement to reinstate him does so." *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62–63 (2000). It explained that the inquiry, more specifically, should be: "[D]oes a contractual agreement to reinstate [the worker] with specified conditions, run contrary to an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law and not from general considerations of supposed public interests?" *Id.* at 63 (citation omitted).

So our inquiry here is whether the 2021 CBA's inclusion of permissive subjects of bargaining runs "contrary to an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law." *Id.* The Union and amici NECA and the International Brotherhood of Electrical Workers agree that a *second-generation* interest-arbitration clause (also known as a self-perpetuating interest-arbitration

clause) *would* violate public policy. Second-generation interest-arbitration clauses are "interest arbitration clauses [that are] included within an interest arbitration award" so that the interest-arbitration process is self-perpetuating and "a party may find itself locked into having that procedure imposed on it for as long as the bargaining relationship endures." *Mulvaney Mech., Inc. v. Sheet Metal Workers Int'l Ass'n., Loc. 38*, 288 F.3d 491, 505 (2d Cir. 2002), *vacated*, *rev'd on other grounds*, 538 U.S. 918 (2003). Many courts have held that public policy prevents such clauses from being imposed. *See, e.g.*, *Loc. 58, Int'l Bhd. of Elec. Workers v. Se. Michigan Chapter, Nat'l Elec. Contractors Ass'n, Inc.* (*Local 58*), 43 F.3d 1026, 1032 (6th Cir. 1995) ("[A]n arbitrator may not use an interest arbitration clause as a means of self-perpetuation, and . . . this type of 'second generation' interest arbitration clause cannot be included over another party's objection."); *Am. Metal Prods., Inc. v. Sheet Metal Workers Int'l Ass'n, Loc. Union No. 104* (*American Metal*), 794 F.2d 1452, 1456–58 (9th Cir. 1986) (affirming district court's enforcement of CIR interest-arbitration award apart from the second-generation interest-arbitration clause); *Aldrich Air Conditioning*, 717 F.2d at 459 ("[A]n interest arbitration clause is unenforceable insofar as it applies to the inclusion of a similar clause in a new collective bargaining agreement."); *Milwaukee Newspaper & Graphic Commc'ns Union v. Newspapers, Inc.*, 586 F.2d 19, 21 (7th Cir. 1978) (affirming district court's enforcement of CIR interest-arbitration award apart from the second-generation interest-arbitration clause).

We have not yet decided that issue and we need not decide it here because the CIR did not impose a

self-perpetuating, or second-generation interest-arbitration clause in the 2021 CBA. Rather, when the CIR imposed the 2021 CBA, it changed Section 1.02(d) of the 2018 CBA so that the parties must mutually agree to "submit the unresolved issues to the [CIR] for adjudication." App. vol. IV, at 272–73. Under the 2021 CBA, if one party does not want to "renew, modify, or extend" the agreement, or "submit the unresolved issues to the [CIR]," then either party may terminate the agreement upon "a ten (10) day written notice."[19]

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[19] The new 2021 CBA clauses in full are:

> (d). In the event that either party, or an Employer withdrawing representation from the Chapter or not represented by the Chapter, has given a timely notice of proposed changes and an agreement has not been reached by the expiration date or by any subsequent anniversary date to renew, modify, or extend this Agreement, or to submit the unresolved issues to the [CIR], either party or such an Employer, may serve the other a ten (10) day written notice terminating this Agreement. The terms and conditions of this Agreement shall remain in full force and effect until the expiration of the ten (10) day period.
>
> (e). By mutual agreement only, the Chapter, or an Employer withdrawing representation from the Chapter or not represented by the Chapter, may jointly, with the Union, submit the unresolved issues to the [CIR] for adjudication. Such unresolved issues shall be submitted no later than the next regular meeting of the [CIR] following the expiration date of this Agreement or any subsequent anniversary date. The [CIR's] decisions shall be final and binding. both parties must either agree to a new CBA, or agree to arbitration; otherwise, one party may terminate the agreement.

App. vol. IV, at 272–73.

Id. This means that the CBA is not self-perpetuating, because both parties must either agree to a new CBA, or agree to arbitration; otherwise, one party may terminate the agreement.

Brent generates a long string cite in support of its argument that arbitration awards that "purport to impose upon an employer a permissive subject of bargaining" are "contrary to law and public policy." Op. Br. at 37; *see id.* at 37–39 (collecting cases). But as the Union points out, four of the seven circuit cases Brent cites are "inapposite" because their public-policy discussions condemn imposing second-generation interest-arbitration clauses specifically, and do not speak to the imposition of permissive subjects of bargaining in general. Resp. Br. at 40–41 (citing *Local 58*, 43 F.3d at 1032; *American Metal*, 794 F.2d at 1457–58; *Aldrich Air Conditioning*, 717 F.2d at 459; *Milwaukee Newspaper & Graphic*, 586 F.2d at 21). Brent seems to argue that because imposing a self-perpetuating interest-arbitration clause in arbitration violates public policy, and self-perpetuating interest-arbitration clauses are permissive subjects of bargaining, then the imposition of permissive subjects of bargaining violates public policy. This logical fallacy is easily dismissed.

More worthy of examination is Brent's reliance on cases from the Second, Fifth, and Sixth Circuits that ostensibly support its argument that "[a]s applied to nonmandatory subjects, an interest arbitration provision is contrary to national labor policy because it deprives the parties of their right to insist on excluding nonmandatory subjects from the collective bargaining agreement." Op. Br. at 30 (quoting *N.L.R.B.*

v. Sheet Metal Workers Int'l Ass'n, Loc. Union No. 38 (*Local Union No. 38*), 575 F.2d 394, 399 (2d Cir. 1978)).

In *Local Union No. 38*, a union had bargained to impasse about a second-generation interest-arbitration clause, among other provisions. *Id.* The Second Circuit explained that the NLRA prohibits "insistence on a nonmandatory subject to impasse, that is, making agreement on a nonmandatory subject a condition to any agreement." *Id.* at 398. The Second Circuit then more broadly held that "an interest arbitration provision of a collective bargaining agreement is void as contrary to public policy, insofar as it applies to nonmandatory subjects." *Id.*

Though that case ostensibly supports Brent's position, the Second Circuit has since clarified that *Local Union No. 38*'s rule applies only when there is no pre-existing contract. *See Coca-Cola Bottling Co. of New York v. Soft Drink & Brewery Workers Union, Loc. 812, Int'l Bhd. of Teamsters*, 39 F.3d 408, 410 (2d Cir. 1994) (explaining that *Local Union No. 38*'s holding "did not place a similar limit on the arbitrability of disputes arising under an existing contract" because "[i]f the parties elect to include in their agreement a provision governing a matter not subject to mandatory bargaining and also adopt a broad arbitration clause, nothing in [*Local No. 38*], labor law, or the Arbitration Act precludes arbitration of a dispute concerning the meaning or application of that provision"). So the Second Circuit's caselaw does not help Brent.[20]

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[20] The Union also critiques *Local Union No. 38* as relying on a mistaken reading of *N.L.R.B. v. Columbus Printing Pressmen & Assistants' Union No. 252* (*Columbus Printing Pressmen*), 543 F.2d 1161, 1169 (5th Cir. 1976). As the Union points out, the

We next consider Brent's reliance on Fifth Circuit caselaw, namely *E.F. Etie*, 1 F.3d at 1464. Though the Fifth Circuit in *E.F. Etie* discussed self-perpetuating interest-arbitration clauses as against national labor policy, it also extended that rule to hold more broadly that, "[i]nsofar as an interest arbitration proceeding forced a party to put nonmandatory issues on the table, it was unenforceable as contrary to that policy." *Id.* at 1476. *E.F. Etie* cited *Local Union No. 38* in support, and, by extension, *Allied Chemical*, on which *Local Union No. 38* also relied. *See E.F. Etie*, 1 F.3d at 1467. But *Allied Chemical* does not support the conclusion Brent draws from these cases.

In *Allied Chemical*, the Court decided that an employer's unilateral midterm modification of retiree benefits for already-retired employees was not an unfair labor practice because such modification did not concern a mandatory subject of bargaining. 404 U.S. at 159–60, 185. The Court did not discuss interest arbitration, and neither did it state that interest arbitration of permissive subjects conflicted with national labor policy. So *E.F. Etie* merely repeated *Local Union No. 38*'s mistaken reading of *Allied Chemical*.[21] We agree with the district court that

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Second Circuit undermined its own reliance on *Columbus Printing Pressmen*, because, though the Second Circuit cited it for the proposition that the NLRB "espoused the position we now adopt," it later said that the Fifth Circuit "did not reach the question of the validity of interest arbitration clauses as applied to nonmandatory subjects in general, but did hold such clauses invalid as applied to one of the nonmandatory issues involved in this case, to wit, renewal of the interest arbitration provision itself." *Local Union No. 38*, 575 F.2d at 399.

[21] *Local Union No. 38* extrapolated its policy rule from an overbroad reading of *Allied Chemical*: "The importance of preserving

"Brent Electric's reading of *E.F. Etie* and *Local Union 38* to prohibit interest arbitration of all non-mandatory subjects is incorrect because neither case held that interest arbitration could not resolve non-mandatory subjects when the parties had agreed to interest arbitration for non-mandatory subjects." *Brent Electric*, 2023 WL 5750484, at *9.

Finally, Brent lists *Sheet Metal Workers, Local Union No. 24 v. Architectural Metal Works, Inc.* (*Architectural Metal*), 259 F.3d 418 (6th Cir. 2001).

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parties' freedom to exclude nonmandatory subjects from labor agreements is acknowledged by the rule that '[b]y once bargaining and agreeing on a permissive subject, the parties . . . do not make the subject a mandatory topic of future bargaining.'" 575 F.2d at 399 (quoting *Allied Chemical*, 404 U.S. at 187). *E.F. Etie* also cited Ninth and Eighth Circuit cases in support of its rule. *See* 1 F.3d at 1476 (citing *Am. Metal Prods., Inc. v. Sheet Metal Workers Int'l Ass'n, Loc. No. 104* (*American Metal*), 794 F.2d 1452, 1467 (9th Cir. 1986); *Sheet Metal Workers' Int'l Ass'n, Loc. 14 v. Aldrich Air Conditioning, Inc.*, 717 F.2d 456, 459 (8th Cir. 1983)). But neither of those cases help Brent here. In *American Metal*, the Ninth Circuit held that an arbitrator cannot impose an interest-arbitration clause over the objection of the parties to the arbitration. 794 F.2d at 1456–57. *American Metal* did not concern enforcement of an interest-arbitration clause that was mutually agreed upon by the parties, as it was here. *See generally id.* at 1453– 58. Similarly, the Eighth Circuit in *Aldrich Air Conditioning* held that "an interest arbitration clause is unenforceable insofar as it applies to the inclusion of a similar clause in a new collective bargaining agreement." 717 F.2d at 459. Like *American Metal*, *Aldrich Air Conditioning* concerned a new agreement and not an interest-arbitration provision that the parties had agreed to; these cases predominantly reflect the concern that self-perpetuating interest-arbitration clauses not be imposed in arbitration over a party's objection. So, "[o]nce included in a collective bargaining agreement, however, interest arbitration clauses generally are enforceable." *Aldrich Air Conditioning*, 717 F.2d at 458.

The real dispute in *Architectural Metal* was whether an extension clause and self-perpetuating interest-arbitration provision could be imposed in arbitration. *See id.* at 430. The Sixth Circuit leaned on a prior case to conclude that any interest-arbitration, extension clause, "and/or any other covenant or condition which did not directly implicate a mandatory subject of collective bargaining . . . shall be deemed null, void, and unenforceable against [the company]." *Id.* at 431. But that prior case (*Local 58*) in turn relied on *Local Union No. 38* for the general proposition that "interest arbitration as to nonmandatory subjects is 'void as contrary to public policy.'" *Local 58*, 43 F.3d at 1032 (quoting *Local Union No. 38*, 575 F.2d at 398).

This line of caselaw collapses under any real scrutiny: If we remove from *Local Union No. 38*, *E.F. Etie*, and *Architectural Metal* any discussion of self-perpetuating interest-arbitration provisions, those cases lack the rigorous inquiry into positive law that the Court in *Eastern Associated Coal* demands to justify a blanket rule prohibiting all permissive subjects of bargaining from being imposed in interest arbitration. *See* 531 U.S. at 62–63. Paraphrasing *Eastern Associated Coal*, "[D]oes [an arbitral award imposing permissive subjects of bargaining in a CBA] run contrary to an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law and not from general considerations of supposed public interests?" *Id.* at 63. We easily conclude that it does not. Brent's cited cases do not reference any "explicit, well-defined, and dominant public policy" to prevent a party from contractually agreeing to arbitration that may impose permissive subjects of bargaining. Indeed, our own precedent and the vast weight of caselaw compel the

opposite conclusion: dominant public policy favors holding parties to their contractually agreed obligations. *See, e.g.*, *Borg-Warner*, 356 U.S. at 349 ("[E]ach party is free to bargain or not to bargain, and to agree or not to agree" and "[e]ach of the two controversial [nonmandatory] clauses . . . would be enforceable if agreed to by the unions."); *McElroy's*, 500 F.3d at 1097 ("Nothing in the NLRA, the NLRB's decisions, or this Court's precedent releases McElroy's from this bargained-for contractual obligation."); *Collier Electric*, 296 NLRB at 1098 (holding that a union is "free to seek enforcement of its contractual rights by submitting the unresolved bargaining issues to interest arbitration, and by pursuing a Section 301 suit in court, without violating Section 8(b)(3) or Section 8(b)(1)(B) of the Act").

We acknowledge that Brent's public-policy argument may be colorable. But the Second Circuit has disavowed Brent's interpretation of *Local Union No. 38*, and the Fifth and Sixth Circuit decisions Brent cites rest on dubious foundations. So we decline Brent's invitation to join this circuit minority.

VI. The CIR did not exceed its authority under the Federal Arbitration Act.

Under the Federal Arbitration Act, 9 U.S.C. §§ 1–16, a court may vacate an arbitration award where "the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." *Id.* § 10(a)(4). Because we do not agree with Brent that it has a statutory right to avoid having permissive subjects of bargaining imposed in arbitration when it agreed to interest arbitration in the 2018 CBA, and because we reject Brent's public-policy arguments, we conclude that the CIR did not exceed its powers.

CONCLUSION

We affirm the district court's dismissal of Brent's complaint and grant of the Union's motion for summary judgment confirming the CIR award.

**OPINION AND ORDER,
U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA
(SEPTEMBER 6, 2023)**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BRENT ELECTRIC CO., INC.,

Plaintiff/Counter-Defendant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 584,

Defendant/Counter-Plaintiff.

No. 4:21-cv-00246-CRK-CDL

Before: Claire R. KELLY, Judge.

OPINION AND ORDER

In the matter before the Court, the Brotherhood of Electrical Workers Local Union No. 584 ("the Union") counterclaimed against Brent Electric Company, Inc. ("Brent Electric"), to confirm an arbitral award issued by Council on Industrial Relations ("CIR") which resolved a dispute between Brent Electric and the Union concerning a 2018 Collective Bargaining Agree-

ment ("2018 CBA"). *See* Counterclaim, July 15, 2021, ECF No. 16. Brent Electric had sued the Union because it objected to the terms of the successor collective bargaining agreement ("2021 CBA") imposed as a result of the arbitral award and sought to vacate the award. *See* First Am. Compl., July 1, 2021, ECF No. 10. The Court previously granted the Union's motion to dismiss Brent Electric's complaint. *See* Opinion and Order at 12, Nov. 16, 2022, ECF No. 45; *see also* Mot. Dismiss, July 15, 2021, ECF No. 18.

Both parties have moved for summary judgment on the Union's counterclaim. The Union, in addition to asking this Court to confirm the arbitral award, seeks additional remedies in connection with the confirmation of the award. *See* Counterclaim at 8. Specifically, the Union asks for an audit of Brent Electric's payroll records at Brent Electric's expense and attorneys' fees. *See id.* Brent Electric seeks summary judgment in opposition to the Union's claim to confirm the arbitral award. *See* Brent's Mot. Summary J., Apr. 21, 2023, ECF No. 68 ("Brent's Moving Br."). The Union filed its response on May 19, 2023. *See* Union's Opp. [Brent's Moving Br.], May 19, 2023, ECF No. 74 ("Union's Resp. Br."). The Union moved for summary judgment on July 10, 2023. *See* Br. Supp. Union's Mot. Summary J., July 10, 2023, ECF No. 77 ("Union's Moving Br."). Brent responded to the Union's motion on July 31, 2023. *See* Brent's Opp. [Union's Moving Br.], July 31, 2023, ECF No. 78 ("Brent's Resp. Br."). The Union filed its reply on August 11, 2023. *See* Union's Reply [Brent's Resp. Br.], August 11, 2023, ECF No. 79 ("Union's Reply").

JURISDICTION AND STANDARD OF REVIEW

The Court has jurisdiction over the parties' claims arising under § 301 of the Labor Management Relations Act ("LMRA")[1] pursuant to 28 U.S.C. § 1331 (2018).

The Court shall grant summary judgment if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). When considering summary judgment, the Court must view all facts and inferences drawn from the record in the light most favorable to the non-moving party. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986). However, only disputes over material facts—those affecting the outcome of the case—preclude summary judgment. *Id.* at 248.

UNDISPUTED FACTS[2]

Brent Electric authorized the Eastern Oklahoma Chapter of the National Electric Contractors Association

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[1] Section 301 of the LMRA provides that:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185.

[2] The Court draws the undisputed material facts from the record. The parties provide their statements of fact in their briefs pursuant to Fed. R. Civ. P. 56(c). *See* Brent's Moving Br. at 2–10 ("Brent's First SOF"); Brent's Resp. Br. at 1–7 ("Brent's Second

("NECA") to act on its behalf as representative for all matters related to the collective bargaining between NECA and the Union. Brent's First SOF ¶ 1.[3] Pursuant to its agreement with NECA, Brent Electric agreed to be bound to the 2018 CBA concluded by NECA and the Union. Brent's First SOF ¶¶ 2–3; Brent's Second SOF ¶ 3; Union's First SOF ¶ 3; Union's Second SOF ¶ 3; *see* IBEW Inside Construction Agreement, ECF No. 10-2 ("2018 CBA"). The 2018 CBA included Addendum Four Memorandum of Understanding ("Addendum Four"),[4] which involves NECA, the Union, and the Oklahoma Electrical Supply Company ("OESCO") and was initially executed on May 30, 2012, and renewed on June 1, 2018. *See* Compl. at Ex. D, July 1, 2021, ECF No. 10-6 ("Addendum Four"). The addendum regards Brent Electric's obligations toward the pension plan trust. Brent's First SOF ¶¶ 14–15; Union's First SOF ¶¶ 10, 14.

SOF"); Union's Resp. Br. at 1–11 ("Union's First SOF"); Union's Moving Br. at 3–8 ("Union's Second SOF").

[3] The Union's statement of facts omits responses where the Union does not dispute Brent Electric's facts. *See* Union's Resp. Br. at 2.

[4] In its motion for summary judgment, Brent Electric addresses Addendum Four of the 2018 CBA as separate and distinct from the 2018 CBA. *See* Brent's First SOF ¶¶ 40–41, 44; Brent's Second SOF ¶¶ 3, 10, 12, 14. However, the Union disputes Brent Electric's characterization of the Addendum as distinct from the 2018 CBA. *See* Union's First SOF ¶ 10 ("But, Local 584 disputes any assertions or implications that this addendum's terms were not part of the 2018 CBA, and disputes that this addendum existed independently of the 2018 CBA"). Brent Electric did not file a reply to the Union's response. *See* Fed. R. Civ. P. 56(e)(2).

On September 18, 2020, Brent Electric informed NECA and the Union that it was revoking and terminating its authorization of NECA as its representative, and that it was also terminating the 2018 CBA. Brent's First SOF ¶¶ 5–6, 8; Brent's Second SOF ¶ 5; Union's First SOF ¶ 6; Union's Second SOF ¶ 5. On February 12, 2021, Brent Electric sent a letter to the Union regarding a CBA that would succeed the 2018 CBA, which was set to expire on May 31, 2021. Brent Electric's letter challenged "non-mandatory permissive subjects of bargaining under federal labor law," Brent's First SOF ¶¶ 17–21. Brent Electric argued "the Union could not compel or require Brent Electric to agree to or accept" the 2018 CBA provisions. Union's First SOF ¶¶ 18, 20–21. The Parties met in March and April of 2021, but were unable to successfully negotiate a successor to the 2018 CBA. Union's Second SOF ¶ 5; Brent's Second SOF ¶ 5.

On April 9, 2021, the Union informed Brent Electric of its "intent to submit to the [CIR] for its consideration during the May 2021 regular CIR meeting unresolved issues that remain between the parties as of April 20, 2021, and that may continue to be unresolved in bargaining conducted after April 20th." Brent's First SOF ¶ 22; Union's Second SOF ¶ 6. On April 16, 2021, Brent Electric declined the Union's invitation to join it in submitting their unresolved issues to the CIR for adjudication. Union's Second SOF ¶ 6; Brent's Second SOF ¶ 6. Following Brent Electric's rejection of the invitation, the Union unilaterally submitted these unresolved issues to the CIR. Brent's First SOF ¶ 24; Union's First SOF ¶ 24. On April 30, 2021, Brent Electric informed the CIR that it objected to the Union's unilateral submission to the

CIR. Brent's First SOF ¶¶ 23, 26; Brent's Second SOF ¶¶ 6–7; Union's First SOF ¶ 26; Union's Second SOF ¶ 7. With its objection to arbitration, Brent Electric enclosed its brief regarding the unresolved issues, including its opposition to inclusion in a successor CBA of alleged "non-mandatory permissive subjects of bargaining." Brent's First SOF ¶ 27; Brent's Second SOF ¶ 7; Union's First SOF ¶ 27.

