June 2, 2023

**VIA EMAIL**

Director Becca Jones-Albertus

Solar Energy Technologies Office

Office of Energy Efficiency & Renewable Energy

U.S. Department of Energy

Forrestal Building

1000 Independence Ave SW

Washington, DC 20585

**Re: “Scaling the U.S. Solar Manufacturing Workforce”**

**DE-FOA-0003074**

Dear Director Jones-Albertus:

I write on behalf of the International Brotherhood of Electrical Workers (“IBEW”) in response to the above-captioned request for information. The IBEW appreciates the opportunity to comment on how the Solar Energy Technologies Office (“SETO”) of the U.S. Department of Energy (“DOE”) can promote efficiency in the solar manufacturing sector while at the same time ensuring that workers have a free and fair chance to join a union.

The IBEW is a labor union with an active presence in all 50 states, Puerto Rico, and the District of Columbia. With 820,000 active members and retirees across a variety of fields – including approximately 30,000 members working in the manufacturing sector – the IBEW can provide SETO and DOE with valuable insight into how to empower and support workers in solar manufacturing.

The IBEW is happy to continue this dialogue with SETO and DOE concerning this critically important matter. Should you have additional questions or wish to further discuss these issues, please contact:

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As noted in DOE’s request for information, the Inflation Reduction Act invests an unprecedented amount of taxpayer dollars in researching, developing, and scaling clean energy projects. In addition to disbursing these funds, federal agencies like SETO and DOE have the important responsibility of protecting these massive federal investments. The IBEW urges SETO and DOE to encourage and give preference to those applicants who commit to utilizing labor peace agreements at their solar manufacturing facilities. As explained below, labor peace agreements are an effective method for protecting and safeguarding the federal government’s enormous clean energy investments, and provide employees with the free and fair chance to join a union.

1. **Labor Peace Agreements Protect Government Interests and Avoid Workplace Disruptions (response to parts 2.1, 2.2)**

Labor peace agreements (sometimes called “labor neutrality agreements”) are contracts between employers and unions. Under a labor peace agreement, the employer agrees to remain neutral during a union organizing campaign and to avoid interfering with the campaign. In exchange, the union and workers agree to refrain from picketing, work stoppages, boycotts, and other activities that might cause economic disruption. Labor peace agreements also often include a card check recognition provision, whereby the employer agrees to voluntarily recognize the union as the employees’ exclusive bargaining representative upon the union’s showing that a majority of employees have signed authorization cards. Such a provision eliminates the need for a long and drawn-out election process overseen by the National Labor Relations Board, which is often riddled with delays caused by an employer’s unfair labor practices. In fact, U.S. employers are charged with violating federal law in 41.5 percent of union election campaigns.[[1]](#footnote-1) The administrative process for resolving such disputes is time-consuming and disruptive to business operations.

1. *Protection of Government Investments*

By prohibiting workplace disruptions, such as work stoppages and picketing, labor peace agreements enable government entities to protect their investments and ensure taxpayer dollars are spent responsibly. For example, in *HERE Local 57 v. Sage Hospitality Resources, LLC*,[[2]](#footnote-2) the U.S. Court of Appeals for the Third Circuit upheld the City of Pittsburgh’s decision to condition a grant of tax increment financing upon the recipient’s acceptance of a labor neutrality agreement. Relying chiefly on the Supreme Court’s *Boston Harbor*[[3]](#footnote-3) decision, the Third Circuit held that a government entity may implement funding conditions which serve to advance or preserve the government’s proprietary interest as an investor, owner, or financier, where those conditions are specifically tailored to the government’s proprietary interest.[[4]](#footnote-4) The Third Circuit found that “the City has an interest in ensuring that labor strife does not damage the development” carried out with government assistance.[[5]](#footnote-5)

More recently, in *Airline Service Providers Association v. L.A. World Airports*,[[6]](#footnote-6) the Ninth Circuit upheld a contract provision in which the City of Los Angeles required service providers at LAX airport to sign a labor peace agreement. The Ninth Circuit found that the City, as the operator of LAX, was acting as a market participant, and not a regulator, because the City had “a pressing interest in avoiding strikes, picket lines, boycotts, and work stoppages…and labor peace agreements are one way to protect those interests.”[[7]](#footnote-7) The court also found that requiring labor peace agreements was narrowly tailored to the City’s “clear proprietary interest in avoiding labor disruptions of airport services,”[[8]](#footnote-8) and was therefore not preempted by federal law.

