Submission by Dolores Rogers to the Labour Court re Examination into T's & C's of Electrical Contracting Industry. (3rd Application)

Introduction

My name is Dolores Rogers, I am the wife of an Electrical Contractor, (3 electricians, and 3 apprentices) I am responsible for wages, accounts and HR in the business. I have for the last ten years worked for a contractor in the building industry (Civil) (70+ plus staff) also responsible for wages and accounts and HR.

My total experience in the Construction Industry is over 19 years.

In 2006 I worked for a short time for the AECI as operations manager.

My time within one of the signatories of the REA (AECI) provided me with a full understanding of its contents, its workings, and the who's who of the people at the centre of it, its operation and impact.

I also gave evidence in the longest Labour Court hearing in 2009.

Because of the above, together with my involvement with the NECI and the former NECTA I feel I have extensive knowledge of how a REA/SEO works and its impact on small contractors both in the Electrical and Civil Engineering end of the sector.

Therefore I would like my submission made on behalf of our small Electrical Contractor to be considered by the court.

Firstly I would like to address how the Labour Court actually fulfilled their responsibility and due diligence with regard to the 2015 (Amendment) Act 2015 in this now 3rd application for examination.

Industrial Relations (Amendment) Act 2015 *"Substantially Representative"*

The Act requires that the Labour Court ensure that the applicants, in this case the ECA, AECI and Connect be "*substantially representative"* of the sector it wishes the Labour Court to Examine"

Application for a request to examine Question (d)

The 2015 Act states
Where the court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied re "substantially"

Connect state they have 9871 members based on their figure of 13800 (question e) this means they claim to represent over 71.54% of electricians?

The TEEU merged with UCATT and formed Connect, does their figure include members who are not electricians, or the ESB workers who don't fall under a SEO? I would hope the Labour Court would have asked this question before it decides to spend tax payers funds on a examination into an industry where as required by legislation the applicants are required to be "Substantially Representative"

"Where the applicant is a trade union of workers, please enter the name and address of any trade union of employers or organisation of employers that is representative of employers in the sector to which the request relates"

Connects response list only the AECI and the ECA, it does not refer to the NECI,, this omission suggests that this is a deal amongst themselves and does not apply to non members or NECI employers.

However if they seek to impose a SEO on the rest of us, then this is blatantly a deliberate omission, and a tactic to keep others not in the circle in the dark

It cannot be claimed that they are unaware of the NECI, I and others who have objected to this situation for years.

The NECI, NECTA and other parties were the main players in the longest ever Labour Court hearing in 2009 regarding the old REA, not to mention the drivers in the case taken to the Supreme Court that led to the fall of the REA's due to their non constitutionality

As recent as August 2017 Judicial Review proceedings were issued against the Labour Court following the TEEU/Connect 2nd application to examine the sector. In 2016 substantial submissions were made by the NECI, NECTA and I. I really think that qualifies us as "Interested Parties" as per the legislation

The Court again and for a 3rd time, failed to notice or plain just ignored Connects blatant omission on the courts own application form in reference to this question.

It is not believable in any sense that the Labour Court, Connect, AECI and the ECA do not know about other interested parties, and therefore this "declaration" is not truthful, but regardless the Labour Court is happy to carry on to submissions which will result in a examination, funded by the Irish tax payer.

One would be forgiven for maybe thinking that an arm of this state, namely the Labour Court, is colluding with Big Trade Unions and Big Business to put us the little guy out of business.

The 2015 Amendment Act puts the onus firmly on the court to carry out this legislation correctly.

Section 15 (2) "Prior to undertaking an examination under this section the Court shall publish in such a manner as, in the opinion of the Court, is best calculated to bring the request to the notice of all interested persons concerned, notice of its intention to undertake an examination under this section".

A notice appeared in the Irish Examiner, The Independent, and the Irish Times, and a notice was posted on the Labour Court web site.

Despite the fact that the Labour Court, the AECI, ECA and Connect are more than aware of the NECI and others there was no direct contact made regarding this now 3rd application.