On May 27, 2021, the CIR transmitted to the parties its Preliminary Decision, including a successor CBA, dated May 19, 2021. Brent's First SOF ¶ 28; Brent's Second SOF ¶ 10; Union's First SOF ¶ 28; Union's Second SOF ¶ 10. On May 30, 2021, Brent Electric sent a letter to the CIR alleging errors and omissions, such as the inclusion of alleged permissive subjects of bargaining and Addendum Four. Brent's First SOF ¶ 34; Brent's Second SOF ¶ 11; Union's First SOF ¶ 34; Union's Second SOF ¶ 11. On June 4, 2021, the CIR issued a Second Decision rejecting Brent Electric's allegations of errors and omissions and containing a revised version of the 2021 CBA, correcting one clerical error. Brent's First SOF ¶ 35; Brent's Second SOF ¶ 12; Union's First SOF ¶ 35; Union's Second SOF ¶ 12; *see* Compl. at Ex. O, July 1, 2021, ECF No. 10-15. On June 28, 2021, Brent Electric received the CIR's Final Decision backdated May 19, 2021 and labeled Decision No. 8735, which also contained the 2021 CBA and Addendum Four. Brent's First SOF ¶ 37; Brent's Second SOF ¶ 14; Union's First SOF ¶ 37; Union's Second SOF ¶ 14. The versions of the 2021 CBA attached to the Second Decision and the Final Decision are identical, and the final decision implemented the Second Decision. Brent's First SOF ¶ 38; Union's First SOF ¶ 38. Brent Electric

has not signed the 2021 CBA since receiving the CIR's Final Decision on June 28, 2021. Union's Second SOF ¶ 15; Brent's Second SOF ¶ 15.

DISCUSSION

The parties dispute whether the Court should confirm the CIR award, order an audit, or impose attorneys' fees. Brent Electric argues that it did not agree to arbitration of permissive subjects of bargaining and therefore the CIR's award is invalid, *see* Brent's Moving Br. at 11–25, while the Union argues that the unambiguous language of the 2018 CBA provides for arbitration, the award reflects the essence of the agreement between the parties and comports with public policy,[5] *see* Union's Moving Br. at 11–24. The Union asks the Court to confirm the award imposing the 2021 CBA including the provisions in Addendum Four. Union's Moving Br. at 24. The Union further seeks an audit of Brent Electric's business records related to payroll as well as attorneys' fees. Union's Moving Br. at 19–21. Brent Electric opposes both the request for an audit and attorneys' fees. Brent's Response Brief at 10–11. For the following reasons, the Court denies Brent Electric's motion for summary judgment on the Union's counterclaim, and grants in

[5] Permissive subjects of bargaining are those provisions addressing matters other than wages, working hours, and other conditions of employment. *See NRLB v. Wooster Div. of Borg-Warner Corp.,* 356 U.S. 342, 349 (1958). One particular type of permissive subject of bargaining is an interest arbitration clause. "Interest arbitration is the arbitration of new contract terms." *Sheet Metal Workers' Int'l Ass'n, Loc. Union No. 2 v. McElroy's, Inc.,* 500 F.3d 1093, 1095 n.1 (10th Cir. 2007).

part and denies in part the Union's motion for summary judgment.

I. The Arbitrability of Disputes Arising from the Interest Arbitration Clause

Although the CIR concluded that the 2018 CBA empowered it to resolve the disputes concerning the negotiation of a successor agreement including the subject challenged here, the Union concedes that deference to an arbitral decision may be withheld where a court confronts a "gateway issue" going to arbitrability of the dispute. Union's Resp. Br. at 13–14; Union's Moving Br. at 10–11. Brent Electric does not explicitly frame its challenge as one of arbitrability; nonetheless Brent Electric's arguments implicitly challenge the arbitrability of certain disputes regarding the modification or renegotiation of the 2018 CBA. Brent Electric states that it never agreed to submit permissive subjects of negotiation to the CIR. Brent's Moving Br. at 23–25; Brent's Response Br. at 7–10. However, because the Union and Brent Electric explicitly agreed to submit to arbitration any "unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement," Brent Electric agreed to submit the subjects of negotiation at issue here to the CIR. *See* 2018 CBA § 1.02(d).

Gateway issues, *i.e.,* disputes over whether the parties have a valid arbitration agreement at all, or whether an arbitration clause applies to a certain type of controversy, are questions of law for a court to decide. *See Dish Network L.L.C. v. Ray,* 900 F.3d 1240, 1242 (10th Cir. 2018). In so deciding, the Court will look to the language of the agreement and the issue involved to determine if the parties consented to

submit the dispute to arbitration. *See United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union & its Loc. 13-857 v. Phillips 66 Co.,* 839 F.3d 1198, 1204 (10th Cir. 2016). If the language is ambiguous the Court applies a presumption of arbitrability for disputes and will order arbitration unless the Court determines "with positive assurance" that the parties intended to exclude the matter from arbitration. *See Phillips 66 Co.,* 839 F.3d at 1204. A party can overcome this presumption with "forceful evidence that the parties intended to exclude the grievances from arbitration." *See Phillips 66 Co.,* 839 F.3d. at 1205 (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 585 (1960).

Brent Electric's argument that the CIR was powerless to include permissive subjects of arbitration fails.[6] *See* Brent's Moving Br. at 14–20; Brent's Resp.

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[6] The CIR's letter of June 4, 2021 responding to Brent Electric's May 30, 2021 letter asserted that:

> We note that Brent Electric's letter of May 30, 3021, requests the deletion of several other provisions, which that letter describes as permissive subjects of bargaining. Those provisions have not been deleted for two reasons: 1) In each case, they are among the "[u]nresolved issues or disputes" that your company explicitly agreed to submit to arbitration, and 2) the CIR does not agree that those provisions are permissive subjects of bargaining.

See Brent's First SOF ¶¶ 34–35; Brent's Second SOF ¶ 11; Union's First SOF ¶ ¶ 34– 35; Union's Second SOF ¶ 11 (additional facts asserted by Defendant to which Plaintiff did not reply). Despite conceding that gateway issues are to be decided by the Court, the Union also argues for deference to the CIR's interpretation of § 1.02(d) arguing that "[t]he Court has no oppor-

Br. at 7–10. It is undisputed that the parties agreed to the 2018 CBA, which provides:

> Unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations for the Electrical Contracting Industry (CIR) may be submitted jointly or unilaterally to the Council for adjudication.

2018 CBA § 1.02(d); Brent's First SOF ¶¶ 2–3; Brent's Second SOF ¶ 4; Union's First SOF ¶ 3; Union's Second SOF ¶ 4. The phrase "unresolved issues or disputes" is unambiguous. "Unresolved" means "not settled, solved, or brought to resolution." Merriam-Webster's Dictionary, *https://www.merriam-webster.com/dictionary/* unresolve (last visited July 30, 2023). "Disputes" means a "controversy." Merriam-Webster's Dictionary, *https://www.merriam-webster.com/dictionary/* dispute (last visited July 29, 2023). These terms are limited by the clause that follows "arising out of the failure to negotiate a renewal or modification of this agreement." 2018 CBA § 1.02(d). Thus, the parties agreed to submit to arbitration unsettled controversies in connection with the renewal or modification of the agreement. Section 1.02 has no language of limitation. The language of § 1.02(d) captures a dispute over any provision

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tunity, here, to establish Section 1.02(d)'s meaning in the first instance, so ordinary contract interpretation principles have no place." Union's Moving Br. at 20. The Court does not rely upon the CIRs rationale for determining that it was empowered to arbitrate the dispute before it, as whether it had such power is a question of law for the Court to decide. *See Dish Network,* 900 F.3d at 1242.

arising from the negotiation of a successor agreement to the 2018 CBA.

Brent Electric counters that § 1.02(d) would have to explicitly state that it "included permissive issues" because permissive issues, "were not Unresolved Issues."[7] Brent's Moving Br. at 9–10, 23–24; Brent's Resp. Br. at 5–6. Brent Electric's argument cannot withstand scrutiny. Brent Electric's argument assumes that the words "unresolved issues or disputes" in § 1.02(d) would only include mandatory subjects of negotiation. Brent Electric argues "[t]he parties' duty to bargain created under Sections 8(a)(5), 8(b)(3) and 8(d) of the NLRA is limited to mandatory subjects of bargaining such as rates of pay, wages, hours of employment, or other terms and conditions of employment." *See* Brent's Moving Br. at 11. But the agreement to arbitrate is not so limited; rather, it extends to all subjects of negotiation among the parties including those created by contract. 2018 CBA § 1.02(d). Section 1.02(d) must be read in context. The entirety of § 1.02 refers to the agreement as a whole and does not limit itself to disputes arising from obligations imposed by the NLRA:

SECTION 1.02

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[7] Brent Electric argues that there "is no evidence that Brent Electric waived its statutory right against being compelled to agree non-mandatory permissive subjects of bargaining . . . " despite signing the 2018 CBA. Brent's Moving Br. at 25 (referencing Brent Electric Letter of April 30, 2021, to the CIR). As discussed more fully below, the duty to negotiate may stem from either statute or contract. Here, the Union argues that Brent Electric contracted to resolve any disputes concerning the negotiation of a successor CBA to the 2018 CBA through arbitration.

(a) Either party or an Employer withdrawing representation from the Chapter or not represented by the Chapter, desiring to change or terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter.

(b) Whenever notice is given for changes, the nature of the changes desired must be specified in the notice, or no later than the first negotiating meeting unless mutually agreed otherwise.

(c) The existing provisions of the Agreement, including this Article, shall remain in full force and effect until a conclusion is reached in the matter of proposed changes.

(d) Unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations for the Electrical Contracting Industry (CIR) may be submitted jointly or unilaterally to the Council for adjudication. Such unresolved issues or disputes shall be submitted no later than the next regular meeting of the Council following the expiration date of this agreement or any subsequent anniversary date. The Council's decisions shall be final and binding.

(e) When a case has been submitted to the Council, it shall be the responsibility of the negotiating committee to continue to meet

> weekly in an effort to reach a settlement on the local level prior to the meeting of the Council.
>
> (f) Notice of a desire to terminate this Agreement shall be handled in the same manner as a proposed change.

2018 CBA § 1.02. Subsection (a) refers to withdrawal from the agreement as a whole which itself includes both mandatory and non-mandatory subjects. Subsection (b) likewise speaks of changes to the agreement without distinction between the mandatory and non-mandatory subjects contained within the agreement. 2018 CBA § 1.02. Subsection (f) addresses terminating the agreement, not parts of the agreement. The entirety of § 1.02 including subsection (d) addresses the 2018 CBA as a whole. Thus, the language of § 1.02(d) unambiguously captures any disputes that result from the negotiation of a successor agreement to the 2018 CBA.

Even if one could construe the language of § 1.02(d) as ambiguous, Brent Electric would need to demonstrate that "the parties intended to exclude" the dispute from arbitration. *Phillips 66 Co.,* 839 F.3d at 1204. Indeed, contrary to Brent Electric's position, subsection (d) would need to explicitly exclude permissive subjects of negotiation for § 1.02(d) not to apply to the dispute at issue here. Brent Electric points to nothing that would demonstrate that the parties intended to exclude permissive subjects of negotiation; rather Brent Electric argues only that permissive subjects can never be imposed in interest arbitration. As will be discussed below, Brent Electric's argument regarding whether interest arbitration may impose permissive subjects of negotiation is mistaken.

Thus, there can be no argument that the parties agreed to arbitrate disputes regarding otherwise permissive subjects of negotiation.

II. Confirmation of the Award

The Union argues that the CIR's decision is entitled to great deference. *See* Union's Moving Br. at 8–9. Brent Electric counters that the deferential standard "does not allow the CIR to violate public policy or to impose on Brent Electric permissive subjects of bargaining in violation of federal law." Brent's Resp. Br. at 7. Brent Electric requests the Court grant summary judgment in its favor and refuse to confirm the CIR award because the CIR panel's inclusion of permissive subjects of bargaining in its final decision exceeded its powers and violates public policy. *See* Brent's Moving Br. at 11–20; Brent's Resp. Br. at 7–10. Having decided that the parties agreed to submit the renegotiation of the 2018 CBA to arbitration, the Court must accept the decision so long as the award draws its essence from the agreement and comports with national labor policy. *Kennecott Utah Copper Corp. v. Becker,* 195 F.3d 1201, 1204 (10th Cir. 1999).

Confirmation of an arbitral award requires a valid agreement to arbitrate, and that the award does not exceed the power of the arbitrators.[8] *See* 9 U.S.C. §§ 9, 10(a)(4); *AT&T Mobility LLC v. Concepcion,* 563 U.S.

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[8] Courts provide "maximum deference . . . to the arbitrator's decision . . . because the standard of review of arbitral awards is among the narrowest known to the law." *ARW Exploration Corp. v. Aguirre,* 45 F.3d 1455, 1462–63 (10th Cir. 1995) (internal quotation marks omitted) (quoting *Litvak Packing Co. v. United Food & Commercial Workers, Loc. Union No. 7,* 886 F.2d 275, 276 (10th Cir. 1989).

333, 339 (2011); *see* 9 U.S.C. § 2.[9] When reviewing an arbitral award, the court upholds the arbitrator's decision "[s]o long as the award draws its essence from the collective bargaining agreement." *Kennecott,* 195 F.3d at 1204 (internal quotation marks omitted). An award does not draw its essence from a CBA if it is "contrary to the express language of the contract" or "without rational support." *LB & B Assocs., Inc. v. Int'l Bhd. of Elec. Workers, Loc. No. 113,* 461 F.3d 1195, 1197–98 (10th Cir. 2006) (quoting *Loc. No. 7 United Food and Com. Workers Int'l Union v. King Soopers,* 222 F.3d 1223, 1227 (10th Cir. 2000)); *Mistletoe Express Serv. v. Motor Expressmen's Union,* 566 F.2d 692, 694 (10th Cir. 1977) (citing *Ludwig Honold Mfg. Co. v. Fletcher,* 405 F.2d 1123, 1128 (3d Cir. 1969)). The arbitrator's award is legitimate so "long as the arbitrator is even arguably construing or applying the contract and

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[9] The Labor Management Relations Act of 1947 (LMRA) applies to CBA arbitration. Courts may also look to the provisions of the Federal Arbitration Act ("FAA") for guidance as well. *See* 29 U.S.C. §§ 141–197; *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.,* 484 U.S. 29, 40 n.9 (1987). Pursuant to the FAA Courts may vacate an award for the following reasons:

> where the award was procured by corruption, fraud, or undue means;(2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

acting within the scope of his authority." *Loc. No. 7 United Food & King Soopers,* 222 F.3d 1223, 1227 (10th Cir. 2000) (citing *Misco,* 484 U.S. at 38).

Finally, arbitrators exceed their powers when they render decisions violating law or public policy. *See Misco,* 484 U.S. 29, at 43 (citing *W.R. Grace & Co. v. Loc. Union 759, Int'l Union of United Rubber, Cork, Linoleum & Plastic Workers of Am.,* 461 U.S. 757, 766 (1983)). The inclusion of some, but not all, permissive clauses in interest arbitration awards violates national labor policy. *See NLRB v. Columbus Printing Pressmen & Assistants' Union No. 252,* 543 F.2d 1161, 1171 (5th Cir. 1976) (holding that contract arbitration clauses "are not enforceable to perpetuate inclusion of contract arbitration clauses continuously in contract after contract," but parties are free to "agree to contract arbitration when they think it is mutually advantageous and entitles them to enforce arbitration over contract terms involving mandatory subjects of bargaining and perhaps others"); *Am. Metal Prod., Inc. v. Sheet Metal Workers Int'l Ass'n Loc. Union No. 104,* 794 F.2d 1452, 1457 (9th Cir. 1986) (finding "[a]n arbitration panel cannot make [the interest arbitration clause in the expired contract] self-perpetuating by including an interest arbitration clause in the new contract."); *Loc. 58, Int'l Bhd. of Elec. Workers, AFL-CIO v. Se. Michigan Chapter, Nat. Elec. Contractors Ass'n, Inc.,* 43 F.3d 1026, 1032 (6th Cir. 1995) (explaining, "the law is clear that an arbitrator may not use an interest arbitration clause as a means of self-perpetuation, and that this type of "second generation" interest arbitration clause cannot be included over another party's objection").

The award in this case takes its essence from the agreement and comports with national labor policy. There can be no question that the CIR was "arguably construing or applying the contract."[10] *See King Soopers,* 222 F.3d at 1227 (explaining that an arbitrator's award will be seen as drawing its essence from the collective bargaining agreement if the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority). The CIR considered the provisions of 2018 CBA and included those provisions, in part, in the 2021 CBA. Section 1.03 of the 2018 CBA agreement states "[t]his Agreement shall be subject to change or supplement at any time by mutual consent of the parties," suggesting that the permissive subjects were among the CBA issues that could be negotiated. *See* 2018 CBA § 1.03. Moreover, the 2018 CBA also states that any unresolved issues arising from the desire to change or terminate the agreement may be "submitted jointly or unilaterally to the Council for adjudication." *Id.* at 1.02(d). By referencing the "[u]nresolved issues or disputes arising out of the failure to negotiate a renewal or modification," the parties intended the arbitrators to determine all the terms of a potential renewal or modification. *Id.*

Brent Electric's insistence that the award exceeds the arbitrators' powers ignores the parties' contractual agreement to arbitrate. *See McElroy's,* 500 F.3d at 1098. The obligation to negotiate various provisions in a labor agreement may stem from either statute or

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[10] The Court previously determined that "the arbitration award imposing the 2021 CBA is enforceable pursuant to the interest arbitration agreement in the 2018 CBA." Opinion and Order at 11, Nov. 16, 2022, ECF No. 45.

contract. *See generally Borg-Warner Corp.,* 356 U.S. 342. Section 29 of the United States Code imposes a statutory duty on unions and employers to bargain in good faith. *See* 29 U.S.C. §§ 158(a)(5), (b)(3). The National Labor Relations Act, 29 U.S.C. §§ 151–169 ("NLRA"), established that an employer commits an unfair labor practice by refusing to bargain collectively with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement. 29 U.S.C. § 158(d).

Parties are also free to contractually agree to negotiate permissive subjects. *See Borg-Warner,* 356 U.S. 342, 349; *see also Sheet Metal Workers' Int'l Ass'n, Loc. Union No. 2 v. McElroy's, Inc.,* 500 F.3d 1093, 1097 (10th Cir. 2007). The Tenth Circuit recognized the distinction between statutory and contractual obligations in *McElroy's.* McElroy, a mechanical contractor, sought to terminate its agreement with the Local Union on the contract's expiration date despite the existence of an interest arbitration clause. *Id.* at 1095. When McElroy refused to execute the established renewal contract it argued that the national labor policy allowed the termination of a pre-hire agreement without any obligation to negotiate for a renewal. *Id.* at 1096. The Tenth Circuit acknowledged the absence of a statutory obligation to renew the agreement but found that the interest arbitration to which McElroy had agreed created a contractual obligation to renew the contract. *Id.* at 1097.[11] *See also*

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[11] Brent Electric argues that *McElroy's* is inapposite because in that case the parties did not "challenge the arbitration award on the basis that it incorporated non-mandatory, permissive subjects of bargaining." Brent's Resp. Br. at 9–10. Although the facts in *McElroy's* differ from those in the current case, the rationale

Columbus Printing Pressmen, 543 F.2d 1161, 1171. Thus, even absent a statutory duty to negotiate terms by virtue of the NLRA, parties will be required to negotiate where they have agreed to do so.[12] *McElroy's,* 500 F.3d at 1097. Parties' freedom to contractually agree to negotiate non-mandatory subjects of negotiation gives rise to a concomitant freedom to employ

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in *McElroy's* applies in this case. In *McElroy's,* the court held parties would be bound to negotiate a renewal agreement where they had contractually agreed to do so in an interest arbitration clause, even absent a statutory obligation. *See McElroy's,* 500 F.3d at 1097.

[12] Brent Electric cites to cases where the parties had failed to agree to submit disputes over permissive terms, which are inapposite. For example, in *Terex Corp. v. Loc. Lodge 790 Int'l Ass'n of Machinists,* No. 95-cv-5190, 1996 WL 582744 (10th Cir. 1996) (unpublished) the Court of Appeals reversed the district court's grant of judgment on the pleadings rejecting the plaintiff's attempt to vacate an arbitral award arising from the parties' collective bargaining agreement. However, the collective bargaining agreement in that case limited the authority of the arbitrator to "application and interpretation of the existing Agreement." *Id.* at *1. The 2018 CBA in this case contains no such limitation on the scope of CIR's authority.

Likewise, in *Pipefitters Loc. Union No. 208 v. Mech. Contractors Ass'n of Colo.,* 507 F. Supp. 935 (D. Colo. 1981), the district court granted judgment for the plaintiff, rejecting non-mandatory subjects of bargaining which the arbitral award included in the successor CBA. The arbitration clause in that case required both parties to submit the dispute to arbitration, and the district court determined the plaintiff had not agreed to arbitrate the challenged clauses. *Id.* at 936, 939 ("if the parties have not reached a new agreement . . . the parties shall forthwith submit all points of dispute [for arbitration]") (internal brackets omitted). In contrast, the arbitration clause in the 2018 CBA only requires one party to submit issues to arbitration. *See* 2018 CBA § 1.02(d) ("Unresolved issues or disputes . . . may be submitted jointly or unilaterally to the Council for adjudication").

an interest arbitration clause to agree to arbitrate such subjects.