Labor peace agreements have a proven track record. New York State, Maryland, and Washington, DC, as well as local governments across the country – from Pennsylvania to Florida to California – have enacted labor peace ordinances that condition public appropriations or approval of permit applications on the applicant company’s signing of a labor peace agreement.[[9]](#footnote-9)

*Sage Hospitality*, *L.A. World Airports*, and the widespread use of labor peace agreements around the country illustrate that such agreements are a legitimate and effective way for government entities to protect investments of taxpayer dollars. The commitments made by employers and unions who sign labor peace agreements protect the government’s investment from the threat of strikes, work stoppages, and lockouts, and largely insulate a facility from the hostile work environment created by employers when their workers try to form or join a union. These safeguards ensure that investments from the government actually go toward what the government and taxpayers intended, and that the end goals of those investments are successfully realized in an economically efficient manner.

1. *SETO and DOE’s Role*

As noted in DOE’s request for information, the Inflation Reduction Act appropriates approximately $11.7 billion to DOE alone. As the agencies tasked with disbursing large sums of public funds, SETO and DOE enjoy a significant degree of discretion in developing criteria by which to evaluate applications for funding under many of the programs they administer. For example, under the Advanced Technology Vehicles Manufacturing Direct Loan program – first established by the Energy Independence and Security Act of 2007 and modified by the Inflation Reduction Act – DOE is authorized to evaluate and award loans to manufacturing facilities based on, among other things, “criteria as may be established and published by the Secretary.”[[10]](#footnote-10) Similarly, the bipartisan infrastructure law established the State Manufacturing Leadership program, which authorizes DOE to provide financial assistance to states based on “criteria identified by the Secretary”[[11]](#footnote-11) to implement smart manufacturing technologies.

SETO and DOE also have the important responsibility of protecting these massive federal investments and ensuring that the scaling of the country’s solar manufacturing capabilities is successfully executed. The IBEW urges SETO and DOE to utilize their discretion in implementing these federal assistance programs to encourage and give preference to those applicants who commit to utilizing labor peace agreements at their solar manufacturing facilities. Labor peace agreements are an effective method for protecting and safeguarding the federal government’s enormous clean energy investments, all while ensuring that employees have a free and fair chance to join a union.

1. *The Free and Fair Chance to Join a Union*

An ancillary benefit of labor peace agreements is that they provide employees with a free and fair chance to join a union should they so desire. As described above, one study found that, between 2016 and 2017, employers were charged with committing unfair labor practices in an alarming 41.5 percent of union election campaigns supervised by the National Labor Relations Board.[[12]](#footnote-12) Labor peace agreements provide assurances that an employer will not interfere with the organizing campaign and will remain neutral throughout, thereby eliminating the risk that an employer will respond to an organizing campaign with conduct that could negatively affect worker productivity or efficiency like surveillance or intimidation. Similarly, employers often spend vast sums of money to disrupt union organizing efforts. The Economic Policy Institute estimates that employers spend more than $430 million per year on “union avoidance” consultants and other related efforts.[[13]](#footnote-13) Labor peace agreements thus also ensure that taxpayer dollars are spent as intended rather than on union avoidance efforts or other measures meant to dissuade employees from joining a union.

1. **The Benefits of Unionization (response to parts 3.3, 3.4, 3.5)**

As discussed above, labor peace agreements also provide employees with the free and fair chance to join a union. The benefits that flow from unionization are too many to mention, but a few are highlighted below.

1. *Better Wages and Benefits, Especially for Women and People of Color*

Workers represented by a union earn wages more than 10 percent higher, on average, and receive better benefits – such as health insurance, retirement plans, and paid sick leave – than workers who are not unionized.[[14]](#footnote-14) This “premium” enjoyed by union workers extends to women and people of color.[[15]](#footnote-15) “Indeed, the union wage premium is *higher* for Black, Hispanic, and Asian workers than it is for white workers.”[[16]](#footnote-16) Data also shows that the racial wealth gap is smaller among union members than among nonunion members.[[17]](#footnote-17) This is largely due to the fact that “[n]onwhite union members ha[ve] almost five times the median wealth of their nonunion member counterparts,”[[18]](#footnote-18) according to data from 2010 to 2016.