In this tech age I do not feel that the courts requirement to *"bring the request to the notice of all interested parties concerned"* was met It is the 21st century where most business is carried out electronically, surely a simple email to those who at least had submitted now 3 submissions, would fulfil the courts obligation.

Construction Industry SEO hearing

This only came to our attention when we were alerted to the first notice of intention to examine the Electrical Sector.
We note that the TEEU/Connect was cited in the CIF application, so this is confirmation that the then named TEEU has non electrician members, again we must ask the question were these non electrician members also counted in their application to have the Electrical Industry Examined.

The CIF are an employer body and we noted on their application no question was asked as to how many employers are their members, and therefore we must ask how the legal requirement of "Substantially Representative" was satisfied by the Labour Court when the question was not even asked.

The CIF claimed their members employ 20,678 of the estimated 50,000/56,000 employed in the industry.

It did not say how this figure was arrived at, and if correct does not represent "substantially representative" at less than 40% of the industry not all of which will be members of any Trade Union.

We also note the CWPS (Construction Workers Pension located in the CIF office made a submission in the SEO for the construction industry.

This is astounding as this was a direct tout for business which the Labour Court facilitated by a company directly linked to the applicant, and we note that no other pension company knew or submitted a pitch for what if the CIF figures are correct represent 40% of the construction sector pension market.

At the 26/06/2017 hearing in the Labour Court on foot of the application and submissions for the construction SEO examination, no notice was posted on the Labour Court web site, and only "invited" parties could attend.

This was the response from the Labour Court

The Labour Court, by way of notice in the national newspapers, invited interested parties to make submissions regarding a request it had received under Section 14 of the Industrial Relations Amendment Act 2015 to "examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of the workers" in the Construction Sector. Please note that as this matter falls to be dealt with under the Industrial Relations Amendment Act 2015 ***this is a private rather than a public hearing and only the invited parties are entitled to be in attendance***

When I asked for clarification I was told the above was the Courts clarification.

So the position was/and is, if you miss 3 newspaper notices, and a web site notice, parties can apply to the court for examination after which interested parties will be barred from any input, this is, in our opinion an abuse of the 2015 Amendment Act legislation, put in place to ensure that never again would we have deals done

behind closed doors, by minority groups who then went out and imposed their "One size fits all" on the rest of the industry.

How is the Construction SEO working
Below is the increase on the first and second rates of pay pre and post the introduction of the construction SEO The double digit % increase speaks for itself.

	Current Rates	39 Hrs	T + 1/2 (6)	Total 39 + 6 @ T+1/2	ER PRSI	ER Pension	Total	8% Hol	Total Weekly Cost	Diff	% Increase
New Entrant	**€13.77**	€537.03	€123.90	€660.93	€71.05	€14.12	€746.10	€59.69	€805.79		
Category 1	**€17.04**	€664.56	€153.36	€817.92	€87.93	€27.74	€933.59	€74.69	€1,008.28	€202.49	25.13%
Rate 2	**€15.89**	€619.71	€143.04	€762.75	€81.99	€14.12	€858.86	€68.71	€927.57	€156.48	
Category 2	**€18.36**	€716.04	€165.24	€881.28	€94.74	€27.74	€1,003.76	€80.30	€1,084.06	€156.49	16.87%

NCH (National Children's Hospital) and the SEO
Minister Breen who signed into law these double digit increases should now reflect on the impact his actions are having with regards to the overspend at the NCH.

It is worth noting that on one section of the NCH the main contractor has no direct staff except office/engineers and foremen and subs the work out to 6 Sub Contractors, who received 10% increase to cover the double digit wage increase the Principal Contractor through their employers organisation CIF signed into law, aided and abetted by the tax funded Labour Court.

10% is a long way away from 21.13% or 16.78% which presumably they claimed from the long suffering tax payers of this country.

Tom Parland Director General of the CIF is on record attributing rising construction costs to the Construction SEO, one would be forgiven in thinking that the CIF had no act or part in signing these wage fixing mechanisms in. Of course they would be wrong. The CIF is at the centre of the construction SEO, and this 3rd attempt to introduce one into the Electrical sector.