Brent Electric's argument that the arbitration award violates a well-defined public policy fails because national labor policy does not preclude parties from contractually agreeing to the arbitration of permissive subjects of negotiation, rather it precludes only agreement to self-perpetuating permissive clauses. Brent Electric's analysis overlooks the character of the disputes in the cases it cites in support of this argument. First, Brent Electric relies on a series of cases that concern second-generation interest arbitration clauses to argue that the award violates national labor policy. *See* Brent's Moving Br. at 12. A second-generation interest arbitration clause, also known as a new contract arbitration clause, is a clause that results from an interest arbitration and provides for the unilateral invocation of interest arbitration. *See Columbus Printing Pressmen,* 543 F.2d at 1163 n.4. Second-generation interest arbitration clauses pose a unique danger because they are self-perpetuating and thus undermine, rather than reinforce, freedom of contract. *See id.* at 1171 (holding second-generation interest arbitration clauses are unenforceable due to the risk of self-perpetuation); *Loc. 58, Int'l Bhd. of Elec. Workers, AFL-CIO v. S.E. Mich. Ch., Nat'l Elec. Contractors Ass'n, Inc.,* 43 F.3d 1026, 1032 (6th Cir. 1995) (severing second-generation interest arbitration clause from arbitral award); *Sheet Metal Workers Int'l Ass'n Loc. Union No. 24 v. Architectural Metal Workers, Inc.,* 259 F.3d 418, 430–32 (6th Cir. 2001) (invalidating second-generation interest arbitration clause in arbitral award and remanding to exclude all non-mandatory provisions); *American Metal Prods, Inc. v. Sheet Metal*

Workers Int'l Ass'n Loc. Union No. 104, 794 F.2d 1452 (9th Cir. 1986) (invalidating second-generation interest arbitration clause in arbitral award); *Sheet Metal Workers Int'l Ass'n Loc. 14 v. Aldrich Air Conditioning,* 717 F.2d 456 (8th Cir. 1983) (invalidating second-generation interest arbitration clause in arbitral award). The 2021 CBA does not contain a second-generation interest arbitration clause.[13]

Secondly, Brent Electric cites out of circuit cases for the proposition that any permissive clause imposed by interest arbitration violates national labor policy. *See Sheet Metal Workers Loc. Union No. 54 v. E.F. Etie Sheet Metal Co.,* 1 F.3d 1464 (5th Cir. 1993) *cert. denied,* 516 U.S. 1117 (1994) (citing *NLRB v. Sheet Metal Workers Int'l Ass'n Local Union No. 38,* 575 F.2d 394 (2d Cir. 1978)). Brent Electric's reading of these

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[13] The Court previously determined the interest arbitration clause at issue here was valid and did not reach the issue of whether a self-perpetuating arbitration clause, also called a second-generation interest arbitration clause, is valid. *See* Opinion and Order at 9, Nov. 17, 2022, ECF No. 45. Interest arbitration is not self-perpetuating here because the CIR included an arbitration clause in the 2021 CBA requiring both parties to submit a future dispute to the CIR:

> By mutual agreement only, the Chapter, or an Employer withdrawing representation from the Chapter or not represented by the Chapter, may jointly, with the Union, submit the unresolved issues to the Council on Industrial Relations for adjudication. Such unresolved issues shall be submitted no later than the next regular meeting of the Council following the expiration date of this Agreement or any subsequent anniversary date. The Council's decisions shall be final and binding.

2021 CBA § 1.02(e).

cases misapplies Supreme Court precedent regarding statutorily mandated subjects of negotiation to cases in which parties have contractually agreed to negotiate non-mandatory terms and are therefore unpersuasive. *See* Brent's Moving Br at 11–13. First, in *E.F. Etie* the Fifth Circuit invalidated non-mandatory provisions requiring contributions to an industry fund and limiting the employer's ability to subcontract to nonunion employees. *E.F. Etie,* 1 F.3d at 1476. The court invoked the Second Circuit's decision in *Local Union No. 38* which itself relied upon *Allied Chem. & Alkali Workers of Am., Loc. Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.,* 404 U.S. 157 (1971). Brent Electric cites these cases for the proposition that non-mandatory subjects in arbitration awards are "not enforceable" and "nonmandatory provisions in arbitration award[s] are void." *See* Brent's Moving Br. at 12. A close reading of these cases reveals that they cannot support the position Brent Electric asserts.

As a preliminary matter *Allied Chemical* did not involve interest arbitration. Rather, the court in *Allied Chemical,* addressed whether a party's unilateral mid-term modification of a collective-bargaining contract terms constitutes an unfair labor practice under 29 U.S.C. § 158(d). *Allied Chem.,* 404 U.S. at 183. The court held that a unilateral and midterm modification is only an unfair labor practice when it changes a term that is a mandatory, rather than permissive, subject of bargaining. *Id.* at 185. Further, the court explained that the remedy for a unilateral mid-term modification to a permissive term lies in an action for breach of contract not in an unfair-labor-practice proceeding. *Id.* at 188.

Nonetheless, in *Local Union No. 38,* the Second Circuit appeared to read *Allied Chemical* to limit when non-mandatory terms could not be resolved in interest arbitration. *Local Union No. 38,* 575 F.2d at 399 ("Thus, as applied to nonmandatory subjects, an interest arbitration provision is contrary to national labor policy because it deprives the parties of their right to insist on excluding non-mandatory subjects from the collective bargaining agreement").[14] However, the Second Circuit later clarified that *Local Union No. 38* applied only where there was no pre-existing contract:

> The Company's initial argument against arbitrability contends that product level is not a mandatory subject of bargaining and for that reason is beyond the scope of arbitration. The argument rests on an overreading of our opinion in *NLRB v. Sheet Metal Workers Local 38,* 575 F.2d 394 (2d Cir. 1978). That case involved a clause making arbitrable disputes between the parties concerning formation of a new contract. As to such a clause (referred to as an "interest arbitration provision,") we said that it covered only disputes as to which bargaining was mandatory. . . . That decision,

[14] In adopting its position, the *Local 38* court noted "the Board previously has espoused the position we now adopt." *NLRB. v. Sheet Metal Workers Local 38,* 575 F.2d 394 (2d Cir. 1978) (citing *Columbus Printing Pressmen,* 543 F.2d at 1169). Yet in rejecting a self-perpetuating arbitration clause in *Pressmen,* the Fifth Circuit noted nonetheless that parties are free to agree to contract arbitration when they think it is mutually beneficial, and the clause "entitles them to enforce arbitration over contract terms involving mandatory subjects of bargaining and perhaps others." *See id.*

> however, did not place a similar limit on the arbitrability of disputes arising under an existing contract. Indeed, *Sheet Metal Workers* explicitly recognized the parties' freedom "'to agree or not to agree'" with respect to subjects of nonmandatory bargaining (quoting *Borg–Warner,* 356 U.S. 342, at 398). If the parties elect to include in their agreement a provision governing a matter not subject to mandatory bargaining and also adopt a broad arbitration clause, nothing in *Sheet Metal Workers,* labor law, or the Arbitration Act precludes arbitration of a dispute concerning the meaning or application of that provision.

Coca-Cola Bottling Co. of New York v. Soft Drink & Brewery Workers Union, Loc. 812, Int'l Bhd. of Teamsters, 39 F.3d 408, 410 (2d Cir. 1994). Following *Local Union No. 38,* the court in *E.F. Etie,* invoked *Local Union 38,* stating "[i]nsofar as an interest arbitration proceeding forced a party to put nonmandatory issues on the table, it was unenforceable as contrary to that policy." *E.F. Etie Sheet Metal Co.,* 1 F.3d 1464, 1476 (5th Cir. 1993).

Brent Electric's reading of *E.F. Etie* and *Local Union 38* to prohibit interest arbitration of all nonmandatory subjects is incorrect because neither case held that interest arbitration could not resolve nonmandatory subjects when the parties had agreed to interest arbitration for non-mandatory subjects. Further, *Allied Chemical* did not involve interest arbitration. *See Allied Chem.,* 404 U.S. 157. The court's statements in *Allied Chemical* regarding permissive subjects of arbitration related to grievance arbitration,

i.e., just because a party agreed to grievance arbitration of a permissive subject once, does not mean that it must agree to grievance arbitration, or any permissive clause going forward. *See id.* at 188. Indeed, the Second Circuit subsequent to both *E.F. Etie,* and *Local Union 38* clarified that "[i]f the parties elect to include in their agreement a provision governing a matter not subject to mandatory bargaining and also adopt a broad arbitration clause, nothing in *Sheet Metal Workers,* labor law, or the Arbitration Act precludes arbitration of a dispute concerning the meaning or application of that provision." *Coca-Cola Bottling,* 39 F.3d at 410.

Section 1.02 of the 2018 CBA provides that "Unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement . . . may be submitted jointly or unilaterally to the Council for adjudication . . . The Council's decisions shall be final and binding." 2018 CBA § 1.02(d). Here, the parties agreed to submit unresolved issues in the 2018 CBA, including permissive subjects to arbitration.

III. Addendum IV

Brent Electric separately argues that the CIR's award forces Brent Electric to enter into a "freestanding memorandum of understanding" or a "new tripartite agreement" between itself, the Union and NECA. Brent's Moving Br. at 20–21; Brent's Response Br. at 5–6. The Union responds that "2018 CBA Section 1.02(d) set no limits on the provisions that the CIR could include in an awarded contract," Addendum Four was included in the 2018 CBA, and its inclusion

in the award is beyond this Court's review. Union's Resp. Br. at 23–25.

Brent Electric contractually agreed to submit any disputes or unresolved issues concerning the negotiation of a renewal agreement to the 2018 CBA to arbitration. Addendum Four was included in the 2018 CBA. *See Brent Elec. Co. v. Int'l Bhd. of Elec. Workers Local Union No. 584,* No. 4:21-cv-00246, 2022 WL 16973249, 13* n.9 (N.D. Okla. Nov. 16, 2022); *see also* Brent's First SOF ¶¶ 10, 14; Union's First SOF ¶¶ 10, 14. The CIR's inclusion of Addendum Four as part of the 2021 CBA is a determination of the arbitrator which will only be set aside because the CIR was not "arguably construing or applying the contract and acting within the scope of his authority." *See King Soopers,* 222 F.3d. 1223,1227 (citing *Misco,* 484 U.S. 29, at 38). Brent Electric fails to demonstrate that the arbitrator was arguably construing or applying the contract in a manner that was beyond the scope of its authority.

IV. Audit

The Union asks the Court to appoint an accountant and order an audit of Brent Electric's business records at Brent Electric's expense. *See* Union's Moving Br. at 19; *see also* Union's Reply at 3. The Union argues that an audit is appropriate because Brent Electric has refused to implement the CIR's award, and that an audit will ensure or confirm Brent Electric's compliance with the 2021 CBA. *See* Union's Moving Br. at 19. In the event of an appeal by Brent Electric, the Union also asks that the Court order Brent Electric to preserve its payroll-related business records for work performed since June 1, 2021. *See* Union's Moving Br.

at 20. Brent Electric contests the request for an audit in a one-sentence subheading of its brief and adds that the cost of any ordered audit should be paid by the Union and that both parties should participate in the selection of an accountant. *See* Brent's Resp. Br. at 10. Brent Electric makes no response to the Union's request that the Court order it to preserve its payroll related business records concerning bargaining unit work performed since June 1, 2021.

The request for an audit is premature and therefore the Court declines to impose this remedy in connection with the confirmation of the award. Although the Union cites one out-of-circuit case where a court ordered an audit under similar circumstances, *see* Union's Moving Br. at 19–20, the Union fails to demonstrate that Brent Electric will not comply with an order from this Court confirming the award.[15] Should Brent Electric fail to comply with this Court's order, the Union may then seek an order from this Court to enforce its judgment. Fed. R. Civ. P. 69(a)(1). In order to preserve the efficacy of any future enforcement order, the Court will however order Brent Electric to preserve its payroll-related business records for work performed from June 1, 2021, until the conclusion of all appeals from this order.

V. Attorneys' Fees

The Union seeks an award of attorneys' fees, claiming that Brent Electric lacked justification for its noncompliance with the CIR's award. *See* Union's Moving Br. at 21–24; *see also* Union's Reply, ECF No.

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[15] Nor does the Union cite any authority for its view that it should select an auditor and Brent Electric should bear the costs.

79 at 4. Brent Electric argues that attorneys' fees are unwarranted because there is no evidence that it "acted in bad faith, vexatiously, wantonly, or for oppressive reasons" by challenging the CIR's award. *See* Brent's Resp. Br. at 11.

In an action brought by a union to enforce an arbitration award, "the allowance of attorneys' fees is discretionary." *See Fabricut, Inc. v. Tulsa Gen. Drivers, Warehousemen & Helpers, Loc. 523,* 597 F.2d 227, 230 (10th Cir. 1979). A successful party may recover attorneys' fees "when his opponent has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *See F. D. Rich Co. v. U. S. for Use of Indus. Lumber Co.,* 417 U.S. 116, 129 (1974). Further, the "district court has authority to award attorneys' fees where it determines that a party has without justification refused to abide by the award of an arbitrator." *See Int'l Union of Dist. 50, United Mine Workers of Am. v. Bowman Transp., Inc.,* 421 F.2d 934, 935 (5th Cir. 1970) (finding that under the facts of the particular case, the District Court did not abuse its discretion in awarding attorneys' fees and costs incurred by the union).

In *Fabricut,* the Tenth Circuit affirmed the District Court's decision to deny an attorney fee award because the plaintiff, "did not act in bad faith and was not without justification for challenging the arbitrator's award." *See Fabricut, Inc. v. Tulsa Gen. Drivers, Warehousemen & Helpers, Loc. 523,* 597 F.2d 227, 230 (10th Cir. 1979). Rather, the Tenth Circuit considered the plaintiff's claim that the award exceeded the arbitrator's authority was made on substantial grounds and in good faith. *See Fabricut, Inc.,* 597 F.2d at 230.

Despite Brent Electric's incorrect understanding of Tenth Circuit and out-of-circuit precedent, Brent Electric's claims fail to rise to the level of vexatious, wanton, or oppressive action, and the Union offers no evidence that the claims have been asserted in bad faith. *See Fabricut, Inc.,* 597 F.2d at 230. Although Brent Electric's arguments concerning the relevant precedent fail to persuade, the Court cannot conclude that they are without justification. Therefore, the Court denies the Union's request for an award of attorneys' fees.

CONCLUSION

For the foregoing reasons, Brent Electric's motion for summary judgment, *see* ECF No. 68, is denied. The Union's motion for summary judgment, *see* ECF No. 76, is granted in part and denied in part. The arbitration decision and award of the CIR dated June 4, 2021, is confirmed. The Union's request for an audit of Brent Electric's business records is denied. The Union's request for attorneys' fees is also denied. Brent Electric shall preserve its payroll-related business records for work performed from June 1, 2021, through the pendency of any appeal taken from this Court's decision. The Court will enter a separate judgment in accordance with Federal Rule of Civil Procedure 58.

/s/ Claire R. Kelly
Judge*

Dated: September 6, 2023
New York, New York

* Judge Claire R. Kelly, of the United States Court of International Trade, sitting by designation.

**OPINION AND ORDER,
U.S. DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA
(NOVEMBER 16, 2022)**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BRENT ELECTRIC CO., INC.,

Plaintiff/Counter-Defendant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NO. 584,

Defendant/Counter-Plaintiff.

No. 4:21-cv-00246-CRK-CDL

Before: Claire R. KELLY, Judge.

OPINION AND ORDER

In this case, the parties—an employer and a labor organization—failed to conclude a new collective bargaining agreement, and the labor organization submitted the dispute to arbitration, which issued an award imposing a new collective bargaining agreement ("2021 CBA") on the parties. The employer objects to the terms of that new agreement and brings this

action to vacate the arbitration award. The labor organization counterclaims to enforce the arbitration award. Before the Court is defendant/counter-plaintiff International Brotherhood of Electrical Workers Local Union 584's ("the Union") motion to dismiss the first amended complaint. *See* ECF No. 18 ("Def. Br."); ECF No. 10 ("FAC"). The Union argues the plaintiff/counter-defendant Brent Electric Company, Inc.'s ("Brent Electric") complaint fails to state a claim upon which relief can be granted and thus the Court should dismiss the complaint.[1] Def. Br. at 1; *see also* Def.'s Reply to Pl.'s Resp. Opp. [Def. Br.] at 10, ECF No. 24 ("Def. Reply").

BACKGROUND[2]

Brent Electric is an Oklahoma corporation providing electrical service and is an employer affecting

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[1] The Union also requests the Court, in the alternative, dismiss duplicative and/or claim-splitting allegations identical or like those Brent Electric asserts in another case pending before this Court, Case No. 21-cv-00103. Def. Br. at 1. In that case, Brent Electric provided notice to the Union and the National Electrical Contractors Association ("NECA") that it was terminating participation in the Union pension fund under the Memorandum of Understanding ("MOU") located in Addendum Four of the 2018 CBA. FAC ¶¶ 17–22. In response, the Union submitted a grievance to the Labor Management Committee under the 2018 CBA, claiming Brent Electric violated the MOU. *Id.* ¶ 23. Brent Electric lost the grievance, and the Union filed a complaint to enforce the grievance decision in Case No. 21-CV-00103, in which Brent Electric has counterclaimed. *Id.* ¶¶ 24–26. Because the Court determines Brent Electric fails to state a claim to vacate the arbitration award, the Court need not address the Union's alternative argument.

[2] The Court includes facts from the first amended complaint and assumes them to be true for the purpose of this Opinion and

commerce under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (2022) ("LMRA"). FAC ¶ 2. The Union is a labor organization under the LMRA. *Id.* ¶ 3. Brent Electric signed an agreement in 1996 authorizing the National Electrical Contractors Association ("NECA") to represent it in collective bargaining with the Union and agreeing to be bound to agreements between NECA and the Union. *Id.* ¶¶ 6–8. A series of collective bargaining agreements subsequently bound Brent Electric, including an agreement effective from June 1, 2018, to May 31, 2021 ("2018 CBA"). *Id.* ¶¶ 9–11. Brent Electric terminated its agreement with NECA to act on its behalf on September 18, 2020, and informed the Union it intended to terminate the 2018 CBA, prior to the deadlines for notice of termination in the representation agreement with NECA and in the 2018 CBA. *Id.* ¶¶ 12–15.

Brent Electric informed the Union it intended to negotiate the terms of a new CBA and addressed provisions from the 2018 CBA it called "permissive subjects of bargaining." *Id.* ¶¶ 27–30. Brent Electric argued that federal law does not require parties to negotiate permissive subjects of bargaining. *Id.* ¶ 30. The Union informed Brent Electric on April 9, 2021, it would submit the unresolved issues between the parties to the Council on Industrial Relations ("CIR") for its consideration under the terms of the 2018 CBA. *Id.* ¶ 31. Brent Electric informed the CIR it objected to the Union's unilateral submission and attached a brief arguing against inclusion of the permissive subjects of bargaining in the new CBA. *Id.* ¶¶ 32–34. The CIR issued a preliminary decision and forwarded it to

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Order. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555–56 (2007); FAC.

Brent Electric on May 27, 2021. *Id.* ¶ 35. The preliminary decision included a list of matters under dispute. *Id.* ¶ 36. Brent Electric objected to what it called errors and omissions in the CIR's preliminary decision on May 30, 2021, and the CIR issued a second decision on June 4, 2021, including provisions Brent Electric considers to be permissive subjects of bargaining. *Id.* ¶¶ 37–40. Brent Electric received the CIR's final award on June 28, 2021, which was identical to CIR's second decision. *Id.* ¶¶ 41–43.

The final award contained, and Brent Electric objects to, the following clauses:

> Section 1.02(c) is an evergreen clause as it mandates that the terms of the collective bargaining agreement will remain in effect at last [sic] 10 days after the expiration of the Agreement. . . .
>
> Section 1.02(c) and 1.09 . . . [t]he evergreen provision in combination with the status quo provision mandate that the Imposed Agreement remain in effect past the term of the Imposed Agreement until: (1) the Union agrees to a proposed contract change; (2) the Union and Brent Electric jointly and voluntarily agree to interest arbitration before CIR to resolve outstanding issues; or (3) either party provides a subsequent ten (10) day notice to terminate the agreement, an act that either party allegedly can take to forestall termination of the collective bargaining agreement. . . .
>
> Section 1.03 . . . is an international union approval provision. . . .

Section 2.01 . . . is an employer qualifications provision which permits the Union to determine the status of Brent Electric for that purpose. . . .

Section 2.05(a)–(c) . . . deals with surety bonds. . . .

Section 2.06(b) . . . requires a joint negotiating committee and requires that the committee be comprised of four individuals per party. . . .

Section 2.07 . . . addresses Non-Resident Employees (Portability). . . .

Section 2.11 . . . involve[s] discipline of the Union's members – Internal Union Discipline of Members. . . .

Section 2.12 . . . covers the appointment of stewards . . . and deals with the relationship between the Union and who it chooses to act as its agent. . . .

Section 3.05(b) references at subsection 6 to "LMCC" and subsection 7 "NLMCC" . . . each deal with industry promotion fund issues. . . .

Section 3.08 . . . deals with an Advertising Fund. . . .

Section 3.09 . . . addresses a political action committee ("PAC") fund. . . .

Section 3.10 . . . deals with the employer deduction from employee payroll checks of Advertising Fund and PAC fund obligations. . . .

Section 6.01 (second and fourth paragraphs) . . . indicates that Brent Electric will be bound to a National Electrical Benefit Fund trust agreement which . . . contains penalty clauses. . . .