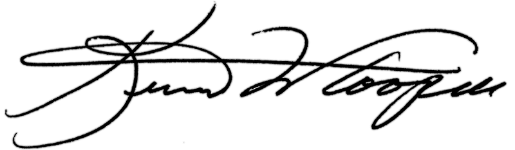
1. *Due Process Rights at Work*

Apart from wages and benefits, employees represented by a union also enjoy due process rights at work under a collective bargaining agreement. Union employees are thus protected from arbitrary discipline, [[19]](#footnote-19) which helps safeguard career advancement opportunities and protects historically marginalized groups from implicit bias and outright discrimination.

1. *Increased Productivity and a Reduction in Worker Turnover*

Studies also show that union membership in the manufacturing industry increases productivity. In a meta-analysis of 53 academic studies analyzing nearly 50,000 workers, researchers found that American unions in the manufacturing sector boost productivity by 10 percent.[[20]](#footnote-20) Additionally, unionized workplaces generally have lower turnover – largely due to increased morale from having a voice at work, higher wages, and better benefits – which results in a more experienced and productive workforce as well as reduced training costs.[[21]](#footnote-21)

Thank you again for the opportunity to comment on this important issue. The IBEW is committed to working with our government partners on promoting the responsible disbursement of federal funds and lifting up and empowering workers. I look forward to working with SETO and DOE in support of an equitable transition to America’s clean energy future.

Sincerely yours,

Kenneth W. Cooper

International President

KWC:jrm

1. Economic Policy Institute, Unlawful: U.S. employers are charged with violating federal labor law in 41.5% of all union election campaigns, at 2 (2019). [↑](#footnote-ref-1)
2. 390 F.3d 206 (3d Cir. 2004). [↑](#footnote-ref-2)
3. *Bldg. & Constr. Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218 (1993) (“*Boston Harbor*”). [↑](#footnote-ref-3)
4. *Sage Hospitality*, 390 F.3d at 216. [↑](#footnote-ref-4)
5. *Id*. at 217. [↑](#footnote-ref-5)
6. 873 F.3d 1074 (9th Cir. 2017). [↑](#footnote-ref-6)
7. *Id*. at 1080. [↑](#footnote-ref-7)
8. *Id.* at 1082-83. [↑](#footnote-ref-8)
9. *See, e.g.,* N.Y. Pub. Auth. Law § 2879-B; Md. Code Ann., State Gov’t § 9-1A-07(c)(7)(v); D.C. Code § 32-851 et seq.; Pittsburgh, Pa., Code § 161.30.1; Miami-Dade Cty., Fla., Cty. Commission Res. R-148-07; San Francisco, Cal., Admin. Code § 23.50 et seq. [↑](#footnote-ref-9)
10. 42 U.S.C. § 17013(d)(3)(A)(i)(III). [↑](#footnote-ref-10)
11. Sec. 40534(b)(2), Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1070. [↑](#footnote-ref-11)
12. Economic Policy Institute, *supra* note 1, at 2. [↑](#footnote-ref-12)
13. Economic Policy Institute, Employers spend more than $400 million per year on ‘union-avoidance’ consultants to bolster their union-busting efforts, at 1 (2023). [↑](#footnote-ref-13)
14. Economic Policy Institute, Unions help reduce disparities and strengthen our democracy, at 2, 6-7 (2021). [↑](#footnote-ref-14)
15. *Id.* at 6. [↑](#footnote-ref-15)
16. Center for American Progress, The Clean Economy Revolution Will Be Unionized, at 4 (2021). [↑](#footnote-ref-16)
17. Center for American Progress, Union Membership Narrows the Racial Wealth Gap for Families of Color, at 4 (2018). [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. Economic Policy Institute, *supra* note 14, at 7. [↑](#footnote-ref-19)
20. Christos Doucouliagos & Patrice Laroche, *What Do Unions Do to Productivity? A Meta-Analysis*, 42 Industrial Relations Journal 650, at 664 (2003). [↑](#footnote-ref-20)
21. Illinois Economic Policy Institute, Unions Can Increase Efficiency, at 7 (2015). [↑](#footnote-ref-21)