Section 6.02 (first sentence) . . . indicates that Brent Electric will be bound to a health insurance trust agreement which . . . contains penalty clauses. . . .

Section 6.03 (including 3.05, number 6 and 6.05 (c)) . . . deal with the Local Pension Plan. . . .

Sections 6.03 and 6.04 (a) (first sentence in each) . . . indicate that Brent Electric will be bound to Local Pension and Profit-Sharing Plan trust agreements which . . . contain penalty clauses. . . .

Section 6.05(c) . . . contains a reference to the "LMCC" and "NLMCC". . . .

Section 6.06 . . . contains a reference to Sections 3.08 and 3.09 (Advertising Fund and PAC Fund, respectively). . . .

Section 6.07 (b) . . . addresses fringe benefit remedies at the end of sentence and therefore deals with penalty clauses. . . .

Articles VII and VIII . . . also deal with the "LMCC" and "NLMCC". . . .

The International Approval Reference above the signature lines . . . may not be mandated. . . .

> Addendum Three . . . addresses the "LMCC" and "NLMCC,". . . .
>
> Addendum Four – MOU . . . is a separate agreement reached by third parties, NECA and OESCO, with the Union. . . .
>
> The newly imposed and created MOU also makes the parties subject to the current collective bargaining agreement's evergreen clause. . . .

Id. ¶¶ 52–109.

After filing a complaint on June 8, 2021, *see* ECF No. 2, Brent Electric filed its first amended complaint on July 1, 2021, claiming that the Court must vacate and set aside CIR's arbitration award under the LMRA and the Federal Arbitration Act, 9 U.S.C. ch. 1 ("FAA"). FAC ¶¶ 45–51.

JURISDICTION AND STANDARD OF REVIEW

The Court has jurisdiction over the parties' claims arising under section 301 of the LMRA[3] and section 10 of the FAA pursuant to 28 U.S.C. § 1331.

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[3] Section 301 of the LMRA provides that "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185. Parties may bring actions to enforce arbitration awards under section 301 of the LMRA even though the conduct involved amounts to an unfair labor practice under the National Labor Relations Board's jurisdiction. *Hines v. Anchor Motor Freight, Inc.,* 424 U.S. 554, 562 (1976).

On a Rule 12(b)(6) motion, the court assesses whether the plaintiff's complaint is legally sufficient to state a claim for relief. *Broker's Choice of Am., Inc. v. NBC Universal, Inc.,* 757 F.3d 1125, 1135–36 (10th Cir. 2014). A complaint is legally sufficient if it contains factual allegations that state a plausible claim for relief on its face. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Although a complaint need not contain detailed factual allegations, it must still contain more than mere labels, legal conclusions, and a "formulaic recitation" of the claim's elements. *Id.* at 555. A plaintiff states a plausible claim when the plaintiff pleads facts allowing the court to reasonably infer the defendant is liable for the allegations. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). On a motion to dismiss, the court considers the complaint and documents it incorporates, and any matters the court decides to judicially notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.,* 551 U.S. 308, 322 (2007). The court accepts as true all well pled factual allegations. *Twombly,* 550 U.S. at 555–56.

DISCUSSION

The Union argues the Court should dismiss Brent Electric's first amended complaint because it lacks grounds for the Court to vacate the arbitration award. Def. Br. at 6–24; Def. Reply at 1–10. Brent Electric argues it has pled sufficient facts to state a claim for vacating the arbitration award under the LMRA and the FAA because the award violates public policy and exceeds the CIR's authority by including permissive provisions in the 2021 CBA. Pl.'s Resp. to [Def. Br.] at 9–16, 18–20, ECF No. 21 ("Pl. Br."). Brent Electric also argues the CIR exceeded its powers by imposing new

obligations on Brent Electric, drawing on a prior third-party agreement that is separate from the 2018 CBA. *Id.* at 16–18. For the following reasons, the Court determines Brent Electric has failed to state a claim and dismisses its claim to vacate the arbitral award.

Under section 10 of the FAA, courts set aside awards when arbitrators exceed their powers.[4] Courts may vacate an award for the following reasons:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). In labor cases, arbitrators exceed their powers when their award fails to draw "its essence from the collective bargaining agreement."

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[4] Courts looks to the FAA for guidance in labor arbitration cases under section 301 of the Labor Management Relations Act. *See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.,* 484 U.S. 29, 40 n.9 (1987).

United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597–98 (1960).

Additionally, a court may refuse to enforce arbitral awards that "violate law or public policy." *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.,* 484 U.S. 29, 42–43 (1987), citing *W.R. Grace & Co. v. Loc. Union 759, Int'l Union of United Rubber, Cork, Linoleum & Plastic Workers of Am.,* 461 U.S. 757, 766 (1983). The policy must be "well defined and dominant," and is to be ascertained "by reference to the laws and legal precedents." *Id.* The relevant law here, the National Labor Relations Act, 29 U.S.C. §§ 151–169 ("NLRA"), imposes requirements on employers and unions to collectively bargain in good faith.

Arbitrators do not exceed their powers when they decide mandatory collective bargaining provisions under the NLRA or permissive subjects to which the parties have agreed. Under the NLRA, there are mandatory subjects of bargaining, which include "wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(d). Additionally, parties are also free to agree to permissive subjects of bargaining. *N.L.R.B. v. Wooster Div. of Borg-Warner Corp.,* 356 U.S. 342, 349 (1958). Permissive subjects of bargaining are those matters other than wages, working hours, and other conditions of employment. *Id.* As a general rule, arbitrators do not exceed their powers when ruling on a subject the parties have agreed to arbitrate. *See id.* ("Each of the two controversial clauses is lawful in itself. Each would be enforceable if agreed to by the unions.")

Authority exists in other circuits that one type of permissive clause, a second-generation interest arbi-

tration clause,[5] violates public policy. *See Loc. 58, Int'l Bhd. of Elec. Workers, AFL-CIO v. Se. Mich. Chapter, Nat'l Elec. Contractors Ass'n, Inc.,* 43 F.3d 1026, 1032 (6th Cir. 1995) (ruling that an arbitrator may not use a second-generation interest arbitration clause as a means of self-perpetuation); *Am. Metal Prods., Inc. v. Sheet Metal Workers Int'l Ass'n, Loc. Union No. 104,* 794 F.2d 1452, 1457 (9th Cir. 1986) (ruling that arbitrators cannot make an interest arbitration clause self-perpetuating by including an interest arbitration clause in the new contract); *N.L.R.B. v. Columbus Printing Pressmen & Assistants' Union No. 252,* 543 F.2d 1161, 1169 (5th Cir. 1976) (ruling that an interest arbitration clause in a new contract is unenforceable but declining to rule whether permissive terms generally are unenforceable). Second-generation interest arbitration clauses implicate public policy because the parties lose the ability to terminate the clause, which disturbs freedom of contract and disconnects the parties' negotiation of future agreements from the balance of economic power between them. *See Columbus Printing Pressmen & Assistants' Union No. 252,* 543 F.2d at 1169. This circuit has yet to confront a permissive clause imposing second-generation interest arbitration, and this Court need not reach the question here as a second-generation interest arbitration clause is not at issue in this case.[6]

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[5] Interest arbitration is the arbitration of new contract terms. *See Sheet Metal Workers' Int'l Ass'n, Loc. Union No. 2 v. McElroy's, Inc.,* 500 F.3d 1093, 1095 n.1 (2007).

[6] The 2021 CBA's dispute resolution clause requires both parties to submit a dispute to the CIR:

That courts have found second-generation interest arbitration clauses violate public policy does not undermine other permissive clauses. Precluding the use of interest arbitration clauses from compelling interest arbitration preserves the freedom of contract that arbitration supports. A party's freedom to agree to interest arbitration only exists when there is freedom not to agree to interest arbitration. However, the danger of self-perpetuation does not exist for other permissive subjects of arbitration. For example, a party's agreement to submit a provision for international union approval to interest arbitration does not extend beyond the agreement for example. *See Sheet Metal Workers' Int'l Ass'n, Loc. Union No. 2 v. McElroy's, Inc.,* 500 F.3d 1093, 1097 (2007) (ruling that a party to a collective bargaining agreement has a contractual obligation to negotiate or submit to interest arbitration). So too with evergreen clauses that do extend the terms of an agreement past its expiration, these clauses are not potentially self-perpetuating similar to interest arbitration provisions.[7]

> By mutual agreement only, the Chapter, or an Employer withdrawing representation from the Chapter or not represented by the Chapter, may jointly, with the Union, submit the unresolved issues to the Council on Industrial Relations for adjudication. Such unresolved issues shall be submitted no later than the next regular meeting of the Council following the expiration date of this Agreement or any subsequent anniversary date. The Council's decisions shall be final and binding.

2021 CBA, § 1.02, at 2.

[7] Brent Electric argues that evergreen clauses are permissive subjects of bargaining like interest arbitration clauses and are thus unenforceable. *See* Pl. Br. at 16–18; FAC ¶¶ 52–54. Brent

Finding permissive clauses other than second-generation interest arbitration unenforceable would inject additional uncertainty into labor negotiations, the avoidance of which is one of the polices underlying the LMRA. *See Allied Chem. & Alkali Workers of Am., Loc. Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.,* 404 U.S. 157, 187 (1971) (describing the LMRA's aim as termination and modification of CBAs "without interrupting the flow of commerce or the production of goods" (quoting *Mastro Plastics Corp. v. N.L.R.B.,* 350 U.S. 270, 284 (1956))).[8]

Here, the arbitration award imposing the 2021 CBA is enforceable pursuant to the interest arbitration agreement in the 2018 CBA. The parties agreed to the 2018 CBA, and Brent Electric does not challenge the validity of the interest arbitration provision itself. The parties chose arbitration to resolve any dispute over the next CBA's terms including the dispute over the inclusion of permissive provisions. But so long as the 2021 CBA does not contain an interest arbitration provision, the choice of arbitration and permissive provisions is finite—it ends in the 2021 CBA, and

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Electric therefore implies that evergreen clauses pose the same danger as interest arbitration clauses—that they can become self-perpetuating. However, the evergreen clause in the 2021 CBA is terminable with ten days' notice, *see* 2021 CBA § 1.02(d), at 2, and thus is not potentially self-perpetuating.

[8] In light of the foregoing, the Court is unpersuaded by courts in other circuits that have held that all permissive clauses imposed by interest arbitration violate public policy. *See Sheet Metal Workers, Int'l Ass'n, Loc. Union No. 24 v. Architectural Metal Works, Inc.,* 259 F.3d 418, 430 (6th Cir. 2001); *Sheet Metal Workers Loc. Union No. 54, AFL-CIO v. E.F. Etie Sheet Metal Co.,* 1. F.3d 1464, 1476 (5th Cir. 1993); *N.L.R.B. v. Sheet Metal Workers Int'l Ass'n, Loc. Union No. 38,* 575 F.2d 394, 398–99 (2d Cir. 1978).

indeed the arbitrators here did not include an interest arbitration provision in the 2021 CBA. The parties agreed to include permissive clauses, including interest arbitration, in the 2018 CBA.[9]

Taking all the facts Brent Electric pleads as true, Brent Electric fails to allege facts that could support an inference that the arbitration award is unenforceable and thus does not state a plausible claim for why the Court should vacate the award.

CONCLUSION

In light of the foregoing, it is

ORDERED that the Union's Motion to Dismiss the First Amended Complaint, ECF No. 18, is GRANTED; and it is further

ORDERED that Count 1 of Brent Electric's First Amended Complaint, ECF No. 10, against the Union is DISMISSED.

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[9] Brent Electric also alleges the arbitrators included new provisions when it included the MOU in Addendum Four of the 2021 CBA. Pl. Br. at 16–18; *see* 2021 CBA, Addendum Four, at 51. However, like the other permissive clauses in the 2021 CBA, these provisions are enforceable. The provisions at Addendum Four were no less a part of the 2018 CBA, despite being in an addendum, and Brent Electric fails to show how these provisions are not "[u]nresolved issues or disputes arising out of the failure to negotiate a renewal or modification" of the 2018 CBA. *See* 2018 CBA § 1.02(d), at 4. While Addendum Four of the 2018 CBA is at issue in the related case before this Court, Case No. 21-cv-00103, the Court does not reach the substance of those provisions here.

/s/ Claire R. Kelly
Judge*

Dated: November 16, 2022
New York, New York

* Judge Claire R. Kelly, of the United States Court of International Trade, sitting by designation.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

9 U.S.C. § 10

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

[…]

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

29 U.S.C. § 158

(d) Obligation to bargain collectively

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession […].

DECISION, COUNCIL ON INDUSTRIAL RELATIONS FOR THE ELECTRICAL CONTRACTING INDUSTRY (MAY 19, 2021)

Council on Industrial Relations for the Electrical Contracting Industry

Decision No. 8735
Tulsa, Oklahoma
May 19, 2021
Inside

PARTIES IN DISPUTE:

Brent Electric Co, Inc.
Local Union No. 584, IBEW

PRESENTATION:

By brief and oral argument for Union
By brief only for Employer

APPEARANCES:

For Local Union No. 584, IBEW: D. Phelan, J. Griffin, B. Langworthy

MATTERS IN DISPUTE:

1. Article I, Section 1.01 — Length of Agreement
2. Article II, Section 2.08 — Remove Favored Nations

3. Article III, Section 3.02(b) — Holidays (add Christmas Eve)
4. Article III, Section 3.05(a) — Wages
5. Article III, Section 3.05(b) — Fringe Benefits
6. Article III, Section 3.13(b) — No working Foreman
7. Article III, Section 3.13(d) — State License for Supervisors
8. Article IV, Section 4.21 — Eliminate from New IBEW Local Union 584 Agreement

MEMBERS OF COUNCIL SITTING:

FOR THE EMPLOYER

S. Bringmann
K. Tighe
R. Stephens
S. Murphy
M. Kawolsky
B. Orgill

FOR THE UNION

M. Welsh
D. Wilkinson
B. Stage
T. McTavish
R. Stutzman
A. Davis

DECISION:

After careful consideration of the evidence submitted, the Council rules as follows:

> The parties are directed to sign and implement immediately the inside agreement which is attached hereto and hereby made a part of this decision. The Council retains jurisdiction over disputes pertaining to this Agreement including any wage/fringe openers contained therein and such disputes are to be returned to Council through the normal procedures if the parties are unable to reach agreement.

[. . .]

COUNCIL ON INDUSTRIAL RELATIONS FOR THE ELECTRICAL CONTRACTING INDUSTRY

DECISION NO. 8735

UNANIMOUSLY ADOPTED:
Washington, DC
May 19, 2021

{signature not legible}
Acting Co-Chairman

{signature not legible}
Acting Co-Chairman

{signature not legible}
Secretary

IBEW INSIDE CONSTRUCTION AGREEMENT
BETWEEN
LOCAL UNION NO. 584, IBEW.
AND
BRENT ELECTRIC COMPANY INC.

As used hereinafter in this Agreement, the term "Employer" shall mean Brent Electric Company Inc. and the term "Union" shall mean Local Union No. 584, IBEW.

Basic Principles

The Employer and the Union have a common and sympathetic interest in the Electrical Industry. Therefore, a working system and harmonious relations are necessary to improve the relationship between the Employer, the Union, and the Public. Progress in industry demands a mutuality of confidence between the Employer and the Union. All will benefit by continuous peace and by adjusting any differences by rational, common sense methods. Now, therefore, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

ARTICLE I
MODIFIED CIR

EFFECTIVE DATE:

SECTION 1.01 This Agreement shall take effect, June 1, 2021, and shall remain in effect until, May 31, 2024, unless otherwise specifically provided for herein. It shall continue in effect from year to year thereafter, from June 1 through May 31 of each year, unless changed or terminated in the way later provided herein.

CHANGES:

SECTION 1.02

(a). Either party or an Employer withdrawing representation from the Chapter or not represented by the Chapter, desiring to change or terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter.

(b). Whenever notice is given for changes, the nature of the changes desired must be specified in the notice, or no later than the first negotiating meeting unless mutually agreed otherwise.

(c). The existing provisions of the Agreement, including this Article, shall remain in full force and effect until a conclusion is reached in the matter of proposed changes.

(d). In the event that either party, or an Employer withdrawing representation from the Chapter or not represented by the Chapter, has given a timely notice of proposed changes and an agreement has not been reached by the expiration date or by any subsequent anniversary date to renew, modify, or extend this Agreement, or to submit the unresolved issues to the Council on Industrial Relations for the Electrical Contracting Industry (CIR), either party or such an Employer, may serve the other a ten (10) day written notice terminating this Agreement. The terms and conditions of this Agreement shall remain in full force and effect until the expiration of the ten (10) day period.

(e). By mutual agreement only, the Chapter, or an Employer withdrawing representation from the

Chapter or not represented by the Chapter, may jointly, with the Union, submit the unresolved issues to the Council on Industrial Relations for adjudication. Such unresolved issues shall be submitted no later than the next regular meeting of the Council following the expiration date of this Agreement or any subsequent anniversary date. The Council's decisions shall be final and binding.

(f). When a case has been submitted to the Council, it shall be the responsibility of the negotiating committee to continue to meet weekly in an effort to reach a settlement on the local level prior to the meeting of the Council.

(g). Notice of a desire to terminate this Agreement shall be handled in the same manner as a proposed change.

SECTION 1.03 This Agreement shall be subject to change or supplement at any time by mutual consent of the parties hereto. Any such change or supplement agreed upon shall be reduced to writing, signed by the parties hereto, and submitted to the International Office of the IBEW for approval, the same as this Agreement.

SECTION 1.04 During the term of this Agreement, there shall be no stoppage of work either by strike or lockout because of any proposed changes in this Agreement or dispute over matters relating to this Agreement. All such matters must be handled as stated herein.

GRIEVANCES/DISPUTES:

SECTION 1.05 There shall be a Labor-Management Committee of three representing the Union and three representing the Employer. It shall meet regularly at such stated times as it may decide. However, it shall also meet within 48 hours when notice is given by either party. It shall select its own Chairman and Secretary. The Local Union shall select the Union representatives and the Employer shall select the management representatives.

SECTION 1.06 All grievances or questions in dispute shall be adjusted by the duly authorized representative of each of the parties to this Agreement. In the event that these two are unable to adjust any mater within 48 hours, they shall refer the same to the Labor-Management Committee.

SECTION 1.07 All matters coming before the Labor-Management Committee shall be decided by a majority vote. Four members of the Committee, two from each of the parties hereto, shall be a quorum for the transaction of business, but each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting. In the absence of a deadlock, the Labor-Management Committee's decision shall be final and binding.

SECTION 1.08 Should the Labor-Management Committee fail to agree or to adjust any matter; such shall then be referred to the Council on Industrial Relations for the Electrical Contracting Industry for adjudication. The Council's decisions shall be final and binding.

SECTION 1.09 When any matter in dispute has been referred to conciliation or arbitration for adjustment, the provisions and conditions prevailing prior to the time such matters arose shall not be changed or abrogated until agreement has been reached or a ruling has been made.

SECTION 1.10 Any grievance not brought to the attention of responsible opposite parties to this Agreement in writing within 15 working days of its occurrence shall be deemed to no longer exist.

ARTICLE II
EMPLOYER RIGHTS/UNION RIGHTS

EMPLOYER QUALIFICATIONS:

SECTION 2.01 Certain qualifications, knowledge, experience, and financial responsibility are required of everyone desiring to be an Employer in the Electrical Industry, including satisfaction of the requirement that the person, firm or corporation is a qualified and bonded electrical contractor who is engaged in the electrical construction field. Therefore, an Employer who contracts for electrical work is a person, firm, or corporation having these qualifications and maintaining a permanent place of business and a suitable financial status to meet payroll requirements.

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.

FOREMAN CALL-OUT BY NAME:

SECTION 2.03 The employer shall have the right to call Foreman by name, from the available for work list, provided the following conditions are met:

(a) The person called by name must have been signed in on Group 1 for a minimum of thirty (30) days.

(b) The person called by name must serve in the true capacity of a Foreman and not merely receive Foreman's pay.

(c) There shall be no more Foremen than allowed under the Agreement's crew size.

(d) If the person called by name ceases to function as a Foreman for any reason other than job completion, he shall be returned to the referral hall.

(e) All persons called by name and reduced to Journeyman Wireman because of job completion shall again be made Foreman, as the need arises, before any more "call by name" is allowed.

(f) The request by the employer may be made by telephone followed up by letter within five (5) calendar days, with a copy to the Union.

WORKERS COMP INSURANCE:

SECTION 2.04

(a) For all employees covered by this Agreement, the Employer shall carry Worker's

Compensation Insurance, with a company authorized to do business in this State; and shall provide proper coverage under the Federal Insurance Contribution Act (old Age Benefit), Federal Unemployment Tax Act and/or State Unemployment Insurance Law, and shall secure all necessary permits and comply with all licenses and inspection requirements. The Union shall, upon request, be furnished proof of such coverage.

(b) The Employer shall furnish proper accident report forms to any workman upon reporting an injury. The forms shall be filled out by the employee. Any employee injured on the job shall be paid for actual time lost, mileage incurred or suitable transportation while receiving medical care on the day the accident occurred.

SURETY BOND:

SECTION 2.05

(a) The Employer shall carry an employees' benefit bond written by a company authorized to do business in the State of Oklahoma, made out to the N.E.B.F., Health and Welfare,

Annuity and Apprenticeship Training Funds, as evidence of financial responsibility and to ensure proper payment into the N.E.B.F., Health and Welfare, Annuity and Apprenticeship Training Funds required under this Agreement. A copy of the employee benefits bond shall be furnished to the Local Union and Trust Funds.

(b) The Employer shall carry an employee benefit bond as evidence of financial responsibility and to insure proper payments to the Trust Funds, and/or any other Funds and withholdings covered by this Agreement. The minimum bond for any Employer shall be $10,000.

The employer shall be required to provide additional bonding if an employer has greater than twenty-five (25) employees employed in the Local Union 584 jurisdiction.

The bond shall be increased as follows:

25 to 49 employees $25,000.00

50 to 74 employees $50,000.00

75 to 99 employees $75,000.00

100 more employees $100,000.00

(c) The Labor-Management Committee and/or the Council on Industrial Relations, as the case may be, shall have full power to determine the amount of money due, if any, and shall direct payments of delinquent wages from the Bond directly to the affected employ-

ees and direct payments of delinquent Fund contributions from the Bond directly to the Trustees of the affected funds or to their designated agents.

UNION RECOGNITION:

SECTION 2.06

(a) The Employer recognizes the Union as the sole and exclusive representative of all its employees performing work within the jurisdiction of the Union for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) There shall he a Joint Negotiating Committee of four (4) representatives from the Union and four (4) representatives from the Employer. These Committee members shall be selected by the Employer and the Union as soon as possible after notice has been given to either party that amendments and/or changes in the Agreement are desired. Each party shall notify the other in writing of the names of their respective Committee selections.

(c) The rights of the Union are those specifically set forth in this Agreement.

(d) Neither the Employer, the Union or the employees will in any way authorize, ratify, encourage or otherwise support any act or conduct that would be contrary to the Civil Rights Act of 1964, as amended, or any other State or Federal Laws providing the Equal

Employment Opportunity and prohibiting discrimination because of race, color, national origin, religions, sex or age. The provisions of Executive order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and 38 USC 2012 Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended; are hereby incorporated by reference.

NON-RESIDENT EMPLOYEES: (Portability)

SECTION 2.07 An employer signatory to a collective bargaining agreement or to a letter of assent to an agreement with another IBEW Local Union, who signs an assent to this Agreement, may bring up to four bargaining unit employees employed in that Local Union's jurisdiction into this Local's jurisdiction and up to two bargaining unit employees per job from that Local's jurisdiction to this Local's jurisdiction for specialty or service and maintenance work. All charges of violations of this section shall be considered as a dispute and shall be processed in accordance with the provisions of this agreement for the handling of grievances with the exception that any decision of a local labor-management committee that may be contrary to the intent of the parties to the National Agreement on Employee Portability, upon recommendation of either or both the appropriate IBEW International Vice President or NECA Regional Executive Director, is subject to review, modification, or rescission by the Council on Industrial Relations.

SECTION 2.08 Only two (2) members of a firm (Employer) shall be permitted to work with the tools on construction, service or repair work. The working member of a firm (Employer) shall perform work only

during the regular working hours and when at least one (1) journeyman is employed under the terms of this Agreement. However, emergency calls, may be handled by management until an adequate number of referred employees arrive if necessary. This shall not be used for the purpose of avoiding overtime payment to referred employees.

SECTION 2.09 No member of Local Union 584, IBEW, while he remains an active member of such Local Union and subject to employment by the Employer operating under the terms of this Agreement, shall engage in or perform contracting work, whether recognized by the State of Oklahoma or this Local Union.

Contracting is defined as Engaging or offering to engage in, on behalf of oneself or on behalf of another, any electrical work which requires a valid and appropriate license from the Oklahoma Construction Industry Board as required by the Electrical License Act, regardless if said work is in exchange for monetary payment or otherwise.

SECTION 2.10 Workmen shall install all electrical work in a safe and workman like manner and in accordance with applicable code and contract specifications. Where specifications and blueprints do not comply with code requirements or National Electrical Code recommendations, the journeyman or foreman in charge of the job shall notify the Employer. All changes, extras, or alterations shall not be undertaken by job foremen or journeymen without proper written authorization.

UNION RIGHT TO DISCIPLINE MEMBERS:

SECTION 2.11 The Union reserves the right to discipline any IBEW member working in this jurisdiction for violation of its laws, piles, and agreements.

APPOINTMENT OF STEWARDS:

SECTION 2.12

(a) The Business Manager of the Union shall have the right to appoint a working steward on any job or at any shop where employees covered under this Agreement are employed and shall notify the Employer and the individual shop in writing when stewards are appointed. The Employer shall not discriminate against any steward because of his performance of duties. The duties of a steward shall consist of, but shall not be limited to:

(1) Determine that an up-to-date overtime list is posted in the Employer's shop at all times.

(2) Attempt to settle disputes between the Employer and his employees arising from the application or interpretation of this Agreement.

(3) To assure, as far as possible, that all jobs shall be performed with maximum safety.

(4) Report to the Business Manager of the Union all alleged violations of the Agreement, which he is unable to settle. This shall only be done after the steward has

consulted with the Employer on any alleged violations.

(5) The steward shall inspect all toolboxes to determine whether the journeymen have the required tools as set forth in this Agreement.

(6) In the event of a dispute or controversy arising on any job involving employees working under the terms of this Agreement, the employees shall remain at work and report their grievances to the steward. Should the steward be unable to satisfactorily adjust such dispute or controversy with the Employer, he shall notify the Business Manager of the Local Union.

(7) Provided the shop steward can be contacted, he shall be advised when overtime is to be worked unless the overtime results from an emergency. The steward may request (but not more often than monthly) a list of overtime worked by employees in the particular shop.

(8) Overtime shall be impartially divided among workmen insofar as is practical.

(9) Stewards shall be given sufficient time to perform their duties without loss of pay provided they notify the foreman, general foreman or the Employer when they are to be absent themselves from a particular job for the purpose of carrying out their responsibilities. In the event of

a dispute between the steward and the Employer, with respect to the steward's proper and intended use of time off the job for the performance of steward's duties, the steward of the Employer may file a grievance, which shall be handled in accordance with the grievance procedures outlined in this Agreement.

UNION JOB ACCESS:

SECTION 2.13 With prior approval, the official representative of the Union and/or the Employer shall be allowed access to any building, shop or job, at any reasonable time, where members of the Union are employed.

PICKET LANGUAGE:

SECTION 2.14

(a) This agreement does not deny the right of the Union or its representatives to render assistance to other labor organizations by removal of its members from jobs when necessary, and when the Union or its proper representatives decide to do so; but, no removal shall take place until notice is first given to the Employer involved.

(b) When such removal takes place, the Union or its representative shall direct the workmen on such jobs to carefully put away all tools, materials and trucks of the employer in a safe manner. The Union will he financially responsible for any losses to the Employer for negligence in carrying out this provision, but only when a safe place is provided for

such tools, materials and trucks by the Employer.

GENERAL RULES

SECTION 2.15

(a) The policy of the members of the Local Union is to promote the use of materials and equipment manufactured, processed or repaired under economically sound wage, hour and working condition by their fellow members of the International Brotherhood of Electrical Workers

(b) All conduits shall be cut and threaded only by journeyman and/or apprentice wiremen.

(c) Where pipe cutting or threading machine are used, such shall be operated by journeyman and/or apprentice wiremen

(d) All pulling of wire or cable shall be performed by journeyman and/or apprentice wiremen

(e) Journeymen and/or apprentice wiremen employed under the terms of this Agreement shall unload and handle all heavy electrical construction equipment and apparatus at the first point of arrival at the job site. Journeymen and/or apprentice wiremen shall also handle all tools, apparatus, materials and equipment from the first point of delivery at the Job site. The Employer shall furnish all necessary equipment for the handling, unloading and installation of such apparatus, materials and equipment, provided that the above does not conflict with Agreements and/or understandings between the

International Office of the Union and other International Unions pertaining to jurisdictional matters.

(f) All chasing, channeling and hole cutting of concrete, masonry, steel, wood or any other material necessary to complete electrical work, including sawing of concrete, masonry and brick, shall be performed by journeymen and/or apprentice wiremen. The Employer shall furnish all tools necessary to comply with this section.

(g) The work to be performed under the terms of this Agreement shall consist of all electrical construction, maintenance and repair work done by an Employer operating under the terms of this Agreement.

(h) All workmen shall be required to observe the terms of this Agreement. Any violation of this section shall be subject to the Grievance Procedures as provided for in Article 1, Section 1.06 of this Agreement. If the Employer and the Union cannot reach an understanding on a grievance pertaining to this matter, the same shall be referred to the Labor-Management Committee for their action and decision. Any decision of the Labor-Management Committee shall be final and binding on both parties.

(i) A journeyman shall be required to make corrections on improper workmanship for which he is responsible on his own time and during regular working hours, unless errors were made by orders of the Employer or the

Employer's representative. The Employer shall notify the Union of workmen who fail to adjust improper workmanship and the Union assumes the responsibility for enforcement of this provision insofar as its members are concerned.

(j) The Employer shall furnish protective arc flash equipment for workmen working on energized circuits or equipment carrying 110 volts or over and shall furnish first aid kits for each truck and job toolbox, except where a first aid station and nurses are made available to Employees employed by the Employer.

(k) On all energized circuits or equipment carrying 277 volts or over, as a safety measure, two (2) or more journeymen must work together.

(l) When workmen are required to work on towers, steeples, smokestacks, flagpoles, oilrigs, and steel framework, or where hazardous conditions exist, they shall have safe scaffolding or protected landings, or safety equipment provided. Workmen shall determine whether or not such scaffolding landings and safety equipment are sufficient and safe. No workman shall be terminated for refusing to work under hazardous conditions.

(m) The Local Union shall furnish to the Apprenticeship and Training Committee all apprenticeship buildings, office and classroom furniture, the committee shall be responsible for these terms. The maintenance, upkeep and all other expenses on these buildings

shall be paid for by the Apprenticeship and Training Committee, the committee shall be responsible for these terms.

(n) When workmen are terminated, they shall be given a slip stating the reason for such termination. These slips shall be furnished by the Union in triplicate, with a copy being forwarded to the Local Union, a copy with the employee's last check and one for the contractor. No discriminatory action will be taken by the Union against the Employer or its supervisors for recording the reasons for termination. If an existing employee is seeking employment using the referral procedure without a termination slip, the Union shall be required to contact the company. If at that time the company has not issued a termination slip, it shall be considered by both parties to be a voluntary quit.

(o) All parties bound to this Agreement will meet at least every (6) months to discuss and strategize on gaining market share throughout 584 jurisdiction.

(p) With a job that requires more than one (1) general foremen, or a superintendent, formal discipline shall flow through the proper chain of command it shall also be followed when laying out manpower and passing down prints, information, job changes etc.

(q) The employee shall not be penalized against his forty (40) hours for absence due to the conducting of Union business.

(r) If the contractor is unwilling to provide forty (40) hours in a work week, then the employee shall have the right to a clean layoff. Except in the case of documented disciplinary action.

TOOL LIST:

SECTION 2.16

(a) A worker shall maintain hand tools in good condition and in compliance with OSHA criteria as far as practical. Each Journeyman Wireman shall provide himself with a kit of tools consisting of the following:

File	Hammer
Channel lock type pliers	25 foot tape measure
Allen wrenches up to 3/8"	Meter
Multi-tap	hack saw frame
Keyhole saw	Level
Wire pliers	sta-con crimping tool
Screw drivers	3/8" drive ratchet with socket setup to 7/8"
Drill bits up to and including ¼"	Adjustable wrench up to 10"

Such bits and taps including files shall be replaced by the Employer upon return of the broken or damaged tool. The kit of tools listed above shall be available on the job site for the use by the worker.

The Employer will furnish necessary locked storage to reasonably protect tools from the weather and vandalism and will replace such tools as listed

above when tools are damaged on the job or stolen from the locked storage.

SECTION 2.16

(b) The employer shall furnish all other necessary tools and equipment, including those safety items required by OSHA regulations or by the customer. Every tool lock up shall include a maintained first aid kit.

UNION SECURITY:

SECTION 2.17 All employees who are members of the Union on the effective date of this Agreement shall be required to remain members of the Union as a condition of employment during the term of this Agreement. New employees shall be required to become and remain members of the Union as a condition of employment from and after the thirty-first (31") day following the date of their employment or the effective date of this Agreement, whichever is later. This clause is not applicable where prohibited by law.

AGE-RATIO:

SECTION 2.18 On all jobs requiring five (5) or more Journeymen, at least every fifth Journeyman, shall be fifty (50) years of age or older, if available.

ANNULMENT/SUBCONTRACTING:

SECTION 2.19 The Local Union is a part of the International Brotherhood of Electrical Workers and any violation or annulment by an individual Employer of the approved Agreement of this or any other Local Union of the IBEW, other than violations of Paragraph 2 of this Section, will be sufficient cause for the cancellation of his Agreement by the Local Union after

a finding has been made by the International President of the Union that such a violation or annulment has occurred.

The subletting, assigning, or transfer by an individual Employer of any work in connection with electrical work to any person, firm or corporation not recognizing the IBEW or one of its Local Unions as the collective bargaining representative of his employees on any electrical work in the jurisdiction of this or any other Local Union to be performed at the site of the construction, alteration, painting or repair of a building, structure or other work, will be deemed a material breach of this Agreement.

All charges of violations of Paragraph 2 of this Section shall be considered as a dispute and shall be processed in accordance with the provision of this Agreement covering the procedure for the handling of grievances and the final and binding resolution of disputes.

UNION JURISDICTION:

SECTION 2.20 In the event the Union claims work, which is not under the jurisdiction of the Employer's contract, but which the Union believes comes within its proper jurisdiction, the Employer shall be notified and be given the opportunity to negotiate a contract for such work and make provisions to receive compensation therefore. However, if the Employer is not successful in negotiating a contract for the work in dispute, no employee shall perform the work in dispute until settlement is reached

ARTICLE III
HOURS/WAGES/WORKING CONDITIONS

HOURS: (Workday/Workweek)

SECTION 3.01a

(1) Eight (8) hours work shall constitute a workday, and thirty (30) Minutes for lunch period between (12:00 o'clock noon and 12:30 o'clock p.m. Any workman required to work by the Employer during his regular specified lunch period, shall receive one and one-half (1 1/2) the prevailing rate of pay for time worked and shall be granted a thirty (30) minute lunch period as soon as reasonably possible thereafter.

The starting and quitting time shall be changed to conform to the starting and quitting time of the majority of other building trades crafts on jobs. Whenever such changes are made, lunch periods and overtime shall be changed; accordingly, and other provisions of the Agreement pertaining to hours and overtime shall also be adjusted to comply with the changes in starting and quitting times. In no case shall the change be more than two hours.

(2) Forty (40) hours within five (5) days Monday through Friday, inclusive — shall constitute the workweek.

(3) Workmen shall be responsible for reporting to the shop all time for hours worked between 12:00:00 a.m. on Monday and 11:59:59 p.m. on Sunday during the previous week, not later than 10:00 a.m., on Monday. In the event that the Employer requires the individual workman to turn in written time

reports, proper forms shall be furnished for this purpose by the Employer. If a foreman is in charge of a job, it shall be his responsibility to turn in all time reports.

(4) All workmen newly employed shall receive pay from the time they report for work at the shop or on the job.

(5) No workman shall handle any of the Employer's tools or materials (this shall not include trucks) before starting time. When workmen report to the shop on evenings they shall leave at quitting time unless working overtime. Workmen reporting directly to the job shall report at starting time and work until quitting time, allowing sufficient time to pick up tools and materials.

(6) Workmen will report to work on employee's time and leave on Employer's time. It is recognized that if the customer requests, the employee will check in and out on their own time, as per the customers policy and procedures.

(7) When an employee must eat his meals on the job, arrangements shall be made for suitable protected quarters.

FOUR TEN-HOUR DAYS:

SECTION 3.01b

The Employer, with 72-hour prior notice to the Union, may institute a work-week consisting of four (4) consecutive ten (10) hour days between the hours of 7:00 a.m. and 6:00 p.m., Monday through Thursday, with one-half hour allowed for a lunch period. Friday

may be used on a voluntary basis as a make-up day at the straight time rate, and if utilized, a minimum of eight (8) hours must be scheduled between the hours listed above. Employees who elect not to work the make-up day shall not be discriminated against by the employer. All work performed outside the scheduled hours shall be compensated at the appropriate overtime rate of pay.

OVERTIME/HOLIDAYS:

SECTION 3.02

(a) All work performed between the hours of 4:30 p.m. and 8:00 a.m. Monday through Saturday, 8:00 a.m. to 12:00 o'clock midnight, Saturdays shall be paid for at one and one half (1 1/2) times the regular rate of pay.

(b) All work performed between 12:00 o'clock midnight Saturday and 12:00 o'clock midnight Sunday and the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Eve, Christmas Day, or days celebrated as such shall be paid at double the straight-time rate. When a holiday falls on Sunday, the following day shall be observed as the holiday.

PAYDAY:

SECTION 3.03

(a) Wages shall be paid in cash or check weekly not later than quitting time on Wednesday and not more than three (3) days' wages may be withheld at that time. Any workman laid

off or discharged shall be paid his wages immediately. In the event he is not paid off, waiting time at the regular straight time rate, shall be charged until payment is made, but waiting time shall not exceed eight (8) hours in any twenty-four (24) hour period. On jobs employing five (5) or more workmen, the Employer shall make provisions to pay off at the job site. No deductions shall be made from the workmen's checks (except legal deductions) without the written consent of the employees involved. A separate or detachable itemized statement shall be furnished to each workman showing total wages earned and any deductions from wages. All payments of wages shall be made by the individual Employer and from no other source. In the event the Employer issues uncollectible checks to employees, the Employer will be required to pay in cash until such time as the Union advises that payment by check will be acceptable. If job is working four days and ten hours per day, then payday will be on the last day of the scheduled work week. When a payday falls on a holiday, the preceding day shall be considered the payday.

(b) Any Employer doing business within the jurisdiction of IBEW Local Union 584 shall be required to pay workmen with cash or by checks drawn on an IBEW Local Union 584 area bank.

DIRECT DEPOSIT:

SECTION 3.04

a) If offered by the employer, employees may voluntarily allow for direct electronic deposit of wages on a weekly basis to the bank or credit union of the Employee's choice. This manner of payment, once adopted, may not be changed except upon 14-day advance written notification between the Employee and Employer with notification copied to the Union. Employees whose wages are deposited via Direct Deposit shall, on regular payday, receive an itemized statement of wages earned and any deductions from those wages.

CLASSIFICATIONS/WAGES:

SECTION 3.05(a) The minimum hourly rate of wages shall be as follows:

	05/31/21	05/30/22	05/29/23
Journeyman Wireman	$32.38	$33.38	$34.38
Journeyman Technician 100% of JW Rate	$32.38	$33.38	$34.38
Foreman 110% of JW Rate	$35.62	$36.72	$37.82
General Foreman 120% of JW Rate	$38.86	$40.05	$41.26
Senior General Foreman 130% of JW Rate	$42.09	$43.40	$44.69

APPRENTICE WIREMAN — SIX (6) PERIODS

	05/31/21	05/30/22	05/29/23
5th Period 80% of Journeyman Wireman Rate	$16.19*	$16.69*	$17.19*
6th Period 85% of Journeyman Wireman Rate	$17.81*	$18.36*	$18.91*
5th Period 80% of Journeyman Wireman Rate	$21.05	$21.70	$22.34
6th Period 85% of Journeyman Wireman Rate	$24.29	$25.03	$25.78
5th Period 80% of Journeyman Wireman Rate	$25.90	$26.70	$27.50
6th Period 85% of Journeyman Wireman Rate	$27.52	$28.37	$29.22

FRINGE BENEFITS:

SECTION 3.05(b) In addition to the above hourly rates, payments shall be made as follows:

1. NEBF-3% of Gross Wages – Reference Section 6.01
2. Health Insurance — as required by the Trust Reference Section 6.02

3. Local Union Pension — 05/31/21 5/30/22 05/29/23 – $3.70/hr $3.70/hr $3.70/hr Reference Section 6.03
4. Profit Sharing Plan — 4% of Gross Wages – Reference Section 6.04
5. Apprenticeship & Training — $ .40 per labor hour worked – Reference Section 5.16
6. LMCC $.05 per labor hour worked Reference Article VIII
7. NLMCC $ .01 (One Cent) per labor hour worked. – Reference Article IX

* 1st and 2nd period apprentice benefits are NEBF and first tier Health Care only.

TRAVEL TIME:

SECTION 3.06 The Employer shall pay time for travel and furnish transportation from shop to job, job to job, and job to shop within the jurisdiction of the Union except when an employee is ordered to report directly to the job. In any case, an employee may move his car only one time per day.

UNION DUES DEDUCTION:

SECTION 3.07 The Employer agrees to deduct and forward to the Financial Secretary of the Local Union—upon receipt of a voluntary written authorization—the additional working dues from the pay of each IBEW member. The amount to be deducted shall be the amount specified in the approved Local Union Bylaws. Such amount shall be certified to the Employer by the Local Union upon request by the Employer.

SECTION 3.08 Advertising Fund. The employer agrees that upon receipt of an authorized card voluntarily signed by an employee, the employer shall deduct from the employee's paycheck each week an amount of $.02 for each hour worked under this Agreement for an Advertising Fund.

(a) The Advertising Fund shall be used solely to better the work opportunities of Local 584 Members and promote Union craftsmanship, but not to the detriment of Employer signatory to the Agreement. Questions by employees regarding the purpose or use of the Advertising Fund monies shall be directed to the Union, not to their employer.

SECTION 3.09 Political Action Committee Fund (PAC Fund). The employer agrees that upon receipt of an authorization card, which has been signed by an employee freely and voluntarily and not out of any fear of reprisal, the employer will deduct from that employee's paycheck each week the sum of $.03 for each hour worked under the terms of this Agreement and forward that amount to the depository, in Section 3.10 of this Agreement.

(a) Each employee shall understand that Local 584 Political Action Committee (PAC) will use money contributed to make political contributions and expenditures in connection with federal, state and local elections.

SECTION 3.10 Deduction Card, Due Date and Procedure. The deductions for the Dues Deduction, PAC Fund and Advertising Fund shall be made on or before the 15th day of each and every month thereafter for the preceding monthly aggregate payment. Failure

to comply on or before the 20th day will result in a penalty of $50.00 and an additional $50.00 penalty every five (5) working days thereafter they are late.

(a) All said sums shall be forwarded monthly in an aggregate amount by the Employer in a check made out to the Electrical Workers Lockbox Account to be sent to the Electrical Workers Lockbox Account, (A bank, as selected by the parties signatory to this Agreement) of Tulsa, Oklahoma. All aforementioned sums shall be sent in one check.

(b) Along with the deducted sum, the Employer will forward an itemized deduction schedule, crediting each employee with his individual portion of the aggregate sum, based on the number of hours worked. Forms for the schedule showing gross pay, Social Security number, hours worked, and deductions shall be furnished by the Local Union, unless submitted on forms and/or report sheets acceptable by the Local Union. All payroll reports must be submitted in duplicate and must be accompanied with the necessary payments.

(c) The Depository will thereby credit an individual account that amount as set forth on the schedule.

(d) A copy of the Schedule shall be sent by the Employer to the Union.

(e) The Depository may be changed at any time by written consent of the Employer and the Union.

(f) The contents of the deduction authorization cards referred to in this Agreement shall be mutually agreed upon by the Employer and the Union.

(g) Authorization shall be irrevocable for a period of one year from the date hereof or until the termination date of said agreement, whichever occurs sooner and it is agreed that authorization shall be automatically renewed and irrevocable for successive periods of one year unless revoked by written notice to the Union ten (10) days prior to the expiration of each one year period, or of each applicable bargaining agreement between the Employer and the Union, whichever occurs sooner.

SECTION 3.11 Limitation of Employer Liability. It is also agreed that the Employer signatory to this Agreement shall have no liability for the handling or use of the deducted sums after such time as the correct aggregate fund is transferred to the Depository.

SECTION 3.12 Non-Payment. If the Employer fails to remit as provided above shall be additionally subject to having this Agreement terminated upon seventy-two (72) hours' notice in writing being served by the Union, provided the Employer fails to show satisfactory proof that the required payments have been paid to the local Depository. The failure of the Employer to comply with the applicable provisions of this Article shall also constitute a breach of the Labor Agreement.

RATIO OF FOREMEN TO JOURNEYMEN:

SECTION 3.13

(a) The Employer shall retain the right to designate which employee on the job shall be assigned as foreman. Any dispute regarding the manner in which a foreman executes his supervisory or job management responsibilities shall be handled only in accordance with Article 1.06 as a grievance against the Employer and not by union disciplinary action against the foreman.

(b) On all jobs where three (3) journeymen are employed, one (1) journeyman shall be designated as foreman. When more than one (1) foreman is required, there shall be one foreman in charge of the job (general foreman) and all additional foremen must obtain their layout and instructions from the general foreman. A general foreman may supervise a crew until a third foreman is required and a general foreman shall not supervise more than three foremen. When a 3rd General Foreman is required, a Senior General Foreman shall be established. The Senior General Foreman will not directly supervise a crew or foreman or more than 3 General Foreman. No foreman shall supervise more than ten (10) journeymen or a crew of more than eighteen (18). Journeymen shall accept layout only from their foreman.

(c) No foreman or general foreman shall hold this capacity on more than one job at any one time. A foreman shall be allowed to work

as a journeyman on overtime, provided that such work equalizes the overtime work in the shop

(d) No person shall act as foreman, supervisor, or superintendent over any electrical work on behalf of an electrical contractor unless such person possesses a valid license as an electrical contractor or journeyman from the Construction Industries Board in the appropriate category for the work performed.

All Foreman, General Foreman, Sr. General Foreman, Superintendents shall have an Oklahoma State Journeyman License in hand per Oklahoma State Licensing Law 158:40-1-3(b) in order to supervise work.

SHOW-UP PAY:

SECTION 3.14 Any workman reporting for work and being laid off, not having been notified the day previous of such layoff, shall receive not less than two (2) hours wages in order to gather his tools and personal belongings, and shall be paid off in full immediately. In the event the employee is not paid off, waiting time at the regular rate of pay shall be charged until payment is made.

(a) When workmen are customarily reporting to a shop or job and do not start to work, they shall receive two (2) hours pay at the appropriate rate of pay, depending on whether the hours are straight time or premium time, unless notified before starting time.

(b) After workmen begin work at starting time, they shall receive a minimum of two (2)

hours pay; likewise, when workmen begin work after a lunch period, they shall receive a minimum of two (2) hours pay. Workmen employed on overtime work shall receive pay for time worked. Any workman leaving the job of his own accord shall receive pay for hours worked and shall first notify the Employer or his representative before leaving the job.

(c) When the Employer directs workmen to report to a job or shop and they do not start to work due to lack of materials or other faults of the Employer, they shall receive two (2) hours pay unless notified two (2) hours before regular starting time.

(d) Faults of the Employer shall not include inclement weather or an Act of God.

SHIFT WORD

SECTION 3.15 When so elected by the contractor, multiple shifts of eight (8) hours for at least five (5) days' duration may be worked. When two (2) or three (3) shifts are worked:

The first shift (day shift) shall consist of eight (8) consecutive hours worked between the hours of 8:00 a.m. and 4:30 p.m. Workmen on the "day shift" shall be paid at the regular hourly rate of pay for all hours worked.

The second shift (swing shift) shall consist of eight consecutive hours worked between the hours of 4:30 and 1:00 a.m. Workmen on the "swing shift" shall be paid at the regular

hourly rate of pay plus 12% for all hours worked.

The third shift (graveyard shift) shall consist of eight (8) consecutive hours worked between the hours of 12:30 a.m. and 9:00a.m. Workmen on the "graveyard shift" shall be paid at the regular hourly rate of pay plus 22% for all hours worked.

The Employer shall be permitted to adjust the starting hours of the shift by up to two (2) hours in order to meet the needs of the customer.

If the parties to the Agreement mutually agree, the shift week may commence with the third shift (graveyard shift) at 12:30 a.m, Monday to coordinate the work with the customer's work schedule. However, any such adjustment shall last for at least five (5) consecutive days' duration unless mutually changed by the parties to this agreement.

An unpaid lunch period of thirty (30) minutes shall be allowed on each shift. All overtime work required before the established start time and after the completion of eight (8) hours of any shift shall be paid at one and one-half times the "shift" hourly rate.

There shall be no pyramiding of overtime rates and double the straight time rate shall be the maximum compensation for any hour worked. There shall be no requirement for a day shift when either the second or third shift is worked.

SECTION 3.16 The Employer agrees to provide a suitable place on the job for the storage of workers' tools and clothes. The Employer's job headquarters on every project shall at all times have a completely equipped Class A First Aid Kit sufficient to satisfy OSHA requirements.

ARTICLE IV
REFERRAL PROCEDURE

SECTION 4.01 In the interest of maintaining an efficient system of production in the Industry, providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of employees in their employment status within the area and of eliminating discrimination in employment because of membership or non-membership in the Union, the parties hereto agree to the following system of referral of applicants for employment.

SECTION 4.02 The Union shall be the sole and exclusive source of referral of applicants for employment.

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

SECTION 4.04 The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union and such selection and referral shall not be affected in any way by rules, regulations, bylaws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements. All such selection and referral shall be in accord with the following procedure.

SECTION 4.05 The Union shall maintain a register of applicants for employment established on the basis of the Groups listed below. Each applicant for employment shall be registered in the highest priority Group for which he qualifies.

JOURNEYMAN WIREMAN—JOURNEYMAN TECHNICIAN

GROUP I All applicants for employment who have four or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a Journeyman Wireman's examination given by a duly constituted Inside Construction Local Union of the or have been certified as a Journeyman Wireman by any Inside Joint Apprenticeship and Training Committee, and, who have been employed in the trade for a period of at least one year in the last four (4) years in the geographical area covered by the collective bargaining agreement.

Group I status shall be limited to one Local Union at one time. An applicant who qualifies for Group I in a local union shall be so registered electronically and remain on Group I in that local union unless and until the applicant designates another local union as his or her Group I local union. If an applicant qualifies for Group I status in a local union other than his or her home local union and designates that local as his or her Group I local union, the business manager of the new Group I status local

union shall by electronic means notify the business manager of the applicant's former Group I status local union.

GROUP II All applicants for employment who have four or more years' experience in the trade and who have passed a Journeyman Wireman's examination given by a duly constituted Inside Construction Local Union of the I.B.E.W. or have been certified as a Journeyman Wireman by any Inside Joint Apprenticeship and Training Committee.

GROUP III All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market, and who have been employed for at least six months in the last three years in the geographical area covered by the collective bargaining agreement.

GROUP IV All applicants for employment who have worked at the trade for more than one year.

SECTION 4.06 If the registration list is exhausted and the Local Union is unable to refer applicants for employment to the Employer within 48 hours from the time of receiving the Employer's request, Saturdays, Sundays and holidays excepted, the Employer shall be free to secure applicants without using the Referral Procedure but such applicants, if hired, shall have the status of "temporary employees".

SECTION 4.07 The Employer shall notify the Business Manager promptly of the names and State License numbers of such "temporary employees" and shall replace such "temporary employees" as soon as registered applicants for employment arc available under the Referral Procedure.

SECTION 4.08 "Normal construction labor market" is defined to mean the following geographical area plus the commuting distance adjacent thereto which includes the area from which the normal labor supply is secured:

COUNTIES

Adair	Delaware	McIntosh	Ottawa
Sequoyah 5	Atoka	Haskell	Muskogee
Pawnee 3	Tulsa	Cherokee	Hughes
Nowata	Payne 4	Wagoner	Coal
Latimer	Okfuskee	Pittsburgh	Washington
Craig	Leflore 1	Okmulgee	Pushmataha
Creek	Mayes	Osage 2	Rogers

1 Except Braden, Pocola and Spiro Township

2 That portion east of State Highway No. 18

3 That portion east of State Highway No. 18

4 Eagle, Indian, Mound and Union Townships only

5 That portion west of Akins, Gans, Hanson, Long and Redlands Townships.

The above geographical area is agreed upon by the parties to include the area defined by the Secretary

of Labor to be the appropriate prevailing wage area under the Davis-Bacon Act to which the Agreement applies.

SECTION 4.09 "Resident" means a person who has maintained his permanent home in the above defined geographical area for a period of not less than one year or who, having had a permanent home in this area, has temporarily left with the intention of returning to this area as his permanent home.

SECTION 4.10 An "Examination" shall include experience rating tests if such examination shall have been given prior to the date of this procedure, but from and after the date of this procedure, shall include only written and/or practical examinations given by a duly constituted Inside Construction Local Union of the I.B.E.W. Reasonable intervals of time for examinations are specified as ninety (90) days, An applicant shall be eligible for examination if he has four years' experience in the trade,

SECTION 4.11 The Union shall maintain an "Available for Work List" which shall list the applicants within each Group in chronological order of the dates they register their availability for employment.

SECTION 4.12 An applicant who is hired and who receives, through no fault of his own, work of forty hours or less shall, upon re-registration, be restored to his appropriate place within his Group.

SECTION 4.13 Employers shall advise the Business Manager of the Local Union of the number of applicants needed. The Business Manager shall refer applicants to the Employer by first referring applicants in Group I in the order of their place on the "Available for Work List" and then referring appli-

cants in the same manner successively from the "Available for Work List" in Group II, then Group III, and then Group IV. Any applicant who is rejected by the Employer shall be returned to his appropriate place within his Group and shall be referred to other employment in accordance with the position of his Group and his place within his Group.

REPEATED DISCHARGE:

SECTION 4.13(b) An applicant who is discharged for cause two times within a 12-month period shall be referred to the neutral member of the Appeals Committee for a determination as to the applicant's continued eligibility for referral. The neutral member of the Appeals Committee shall, within three business days, review the qualifications of the applicant and the reasons for the discharges. The neutral member of the Appeals Committee may, in his or her sole discretion: (1) require the applicant to obtain further training from the JATC before again being eligible for referral; (2) disqualify the applicant for referral for a period of four weeks, or longer, depending on the seriousness of the conduct and/or repetitive nature of the conduct; (3) refer the applicant to an employee assistance program, if available, for evaluation and recommended action; or (4) restore the applicant to his/her appropriate place on the referral list.

SECTION 4.14 The only exceptions which shall be allowed in this order of referral are as follows:

(a) When the Employer states bona fide requirements for special skills and abilities in his request for applicants, the Business Manager shall refer the first applicant on the register possessing such skills and abilities.

(b) The age ratio clause in the Agreement calls for the employment of an additional employee or employees on the basis of age. Therefore, the Business Manager shall refer the first applicant on the register satisfying the applicable age requirements provided, however, that all names in higher priority Groups, if any, should first be exhausted before such overage reference can be made.

SECTION 4.15 An Appeals Committee is hereby established composed of one member appointed by the Union, one member appointed by the Employer or the, Association as the case may be, and one Public Member appointed by both these members.

SECTION 4.16 It shall be the function of the Appeals Committee to consider any complaint of any employee or applicant for employment arising out of the administration by the Local Union of Sections 4.04 through 4.14 of the Agreement. The Appeals Committee shall have the power to make a final and binding decision on any such complaint, which shall be complied with by the Local Union. The Appeals Committee is authorized to issue procedural rules for the conduct of its business, but it is not authorized to add to, subtract from, or modify any of the provisions of this Agreement and its decisions shall be in accord with this Agreement.

SECTION 4.17 A representative of the Employer or of the, Association as the case may be, designated to the Union in writing, and shall be permitted to inspect the Referral Procedure records at any time during normal business hours.

SECTION 4.18 A copy of the Referral Procedure set forth in this Agreement shall be posted on the Bulletin Board in the offices of the Local Union and in the offices of the Employers who are parties to this Agreement.

SECTION 4.19 Apprentices shall be hired and transferred in accordance with the Apprenticeship provisions of the Agreement between the parties.

REVERSE LAYOFF:

SECTION 4.20 When making reductions in the number of employees due to lack of work, Employers shall use the following procedure:

(a) Temporary employees, if any are employed, shall be laid off first. Then employees in Group IV shall be laid off next, if any are employed in this Group. Next to be laid off are employees in Group III, if any are employed in this Group, then those in Group II, and then those in Group I.

(b) Paragraph (a) will not apply as long as the special skills requirement as provided for in Section 4.14(a) is required.

(c) Supervisory employees covered by the terms of this Agreement will be excluded from layoff as long as they remain in a supervisory capacity. When they are reduced to the status of Journeyman, they will be slotted in the appropriate Group in paragraph (a) above.

JOURNEYMAN RECALL:

SECTION 4.21 An employer shall have the right to recall for employment any former employee that the employer has laid off; provided that:

(a) The former employee is in the highest level Group on the referral list containing applicants available for work, regardless of the individual's position on the list; or, he or she is available for assignment regardless of the individual's position on the list;

(b) The person called by name must have been signed in on that Group for a minimum of seven (7) calendar days.

(c) The recall is made within 12 months from the time of layoff;

(d) The former employee has not quit his most recent employer under this agreement within the two weeks prior to the recall request;

ARTICLE V
STANDARD INSIDE APPRENTICESHIP & TRAINING LANGUAGE

SECTION 5.01 There shall be a local Joint Apprenticeship and Training Committee (JATC) consisting of a total of either 6 or 8 members who shall also serve as Trustees to the local apprenticeship and training trust. An equal number of members (either 3 or 4) shall be appointed, in writing, by the local chapter of the National Electrical Contractors Association (NECA) and the local union of the International Brotherhood of Electrical Workers (IBEW).

The local apprenticeship standards shall be in conformance with national guideline standards and industry policies to ensure that each apprentice has

satisfactorily completed the NJATC required hours and course of sturdy. All apprenticeship standards shall be registered with the NJATC before being submitted to the appropriate registration agency.

The JATC shall be responsible for the training of apprentices, journeymen, installers, technicians, and all others (unindentured, intermediate journeymen, etc.)

SECTION 5.02 All JATC member appointments, re-appointments and acceptance of appointments shall be in writing. Each member shall be appointed for a three (3) year term, unless being appointed for a lesser period of time to complete an unexpired term. The terms shall be staggered, with one (1) term from each side expiring each year. JATC members shall complete their appointed term unless removed for cause by the party they represent or they voluntarily resign. All vacancies shall be filled immediately.

The JATC shall select from its membership, but not both from the same party, a Chairman and a Secretary who shall retain voting privileges. The JATC will maintain one (1) set of minutes for JATC committee meetings and a separate set of minutes for Trust meetings.

The JATC should meet on a monthly basis, and also upon the call of the Chairman.

SECTION 5.03 Any issue concerning an apprentice, or an apprenticeship matter shall be referred to the JATC for its review, evaluation, and resolve; as per standards and policies. If the JATC deadlocks on any issue, the matter shall be referred to the Labor-Management Committee for resolution as outlined in Article I of this agreement; except for trust

fund matters, which shall be resolved as stipulated in the local trust instrument.

SECTION 5.04 There shall be only one (1) JATC and one (1) local apprenticeship and training trust. The JATC may, however, establish joint subcommittees to meet specific needs, such as residential or telecommunication apprenticeship. The JATC may also establish a subcommittee to oversee an apprenticeship program within a specified area of the jurisdiction covered by this agreement.

All subcommittee members shall be appointed, in writing, by the party they represent. A subcommittee member may or may not be a member of the JATC.

SECTION 5.05 The JATC may select and employ a part-time or a full-time Training Director and other support staff, as it deems necessary. In considering the qualification, duties, and responsibilities of the Training Director, the JATC should review the Training Director's Job Description provided by the NJATC. All employees of the JATC shall serve at the pleasure and discretion of the JATC.

SECTION 5.06 To help ensure diversity of training, provide reasonable continuous employment opportunities, and comply with apprenticeship rules and regulations, the JATC, as the program sponsor, shall have full authority for issuing all job-training assignments and for transferring apprentices from one employer to another, The employer shall cooperate in providing apprentices with needed work experiences. The local union referral office shall be notified, in writing, of all job-training assignments. If the employer is unable to provide reasonable continuous employment for apprentices, the JATC is to be so notified.

SECTION 5.07 All apprentices shall enter the program through the JATC as provided for in the registered apprenticeship standards and selection procedures.

An apprentice may have their indenture canceled by the JATC at any time prior to completion as stipulated in the registered standards. Time worked and accumulated in apprenticeship shall not be considered for local union referral purposes until the apprentice has satisfied all conditions of apprenticeship. Individuals terminated from apprenticeship shall not be assigned to any job in any classification, or participate in any related training, unless they are reinstated in apprenticeship as per the standards, or they qualify through means other than apprenticeship, at some time in the future, but no sooner than two years after their class has completed apprenticeship, and they have gained related knowledge and job skills to warrant such classification.

SECTION 5.08 The JATC shall select and indenture a sufficient number of apprentices to meet local manpower needs. The JATC is authorized to indenture the number of apprentices necessary to meet the job site ratio as per Section 5.12.

SECTION 5.09 Though the JATC cannot guarantee any number of apprentices; if a qualified employer requests an apprentice, the JATC shall make every effort to honor the request. If unable to fill the request within ten (10) working days, the JATC shall select and indenture the next available person from the active list of qualified applicants. An active list of qualified applicants shall be maintained by the JATC as per the selection procedures.

SECTION 5.10 To accommodate short-term needs when apprentices are unavailable, the JATC shall assign unindentured workers who meet the basic qualification for apprenticeship. Unindentured workers shall not remain employed if apprentices become available for OJT assignment. Unindentured workers shall be used to meet job site ratios except on wage and hour (prevailing wage) job sites.

Before being employed, the unindentured person must sign a letter of understanding with the JATC and the employer-agreeing that they are not to accumulate more than two thousand (2,000) hours as an unindentured, that they are subject to replacement by indentured apprentices and that they are not to work on wage and hour (prevailing wage) job sites.

Should an unindentured worker be selected for apprenticeship, the JATC will determine, as provided for in the apprenticeship standards, if some credit for hours worked as an unindentured will be applied toward the minimum OJT hours of apprenticeship.

The JATC may elect to offer voluntary related training to unindentured; such as Math Review, English, Safety, Orientation/Awareness, Introduction to OSHA, First-Aid and CPR. Participation shall be voluntary.

SECTION 5.11 The employer shall contribute to the local health and welfare plans and to the National Electrical Benefit Fund (NEBF) on behalf of all apprentices and unindentured. Contributions to other benefit plans may be addressed in other sections of this agreement.

SECTION 5.12 Each job site shall be allowed a ratio of two (2) apprentices for every one (1) Journeyman Wiremen (man).

Number of Journeymen	Maximum Number of Apprentices/Unindentured
1	2
4	8
etc.	etc.

The first person assigned to any job site shall be a Journeyman Wireman.

A job site is considered to be the physical location where employees report for their work assignments. The employer's shop (service center) is considered to be a separate, single job site. All other physical locations where workers report for work are each considered to be a single, separate job site.

SECTION 5.13 An apprentice is to be under the supervision of a Journeyman Wireman at all times. This does not imply that the apprentice must always be in sight of a Journeyman Wireman. Journeymen are not required to constantly watch the apprentice. Supervision will not be of a nature that prevents the development of responsibility and initiative. Work may be laid out by the employer's designated supervisor or journeyman based on their evaluation of the apprentice's skills and ability to perform the job tasks. Apprentices shall be permitted to perform job tasks in order to develop job skills and trade competencies. Journeymen are permitted to leave the immediate work area without being accompanied by the apprentice.

Apprentices who have satisfactorily completed the first four years of related classroom training using the NJATC curriculum and accumulated a minimum of 6,500 hours of OJT with satisfactory performance, shall be permitted to work alone on any job site and receive work assignments in the same manner as a Journeymen Wireman.

An apprentice shall not be the first person assigned to a job site and apprentices shall not supervise the work of others.

SECTION 5.14 Upon satisfactory completion of apprenticeship, the JATC shall issue all graduating apprentices an appropriate diploma from the NJATC. The JATC shall encourage each graduating apprentice to apply for college credit through the NJATC. The

JATC may also require each apprentice to acquire any electrical license required for journeymen to work in the jurisdiction covered by this Agreement.

SECTION 5.15 The parties to this Agreement shall be bound by the Local Joint Apprenticeship Training Trust Fund Agreement which shall conform to Section 302 of the Labor-Management Relations Act of 1947 as amended, ERISA, and other applicable regulations.

The Trustees authorized under this Trust Agreement are hereby empowered to determine the reasonable value of any facilities, materials, or services furnished by either party. All funds shall be handled and disbursed in accordance with the Trust Agreement.

SECTION 5.16 All Employers subject to the terms of this Agreement shall contribute the amount of funds specified by the parties' signatory to the local

apprenticeship and training trust agreement. The current rate of contribution is: forty cents ($.40) per hour for each hour worked. This sum shall be due the Trust Fund by the same date as is their payment to the NEBF under the terms of the Restated Employees Benefit Agreement and Trust.

SECTION 5.17 Should the balance of JATC Funds drop to a level of $442,400 each contractor shall add an additional ten cents ($.10) per hour for each hour worked until a balance of $750,000 is reached for two consecutive months, at which time the additional ten cents ($.10) will be withdrawn. Once the Pension Conversion is complete, the diverted twenty cents ($0.20) will return back to the Apprenticeship and Training Fund.

ARTICLE VI
FRINGE BENEFITS

NEBF:

SECTION 6.01 It is agreed that in accord with the Employees Benefit Agreement of the National Electrical Benefit Fund ("NEBF"), as entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended, and now delineated as the Restated Employees Benefit Agreement and Trust, that unless authorized otherwise by the NEBF the individual employer will forward monthly to the NEBF's designated local collection agent an amount equal to 3% of the gross monthly labor payroll paid to, or accrued by, the employees in this bargaining unit, and a completed payroll report prescribed by the NEBF. The payment shall be made by check or draft and shall constitute a debt due and

owing to the NEBF on the last day of each calendar month, which may he recovered by suit initiated by the NEBF or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate local collection agent not later than fifteen (15) calendar days following the end of each calendar month.

The individual Employer hereby accepts, and agrees to be bound by, the Restated Employees Benefit Agreement and Trust.

An individual Employer who fails to remit as provided above shall be additionally subject to having his agreement terminated upon seventy-two (72) hours' notice in writing being served by the Union, provided the individual employer fails to show satisfactory proof that the required payments have been paid to the appropriate local collection agent.

The failure of an individual Employer to comply with the applicable provisions of the Restated Employees Benefit Agreement and Trust shall also constitute a breach of this Agreement.

HEALTH INSURANCE TRUST:

SECTION 6.02 The Employer agrees to comply with the provisions of the Declaration of Trust of the Southwestern Health and Benefit Fund entered into between the Union and the Employer. In accordance therewith, the Employer agrees to forward monthly to the designated health insurance agent or successor agent, as prescribed and in accordance with Section 6.05 of this Agreement for each hour worked by each employee employed under the terms of this Agreement. With the effective date of this Agreement the contribution rate per hour is $6.00. Health insurance

benefit contributions are to be made as required by the Southwestern Health and Benefit Fund or succeeding fund. Any increases in the contribution rate required by the Health and Benefit Fund during the term of this Agreement shall be paid as follows: The first thirty cents ($.30) of any such increase is to be paid fully by the employer. Any subsequent additional increase cost is to be split equally by the contractor and the employee (50%/50%). Tiered Health Care for first year apprentices at $1.60 per hour. Parties agree to continue actively pursuing a new health care carrier and Trust arrangement.

PENSION TRUST

SECTION 6.03 PENSION TRUST: NECA-IBEW LOCAL UNION NO. 584 PENSION PLAN.

The Employer agrees to comply with the provisions of the Declaration of Trust of NECA-IBEW Local Union No. 584. Pension Plan entered into between the Union and the Employer. In accordance therewith, the Employer agrees to forward monthly to the NECA-IBEW Local Union No. 584 Pension Trust Fund, as prescribed and in accordance with 6.05, the amount set forth in Section 3.05(b) of this Agreement for each hour worked by each employee employed under the terms of this Agreement, together with the Pension Plan reports as may be required and mailed to the Pension Trust.

PROFIT SHARING PLAN

SECTION 6.04 NECA-IBEW LOCAL UNION NO. 584 PROFIT SHARING PLAN

(a) The Employer agrees to comply with the provisions of the NECA-IBEW Local Union No. 584 Profit Sharing Plan Trust entered into between the Union and the Employers. In accordance therewith, the Employer agrees to forward monthly to the Profit Sharing Plan Trust an amount equal to a percentage of his gross monthly labor payroll as prescribed and in accordance with Section 6.05, the amount set forth in Section 3.05(b) of this Agreement which he is obligated to pay to the employees in this bargaining unit, and a completed payroll report: prescribed by the board. Payment to the Profit Sharing Fund are not intended and shall not be regarded as contributing current wages; Profit Sharing Fund payments are not intended and are not regarded as taxable wages or income.

NECA-IBEW 401K PLAN:

(b) Contributions to the NECA-IBEW LU #584 Profit Sharing/401K Plan shall be paid on behalf of any employee desiring to participate on a voluntary basis in the 401(k) plan, It is agreed by the parties hereto that the Trust will accept individual Employee Contributions through salary deductions as permitted by the Internal Revenue Code. The employer agrees to make the appropriate wage deductions from the employees' salaries and remit those amounts as contributions in the same manner as for the other Trust Funds set forth in this agreement. An employee may choose to terminate his participation in the

401(k) Plan at the end of any pay period after giving seven (7) days' notice. Any employee who terminates participation may not be re-instated until the first pay period following January 1 or June 1, unless he changes employers.

CONTRIBUTION PROCEDURE:

SECTION 6.05

a) The Employer signatory to this Agreement shall contribute to the appropriate Funds named in this Article VI on later than fifteen (15) days following the end of each calendar month. It is understood and agreed that the failure of any employer to pay the proper amounts to the Fund as required shall constitute a breach of the current working Agreement.

b) The sum of all contributions shall be paid in full and funds shall be mailed with the appropriate monthly payroll report to reach the office of the appropriate Fund no later than fifteen (15) days following the end of each calendar month.

Contributions mailed after the 15th day following the end of the calendar month will be considered delinquent and subject to the appropriate late charges.

c) **Contributions to these Funds will be as follows:**

NAME OF FUND:

N.E.B.F.	3%
Health & Welfare Fund	$6.00
Pension Fund	
05/31/21	$3.70
05/30/22	$3.70
05/29/23	$3.70
Profit Sharing Plan Trust	4% of gross wages
Apprenticeship Fund	$.40 per hour
LMCC	$.05 per hour
NLMCC Fund	$.01 per hour

It is understood and agreed, that failure on the part of any Employer to pay the proper amount to the Individual Fund, as required, shall constitute a breach of this Contract.

SECTION 6.06 There shall be an amount per hour withheld from the wage package of each employee employed under the terms of this Agreement and handled as described in Sections 3.07, 3.08, 3.09 and 3.10 of this Agreement. These withholdings shall be forwarded monthly to the Local Union and each employer shall provide the Local Union a copy of the Monthly Payroll Report listing the names of those

employees for whom such deductions have been made and the amount deducted for each such employee.

FRINGE BENEFIT REMEDIES:

SECTION 6.07

(a) The failure of the Employer to comply with the provisions of Sections 6.01 through 6.06 shall also constitute a breach of this Labor Agreement. As a remedy for such a violation, the Labor-Management Committee and/or the Council on Industrial Relations for the Electrical Contracting Industry, as the case may be, are empowered, at the request of the Union, to require an Employer to pay into the affected Joint Trust Funds established under this Agreement any delinquent contribution to such funds which have resulted from the violation.

(b) If, as a result of violations of this Section, it is necessary for the Union and/or the Trustees of the Joint Trust Funds to institute court action to enforce an award rendered in accordance with Subsection (a) above, or to defend an action which seeks to vacate such award, the Employer shall pay any accountants' and attorneys' fees incurred by the Union and/or Fund Trustees, plus cost of the litigation which have resulted from the bringing of such court action.

ARTICLE VII
LOCAL LABOR-MANAGEMENT COOPERATION COMMITTEE (LMCC)

SECTION 7.01 The parties agree to participate in a Labor-Management Cooperation Fund, under authority of Section 6(b) of the Labor Management Cooperation Act of 1978, 29 U.S.C. § 175(a) and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. § 18(c)(9). The purposes of this Fund include the following:

1. To improve communication between representatives of labor and management;
2. To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organization effectiveness;
3. To assist worker and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;
4. To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the electrical construction industry;
5. To sponsor programs which improve job security, enhance economic and community development, and promote the general welfare of the community and the industry;
6. To engage in research and development programs concerning various aspects of the industry, including, but not limited to, new technologies, occupational safety and health, labor relations, and new methods of improved production;

7. To engage in public education and other programs to expand the economic development of the electrical construction industry;

8. To enhance the involvement of workers in making decisions that affect their working lives; and

9. To engage in any other lawful activities incidental or related to the accomplishment of these purposes and goals.

SECTION 7.02 The Fund shall function in accordance with, and as provided in, it's Agreement and Declaration of Trust and any amendments thereto and any other of its governing documents. Each Employer hereby accepts, agrees to be bound by, and shall be entitled to participate in the LMCC, as provided in said Agreement and Declaration of Trust.

SECTION 7.03 Each employer shall contribute five cent (50) per hour worked under this Agreement up to a maximum of 150,000 hours per year. Payment shall be forwarded monthly, in a form and manner prescribed by the Trustees, no later than fifteen (15) calendar days following the last day of the month in which the labor was performed. The Eastern Oklahoma Chapter, NECA, or its designee, shall be the collection agent for this Fund.

SECTION 7.04 If an Employer fails to make the required contributions to the Fund, the Trustees shall have the right to take whatever steps are necessary to secure compliance. In the event the Employer is in default, the Employer shall be liable for a sum equal to 15% of the delinquent payment, but not less than the sum of twenty dollars ($20), for each month payment of contributions is delinquent to the

Fund, such amount being liquidated damage, and not a penalty, reflecting the reasonable damages incurred by the Fund due to the delinquency of the payments. Such amount shall be added to and become a part of the contributions due and payable, and the whole amount due shall bear interest at the rate of ten percent (10%) per annum until paid, The Employer shall also be liable for all costs of collecting the payment together with attorneys' fees.

ARTICLE VIII
NATIONAL LABOR MANAGEMENT COOPERATION COMMITTEE (NLMCC)

SECTION 8.01 The parties agree to participate in the NECA-IBEW National Labor-Management Cooperation Fund, under authority of Section 6(b) of the Labor Management Cooperation Act of 1978, 29 U.S.C. § 175(a) and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. § 18(c)(9). The purposes of this Fund include the following:

1. To improve communication between representatives of labor and management;
2. To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organization effectiveness;
3. To assist worker and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;
4. To study and explore ways of eliminating potential problems which reduce the compet-

itiveness and inhibit the economic development of the electrical construction industry;

5. To sponsor programs which improve job security, enhance economic and community development, and promote the general welfare of the community and the industry;

6. To encourage and support the initiation and operation of similarly constituted local labor-management cooperation committees;

7. To engage in research and development programs concerning various aspects of the industry, including, but not limited to, new technologies, occupational safety and health, labor relations, and new methods of improved production;

8. To engage in public education and other programs to expand the economic development of the electrical construction industry;

9. To enhance the involvement of workers in making decisions that affect their working lives; and

10. To engage in any other lawful activities incidental or related to the accomplishment of these purposes and goals.

SECTION 8.02 The Fund shall function in accordance with, and as provided in, it's Agreement and Declaration of Trust, and any amendments thereto and any other of its governing documents. Each Employer hereby accepts, agrees to be bound by, and shall be entitled to participate in the NLMCC, as provided in said Agreement and Declaration of Trust.

SECTION 8.03 Each employer shall contribute one cent (1¢) per hour worked under this Agreement up to a maximum of 150,000 hours per year. Payment shall be forwarded monthly, in a form and manner prescribed by the Trustees, no later than fifteen (15) calendar days following the last day of the month in which the labor was performed. Eastern Oklahoma Chapter, NECA, or its designee, shall be the collection agent for this Fund.

SECTION 8.04 If an Employer fails to make the required contributions to the Fund, the Trustees shall have the right to take whatever steps are necessary to secure compliance. In the event the Employer is in default, the Employer shall be liable for a sum equal to 15% of the delinquent payment, but not less than the sum of twenty dollars ($20), for each month payment of contributions is delinquent to the Fund, such amount being liquidated damages, and not a penalty, reflecting the reasonable damages incurred by the Fund due to the delinquency of the payments. Such amount shall be added to and become a part of the contributions due and payable, and the whole amount due shall bear interest at the rate of ten percent (10%) per annum until paid. The Employer shall also be liable for all costs of collecting the payment together with attorneys' fees.

ARTICLE IX

SUBSTANCE ABUSE

SECTION 9.01 The dangers and costs which alcohol and other chemical abuses can create in the electrical contracting industry in terms of safety and productivity are significant. The parties to this Agreement resolve to combat chemical abuse in any

form and agree that, to be effective, programs to eliminate substance abuse and impairment should contain a strong rehabilitation component. The local parties recognize that the implementation of a drug and alcohol policy and program must be subject to all applicable federal, state, and local laws and regulations. Such policies and programs must also be administered in accordance with accepted scientific principles, and must incorporate procedural safeguards to ensure fairness in application and protection of legitimate interests of privacy and confidentiality. To provide a drug-free workforce for the Electrical Construction Industry, each IBEW local union and NECA chapter shall implement an area-wide Substance Abuse Testing Policy. The policy shall include minimum standards as required by the IBEW and NECA. Should any of the required minimum standards fail to comply with federal, state, and/or local laws and regulations, they shall be modified by the local union and chapter to meet the requirements of those laws and regulations. Responsibility for drug testing shall lie with the individual contractor including all cost relating to such drug testing.

SEPARABILITY CLAUSE

SECTION 9.02 Should any provision of this Agreement be declared illegal by any court of competent jurisdiction, such provisions shall immediately become null and void, leaving the remainder of the Agreement in full force and effect and the parties shall, thereupon, seek to negotiate substitute provisions which are in conformity with the applicable laws.

GENDER LANGUAGE

SECTION 9.03 Whenever the male gender is used in this Agreement, the female gender is also intended.

ARTICLE X
CODE OF EXCELLENCE

Section 10.01 The parties to this Agreement recognize that to meet the needs of our customers, both employer and employee must meet the highest levels of performance, professionalism, and productivity. The Code of Excellence has proven to be a vital element in meeting the customers' expectations. Therefore each IBEW local union and NECA chapter shall implement a Code of Excellence Program. The program shall include minimum standards as designed by the IBEW and NECA.

SUBJECT TO THE APPROVAL OF THE INTERNATIONAL PRESIDENT, IBEW

SIGNED FOR THE EMPLOYER:

Brent Electric Company Inc.,

_____
<TITLE>

_____
<TITLE>

SIGNED FOR THE UNION:

Local Union No. 584
International Brotherhood of Electrical Workers

_____
Joe Burnside, President

_____
Dustin Phelan, Business Manager

ADDENDUM ONE

MARKET RECOVERY AGREEMENT BETWEEN THE BRENT ELECTRIC COMPANY INC., AND LOCAL UNION NO. 584, IBEW

1. This Agreement shall become effective June 1, 2021 and shall remain in effect through May 31st, 2024 and shall coincide with the terms of the Inside Construction Agreement between the two parties. Any grievances or changes in this Agreement or termination of this Agreement shall be in accordance with the provisions of the inside Agreement.

2. All contractors' signatory to the Inside Labor Agreement currently in effect between the parties shall be eligible to work under this Recovery Agreement. The parties agree that the implementation and compliance with the provisions of this Recovery Agreement shall not be deemed to be a violation of any of the terms or provisions of the collective bargaining agreement currently in effect between the parties.

3. Referral: Same referral as Inside Agreement including temporary employee provision.

(a) An employee referred to an employer for non-targeted work may be transferred to targeted work.

4. The rates for apprentices shall be percentages listed in the Inside Construction Agreement. Fringe benefits in the Inside Construction Agreement shall apply to all employees except unindentured apprentices.

Only Health and Welfare and NEBF contributions shall be made on this group of Apprentices.

5. Ratios:

There shall be allowed a ratio of one unindentured apprentice to one apprentice to two journeymen, or fraction thereof on any job or in any shop.

EXAMPLE:

1 Journeyman	1 Journeyman	1 Journeyman
1 Apprentice	1 Journeyman	1 Journeyman
1 Unindentured Appr.	1 Apprentice	1 Journeyman
	1 Unindentured Appr.	1 Apprentice
		1 Apprentice
		1 Unindentured Appr.
		1 Unindentured Appr.

a) The ratios will continue on the same basis for larger crew sizes.

b) The employer may reassign apprentices and unindentured apprentices that are in his employ, out of ratio for short periods of time for the purpose of handling large quantities of material. If the reassignment exceeds 8 hours it will be by mutual agreement of the parties.

c) Unindentured apprentices may perform all tasks assigned by a General Foreman,

Foreman, and/or Journeyman when the normal workforce is on the job, however, they shall not work on or near live voltage circuits or systems.

d) If the supply of apprentices is exhausted then unindentured apprentices may be used on a temporary basis to fulfill the ratio until regular apprentices become available to replace them.

Unindentured apprentices, as used above, shall be replaced on the basis of last referred will be first replaced.

(e) If the JATC is unable to furnish an unindentured apprentice in accordance with the allowable ratio, the next available individual who is interviewed but not selected from the pool of applicants will be assigned to the employer. The rate of pay for all such employees shall be at the first period apprentice rate.

(f) In the event a contractor successfully acquires a job under this Memorandum and the maximum number of apprentices and unindentured apprentices has been exhausted the parties to this memorandum, with assistance from the parent organizations, will immediately meet and resolve the manning requirements.

6. Any work obtained under the terms of this memorandum shall be completed under the provisions set forth in said memorandum.

7. Under no circumstances will this memorandum be used to circumvent the intent and/or purposes of the Local Apprenticeship Training Program.

8. The Contractor must notify, on the form attached, the Local Union, within the week, all work bid or negotiated under this memorandum in order to utilize the provisions of this memorandum.

9. All provisions of the Inside Agreement not specifically modified by this memorandum will remain in effect.

10. It is recognized that a drug test by the contractor may be necessary if required by the customer.

11. When so elected by the contractor, he may establish a normal workweek consisting of four (4) ten-hour (10-hr) days exclusive of one-half (1/2) hour unpaid meal period, Monday through Thursday. The Contractor may establish a second shift consisting of ten (10) hours, including a thirty (30) minute paid meal period. When working two (2) shifts, the first shift shall commence between the hours of, 6:00 a.m. and 8:00 a.m. The second shift shall commence with a period of time not to exceed four hours upon expiration of the first shift. The employer can change from one schedule to another, subject to a limitation that he will give the union at least three (3) calendar days, notice of such change. The first ten (10) hours worked each day, on the schedule of four (4) ten-hour (10-hr) days, shall be straight time rate of pay. All time worked after ten (10) hours per day Monday through Thursday or Tuesday through Friday, shall be paid at the appropriate overtime rate of pay.

12. When so elected by the contractor, multiple shifts of at least three (3) days duration may be

worked. When two (2) or three (3) shifts are worked: The first shift (day shift) shall be worked between the hours of 8:00 a.m. and 4:30 p.m. Workmen on the day shift shall receive eight (8) hours pay at the regular hourly rate of eight (8) hours work.

The second Shift (swing shift) shall be worked between the hours of 4:30 p.m. and 1:00 a.m. Workmen on the swing shift shall receive eight (8) hours pay at the regular hourly rate of pay plus 12% for all hours worked. The third shift (graveyard shift) shall be worked between the hours of 12:30 a.m. and 9:00 a.m. Workmen on the graveyard shift shall receive eight (8) hours pay at the regular hourly rate of pay plus 22% for all hours worked.

A lunch period of thirty (30) minutes shall be allowed on each shift. These hours may be shifted by a maximum of four (4) hours. There shall be no overlapping Shift.

All overtime work required after the completion of a regular shift shall be paid at one and one-half (1 1/2) times the shift hourly rate.

There shall be no pyramiding of overtime rates and double the straight time rate shall be the maximum compensation for any hour worked.

There shall be no requirements for a day shift when either the second or third shift is worked.

13. Flexibility: Work classified as maintenance, repair or renovation may be performed on Saturday at straight time rate of pay on a voluntary basis, if the employee has not worked forty hours during the regular workweek. After he has worked forty hours his rate of pay shall be at the appropriate over-time

rate. He will not be discriminated against if he refuses such work.

IN WITNESS WHEREOF, the parties have executed this Agreement this 1st day of June, 2021

SIGNED FOR BRENT ELECTRIC COMPANY INC

_____ _____

SIGNED FOR LOCAL UNION 584 INTERNATIONAL BROTHERHOOD OF ELEC. WORKERS, AFL-CIO

_____ _____

MARKET RECOVERY JOB FORM

Electrical Contractor Name _____

Job Name _____

Job Address _____

Bid Date and Time _____

Date to Be Awarded _____

Approximate Value of the Job _____

Date of Job Start _____

Name of other Bidders	Amount of Bid
_____	_____
_____	_____
_____	_____
_____	_____

Any other information that would be beneficial to the Industry

_____

_____

_____

Contractor's Signature: _____

ADDENDUM TWO

MEMORANDUM OF UNDERSTANDING PROJECT LABOR AGREEMENTS

No agreements entered into by the Local Union, such as Project Labor Agreements, Memorandums of Understanding, or Special Agreements shall allow for the exclusion of payment of Pension funds on hours worked under those agreements.

THE TERM OF THE PROJECT LABOR AGREEMENT SHALL RUN CONCURRENT WITH THE PRESENT AGREEMENT.

THIS AGREEMENT WILL APPLY ONLY TO BD WORK AND IS NOT INTENDED FOR USE ON MAINTENANCE OR NEGOTIATED WORK.

WAGES SHALL BE A MINIMUM OF $12.00 PER MAN HOUR FOR JOURNEYMAN PLUS BENEFITS SHOWN IN THE INSIDE AND MARKET RECOVERY AGREEMENTS.

ALL PROJECT LABOR AGREEMENTS MUST BE APPROVED BY THE BUSINESS MANAGER OF THE LOCAL UNION BEFORE THE PROJECT IS TO BE BID.

PROJECT LABOR AGREEMENTS MAY OR MAY NOT, AT THE DISCRETION OF THE EMPLOYER, CARRY A 2 TO I APPRENTICE RATIO.

APPRENTICE WAGES SHALL BE THOSE SO SPECIFIED IN THE MARKET RECOVERY AGREEMENT.

ANY ITEMS NOT SPECIFICALLY CHANGED WILL BE AS CONTAINED IN THE INSIDE AND MARKET RECOVERY AGREEMENTS.

IN WITNESS THEREOF, the parties hereto, as duly authorized agents of the Employer and the Union,

have executed this Memorandum of Understanding this 1St day of June, of the year 2021.

FOR THE EMPLOYER:

Brent Electric Company Inc.,

_____
<TITLE>

_____
<TITLE>

FOR THE UNION:

Local Union No. 584
International Brotherhood of Electrical Workers

_____
Joe Burnside, President

_____
Dustin Phelan, Business Manager

ADDENDUM THREE

MEMORANDUM OF UNDERSTANDING
CE/CW PROGRAM

It is agreed by both parties, IBEW Local 584 and the Employer, that the CE/CW Program and the CE/CW working ratio will be aggressively pursued.

The CE/CW classifications are as follows:

Construction Wireman	Level 1 (Probation)	40% of JW scale
Construction Wireman	Level 1	40% of JW scale
Construction Wireman	Level 2	45% of JW scale
Construction Wireman	Level 3	50% of JW scale
Construction Wireman	Level 4	55% of JW scale
Construction Electrician	Level 1	60% of JW scale
Construction Electrician	Level 2	70% of JW scale
Construction Electrician	Level 3	80% of JW scale

An individual's success in attaining Journeyman status through the program is dependent upon the individual attaining the minimum training and work experience requirements and/or successfully completing

the advancement requirements as defined and stipulated by the local JATC.

QUALIFYING

All current Intermediate Journeymen shall be transitioned without reduction in pay or benefits. All courses, testing, and evaluation tools for placement of CE/CW shall be performed by the JATC. Any individual representing the JATC involved in administering and/or evaluating practical proficiency exams must have prior hands-on experience in performing electrical work.

Individuals, with or without prior experience in the electrical industry, may make application for the CE/CW classification in three ways: 1) directly with the JATC; 2) may be directed to the JATC through a participating contractor; or 3) may be directed to the JATC as part of an organizing effort.

The initial entry evaluation and placement as a CE/CW will be based upon a combination of the applicant's skills, documented experience, and test results from both written and practical proficiency exams. The JATC will utilize a standard means for evaluating current skills, experience, and training for the purpose of granting advanced standing to Construction Wiremen/Construction Electricians.

ADVANCEMENT

Once positioned at the appropriate pay level, CE/CW shall be required to work a minimum 1,000 hours under probation to determine if they have been assigned the proper classification and pay level necessary to perform to local industry standards and expectations. Advancement in pay levels shall be

strictly based upon satisfactory test results of Advancement Exams at each level of classification. In addition, minimum requirements for documented work experience or OJT are necessary for advancement. OJT shall be based on a combination of work experience and classroom training. Classroom hours shall be converted to OJT hours based upon a ratio of three (3) hours OJT credit for every one (1) hour spent in classroom instruction. Evaluation and placement of any individual with 7,000 hours of work experience, having completed their probationary period and desiring to obtain Journeyman Inside wireman status, shall be done according to local JATC guidelines. No one shall be allowed to advance to Journeyman wireman status in less time than would be required by a First Period apprentice, and no one shall be allowed to advance to Journeyman Inside Wireman status without scoring a passing grade on the Oklahoma State Journeyman license exam administered by the Oklahoma Construction Industry Board.

ADVANCEMENT EXAMS AND TESTING PROCEDURES

A CE/CW who desires to advance to the classification of Journeyman Inside Wireman may request to take the written and practical examinations for each level of the program. All requests to take level exams shall be contingent upon the individual possessing and maintaining a satisfactory work history. To help prepare the individual to take the Advancement Exams, the local JATC will determine minimum training needed taking into consideration the input and recommendations of the NJATC and local parties.

The satisfactory completion of the examinations of one level will result in automatically qualifying to

take the written and practical examination of the next level. This procedure will continue until each level of examinations has been satisfactorily completed.

Construction Electricians, having a minimum of 8,000 hours of electrical construction work experience and having completed all requirements for advancement through all levels of the program, will be qualified to take the final Journeyman Wireman Advance Exam (written and hands-on skill tests). Construction Electricians may take the first level Advancement Exams upon being classified as Construction Electrician.

RETESTING

Any CE/CW failing to achieve a passing score on either the written or practical exam at any level will be provided information regarding their deficiencies so as to study and prepare for re-testing on those parts or sections of the test, which they failed to pass. Individuals failing to certify on sections of the hands-on skills test will also be instructed as to their deficiencies so as to prepare for re-testing. Individuals will NOT be required to re-take the sections of the tests which they successfully passed on the previous attempt, provided they re-take and successfully pass the remaining sections of the test(s) within one year from the date of the initial test. An individual is eligible to re-take the exam on those parts or section(s) failed on any test, for any level of advancement thirty (30) days after the initial test, and ninety (90) days after any subsequent failure.

CONDITIONS AND UTILIZATION

Respecting jobsite ratios determined by the local parties, CE/CW shall be sent by the JATC to the local union for referral to employer. Any employer signa-

tory to the Collective Bargaining Agreement between the local parties is eligible for the assignment of CE/CW based on the allowable ratio in the applicable Agreement.

When there are indentured apprentices available for work, an employer may not add additional CE/CW to a jobsite.

CE/CW will not be employed on any wage-and-hour job, unless the classification has been recognized for that area by the federal or state department of labor, or unless the individuals are paid the regular Journeyman wage rate.

CE/CW may be transferred from job-to-job for the same employer, as long as the appropriate ratios are maintained. The standard ratio shall be: 1 Journeyman /1 Apprentice/1 CE/CW. 1 Journeyman/2 non-Journeymen shall be allowed under the conditions of "first availability".

New CE/CW will not be added to the program when CE/CW are continually unemployed and available for referral. The term "continually unemployed", as used in this section, is intended to mean when the individuals are willing and available for referral or assignment over an extended period of time. The local parties have agreed that an "extended period of time" is defined as when an individual on the top of the out of work list has not moved in 30 days, unless that individual has previously been rejected by the calling employer.

Parameters for limitations on work allowed to be performed by the CE/CW will be negotiated by the LLMC.

REFERRAL PROCEDURE

The JATC shall maintain a separate register of applicants for employment for each classification.

An employer may request applicants by a specific classification, but not by a specific level within the classification.

Applicants for employment shall be sent by the JATC to the local union for the actual referral disbursement to employer.

There shall be no requirement for reverse layoff.

OTHER CONDITIONS

All grievances or disputes related to the administration of the Collective Bargaining Agreement shall be handled in accordance with the Inside Collective Bargaining Agreement.

Construction Electricians shall be required to possess the following tools:

* 1 pair 9-inch High Leverage side Cutters
* 2 pair 10-inch Pump pliers (channel locks)
* 1 Phillips-tip screw driver
* 1 Round-shank flat tip screwdriver
* 1 Square-shank flat tip screwdriver
* 1 Electricians knife
* 1 Electricians folding rule
* 1 Tool pouch (or equivalent)
* 1 Wire stripper

BENEFITS

Construction Wireman Level 1 (Pro.)

NEBF	3%
H&W	None
Annuity	None
5/31/22	$0.00
5/30/22	$0.00
5/29/23	$0.00

Construction Wireman Level 1

NEBF	3%
H&W	$1.60
Annuity	None
5/31/22	$0.00
5/30/22	$0.00
5/29/23	$0.00

Construction Wireman Level 2

NEBF	3%
H&W	$1.60
Annuity	None
5/31/22	$0.00
5/30/22	$0.00
5/29/23	$0.00

Construction Wireman Level 3

NEBF	3%
H&W	$1.60
Annuity	4.0%
5/31/22	$3.70
5/30/22	$3.70
5/29/23	$3.70

Construction Wireman Level 4

NEBF	3%
H&W	$2.60
Annuity	4.0%
5/31/22	$3.70
5/30/22	$3.70
5/29/23	$3.70

Construction Electrician Level 1

NEBF	3%
H&W	$6.00
Annuity	4.0%
5/31/22	$3.70
5/30/22	$3.70
5/29/23	$3.70

Construction Electrician Level 2

NEBF	3%
H&W	$6.00
Annuity	4.0%
5/31/22	$3.70
5/30/22	$3.70
5/29/23	$3.70

Construction Electrician Level 3

NEBF	3%
H&W	$6.00
Annuity	4.0%
5/31/22	$3.70
5/30/22	$3.70
5/29/23	$3.70

EMPLOYER CONTRIBUTIONS

Contributions shall be paid on all levels of CE/CW as stated in the Inside Collective Bargaining Agreement for the following funds: JATC, NLMCC, and Local LMCC. NEBF shall be the only Fringe Benefit payable to individuals classified as Construction Wiremen during their first 1,000 hours of employment (probationary period).

HEALTH CARE

For all Construction Wiremen, after 1,000 hours of employment, the Employer shall forward $1.60 per hour worked, in accordance with the Inside Agreement and Sub-Plan B-1 of Southwest Health and Benefit Fund. Upon achieving the classification of Construction Wireman-Level 4, the Employer shall forward $2.60 per hour worked, in accordance with the Inside Agreement and Sub-Plan B-2 of Southwest Health and Benefit Fund. For all Construction Electricians, the contribution rate shall be $6.00 per hour worked.

PENSION

For Construction Wiremen achieving the classification of Level Three and Level Four, the Employer shall forward the amount set forth in the Inside Agreement for the Local Union Supplemental Pension Trust Fund. All three levels within the Construction Electrician classification shall receive the same amounts of pension benefits as does a Journeyman Wireman, as set forth in the Inside Agreement.

IN WITNESS THEREOF, the parties hereto, as duly authorized agents of the Employer and the Union,

have executed this Memorandum of Understanding this Pt day of June, of the year 2021.

SIGNED FOR THE EMPLOYER:

Brent Electric Company Inc.,

_____

<TITLE>

_____

<TITLE>

SIGNED FOR THE UNION:

Local Union No. 584
International Brotherhood of Electrical Workers

_____

Joe Burnside, President

_____

Dustin Phelan, Business Manager

ADDENDUM FOUR

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and among Brent Electric Company Inc., NECA, and IBEW Local Union No. 584, and applies to all Employers who are signatory to a letter of assent. It will become effective upon ratification by all parties.

This MOU governs the Employer's obligations to contribute to the N.E.C.A. — I.B.E.W. Local Union No. 584 Pension Plan Trust (the "Pension Fund"). This MOU is governed by and subject to the evergreen clause in the Collective Bargaining Agreement.

Local Union No. 584 and the Employer intend to pursue full funding (as certified by the Pension Fund's actuary) of the Pension Fund and to pursue termination by amendment of the Pension Fund in order to convert the retirement benefit structure from a defined benefit plan to a defined contribution plan. Therefore, the Employer and all other employers contributing to the Pension Fund have agreed with Local Union No. 584 to increase their contribution rate to the Pension Fund as provided below, subject to the terms of this MOU.

Commencing June 1, 2012, for each twelve-month period during the term of the Collective Bargaining Agreement (unless the Pension Fund contribution obligation is terminated as provided below), subject to the terms of this provision, the Employer agrees to forward monthly to the Pension Fund the following contributions for each hour worked by each employee under the terms of this Agreement:

12-Month Period Commencing	**Pension Fund Base Contribution Per Hour**	**Plus Transfer from Existing JATC Contribution***	**Total Pension Fund Contri-bution Per Hour**
June 1, 2012	$2.50	$0.20/hour	$2.70
June 1, 2013	$3.00	$0.20/hour	$3.20
June 1, 2014	$3.50	$0.20/hour	$3.70

* From the $0.60/hour the Employer currently contributes to the JATC, $0.20/hour will be transferred to the Pension Fund (so the JATC contribution will be $0.40/hour); provided that if the JATC balance goes below $100,000, the Employer will contribute an extra $0.10/hour to the JATC (so the JATC contribution would be $0.50/hour) and the Employer will continue to contribute the $0.20/hour to the Pension Fund. Once the JATC balance is $150,000 for two consecutive months, the Employer no longer contributes the extra $0.10/hour to the JATC (so the JATC contribution would go back to $0.40/hour) and the Employer will continue to contribute the $0.20/hour to the Pension Fund until the Pension Fund is fully funded and the Employer has terminated its obligation to contribute to the Pension Fund as provided below.

Notwithstanding anything to the contrary in this MOU or elsewhere in the Collective Bargaining Agreement, when the Pension Fund reaches full funding (as certified by the Pension Fund's actuary), the Employer may elect to terminate its obligation to contribute to the Pension Fund and, in lieu of (and not in addition to) making any contributions to the

Pension Fund, the Employer will make contributions to an I.B.E.W. Local Union No. 584 Profit Sharing Plan to be established (the "Profit Sharing Plan") pursuant to the following formula for each hour worked by each employee under the terms of this Agreement (the contributions to the new Profit Sharing Plan are in addition to the Employer profit sharing plan contributions of 4% of compensation provided in Section 6.04(b) of the Collective Bargaining Agreement): $2.00/hour plus 100% of the excess over $2.00/hour of the Pension Fund Base Contribution Per Hour shown in the table above as of June 1, 2012 (which amount shall not include the $0.20/hour transferred from JATC). The $0.20/hour diverted from the JATC will return to the JATC.

The Employer shall make the contributions to the Pension Fund or to the Profit Sharing Plan (as the case may be) no later than fifteen (15) days following the end of each calendar month. It is understood and agreed that the failure of the Employer to pay the amounts required shall constitute a breach of the current working Agreement. The sum of all such contributions shall be paid in full and funds shall be mailed with the appropriate monthly payroll report to reach the office of the Pension Fund or the Profit Sharing Plan (as the case may be) no later than fifteen (15) days following the end of each calendar month. Contributions mailed after the 15th day following the end of the calendar month will be considered delinquent and subject to the appropriate late charges.

Local Union No. 584 agrees that the only liability of the Employer to the Pension Fund is limited to the Employer's actual contributions to the Pension Fund and the Employer shall not be liable for any other obli-

gation or contingent obligation of any kind or nature whatsoever.

This Memorandum of Understanding is executed on this 1st day of June, 2021.

Brent Electric Inc.: NECA:

By: _____ By: _____

IBEW Local Union 584:

By: _____

IBEW LOCAL 584 TARGET FUND
PROGRAM GUIDELINES

The IBEW Local 584 Target Fund Program is designed as a cooperative effort to assist electrical contractors signatory with the local union in obtaining work projects within the jurisdictional boundaries of Local 584. This program is funded totally by Local 584, from working dues assessments deducted from the wages of workers employed within that jurisdiction. The allotment of these funds are at the discretion of the Business Manager of Local 584.

Adherence to the following guidelines is required to be eligible for Target Fund financial aid:

All contractor financial requests must be submitted on a standard form, provided by the local union.

All contractor financial requests must be submitted at least 24 hours in advance of bid date, except in special circumstances approved by the Business Manager.

All contractor financial requests must provide special circumstance for which the financial aid is necessary, such as bidding against non-union contractors.

Any contractor obtaining a project using Target Fund funding must notify Business Manager within seven (7) days of awarding of project.

Under no circumstances will Target Funding be given on a job involving subcontracting between two or more union contractors.

Requests for awarded Target funding must be made on a weekly basis, on a standard form provided by the local union. Such requests must be made within seven (7) days of end of pay period. Should such notification not be made within that time period, all hours worked that week shall not be eligible for payment.

All contractors submitting Target request financial aid applications agree to abide by Target Fund guidelines by making such submission. Any contractor in violation of these guidelines agrees to reimburse the local union any and all monies paid them from the Local 584 Target Fund on project where said violation(s) occur. Violations of these guidelines may also result in the contractor being not eligible for financial awards on future projects.

IBEW INSIDE CONSTRUCTION AGREEMENT BETWEEN LOCAL UNION NO. 584, IBEW AND EASTERN OKLAHOMA CHAPTER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION (JUNE 19, 2018)

It shall apply to all firms who sign a Letter of Assent to be bound by the terms of this Agreement.

As used hereinafter in this Agreement, the term "Chapter" shall mean Eastern Oklahoma Chapter of NECA and the term "Union" shall mean Local Union No. 584, IBEW.

The term "Employer" shall mean an individual firm who has been recognized by an assent to this Agreement.

BASIC PRINCIPLES

The Employer and the Union have a common and sympathetic interest in the Electrical Industry. Therefore, a working system and harmonious relations are necessary to improve the relationship between the Employer, the Union and the Public. Progress in industry demands a mutuality of confidence between the Employer and the Union. All will benefit by continuous peace and by adjusting any differences by rational, common sense methods. Now, therefore, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

ARTICLE I
STANDARD CIR

Effective Date:

Section 1.01

This Agreement shall take effect, June 1, 2018, and shall remain in effect until, May 31, 2021, unless otherwise specifically provided for herein. It shall continue in effect from year to year thereafter, from June 1 through May 31 of each year, unless changed or terminated in the way later provided herein.

Changes:
Section 1.02.

(a) Either party or an Employer withdrawing representation from the Chapter or not represented by the Chapter, desiring to change or terminate this Agreement must provide written notification at least 90 days prior to the expiration date of the Agreement or any anniversary date occurring thereafter.

(b) Whenever notice is given for changes, the nature of the changes desired must be specified in the notice, or no later than the first negotiating meeting unless mutually agreed otherwise.

(c) The existing provisions of the Agreement, including this Article, shall remain in full force and effect until a conclusion is reached in the matter of proposed changes.

(d) Unresolved issues or disputes arising out of the failure to negotiate a renewal or modification of this agreement that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations for the Electrical Contracting Industry (CIR) may be submitted jointly or unilat-

erally to the Council for adjudication. Such unresolved issues or disputes shall be submitted no later than the next regular meeting of the Council following the expiration date of this agreement or any subsequent anniversary date. The Council's decisions shall be final and binding.

(e) When a case has been submitted to the Council, it shall be the responsibility of the negotiating committee to continue to meet weekly in an effort to reach a settlement on the local level prior to the meeting of the Council.

(f) Notice of a desire to terminate this Agreement shall be handled in the same manner as a proposed change.

Section 1.03

This Agreement shall be subject to change or supplement at any time by mutual consent of the parties hereto. Any such change or supplement agreed upon shall be reduced to writing, signed by the parties hereto, and submitted to the International Office of the IBEW for approval, the same as this Agreement.

ARTICLE XI
CODE OF EXCELLENCE

Section 11.01

The parties to this Agreement recognize that to meet the needs of our customers, both employer and employee must meet the highest levels of performance, professionalism, and productivity. The Code of *Excellence* has proven to be a vital element in meeting the customers' expectations. Therefore each IBEW local union and NECA chapter shall implement a Code of Excellence Program. The program shall include minimum standards as designed by the IBEW and NECA. Both parties will meet quarterly to discuss the Code of Excellence program.

SUBJECT TO THE APPROVAL
OF THE
INTERNATIONAL PRESIDENT, IBEW

SIGNED FOR THE EMPLOYERS:

Eastern Oklahoma Chapter,
National Electrical Contractors Association, Inc.

{signature not legible}
President

{signature not legible}
Executive Director

SIGNED FOR THE UNION

Local Union No. 584
International Brotherhood of Electrical Workers

/s/ Michael Kris Gomez
President

/s/ Jeff Sims
Business Manager

APPROVED

INTERNATIONAL OFFICE – I.B.E.W.

JUNE 19, 2018

Lonnie R. Stephenson. Int'l President. This approval does not make the International a party to this agreement