Construction SEO (Pension/Sick Pay)
The construction SEO requirements replicate exactly the CWPS pension. Sure why wouldn't it, the CWPS made submissions during the examination into the Construction sector. It states employers can go off and find another pension/sick pay provider as long as it costs the same as CWPS.

So this is like me tendering for a job, putting prices in and then the client turns me down, and now I say well ye can go somewhere else but legally they will have to charge what I was charging.

This is price fixing and anti competitiveness at its best.

A look back at the last Wage Fixing mechanism, Who knew about the last REA

The first my husband or his business partner knew of or even heard the term REA was when I came home from the AECI and told them in 2006. So you had two qualified electricians working in the industry that never heard of the REA or knew of its contents.

Who knows about this Examination by the Labour Court?

Apart from the Labour Court notice there is no mention of this application on the TEEU, AECI or ECA web site.

This leads us to enquire if the members of the ECA or the AECI are aware that their Trade Association is about to take them into a SEO at all? Was there a ballot?

So now we would like to reflect on the workings of the last REA, now a system re named as a SEO.

How the last REA protected "Profit Margin"

When the larger (CIF, AECI, and ECA) contractors tender for projects the labour part of the tender was (and still is) based on REA rates, and that was/is the price agreed with the client, however the principal then goes on to "Sub" (As per the NCH) out the work at rates far lower than the rate factored into their tender.

I once pointed this out to a Principal Contractor in the Electrical industry and the reply was. "Look Dolores do you want the job or not"

Were the employer AECI and ECA compliant with their own REA

No, my husband was employed by a major electrical contractor who was a member of the ECA, but was never signed up to the CWPS, and yet the ECA , AECI and the TEEU were running a limited company (EPACE Ltd) charged with targeting him and his small contracting partnership to pay rates and conditions that they themselves were not compliant with.

Pension Equivalent to CWPS

The old REA stated that a pension equivalent to CWPS be paid, trouble was there was no other product that included "Sick Pay" as a combined product so the CWPS as it was designed complied with the REA, and in doing so became a monopoly provider in the Construction Industry. It was also stated on the CIMA site to be the only pension accepted by the Labour Court.

Companies spawned by the last REA

1. CWPS (Pension Company and collector of levies which funded the other REA spin offs) its trustees are made up of major contractors and Trade Unionists. A past Labour Court Chairman was a trustee of this pension.
2. EPACE Ltd (Now defunct was the self styled REA enforcer, a private company run by the REA signatories (TEEU, AECI & ECA) funded by levies collected by CWPS, levies <u>not required</u> by the REA.
3. CIMA (also defunct and operated and funded as EPACE to target employers in the building trade)

4. CWHT (Construction workers health trust.) funded by levies collected by the CWPS to provide health advise and screening on site. I once rang them to attend our small company and was told that they only go on the *"Big Sites"*
5. Workers Benevolent fund. (I was never sure why this was set up, as the accident and sickness within the CWPS covers a worker when off sick. I could never find out the criteria, or process for applying for this fund.
6. Employers Benevolent Fund. (Same as above but for contractors) Operated out of Canal House where CIF are based. I tried but failed to find out what was the process, or criteria to avail of this fund.

Note: **CAS** (Contracts Administration Services) this is a private company, not funded by levies collected by CWPS. It seems to be hired by the large principal contractors to ensure that the smaller sub contractors hired by them are compliant with a REA they had no act hand or part in. Not sure what GDPR would have to say about mass sharing of workers earnings information.

Were the levies collected by CWPS required by the last REA
No, and furthermore when you called CWPS you were given the employee/employer rates with the non required levies.

You were not told that neither employee nor employer was required to pay these levies.

Unless you were a contractor who understood the REA, you would operate those deductions incorrectly in payroll, causing underpayments to Revenue and unwittingly breaking the law.

We would like to point out to the court that thousands of small companies such as ours do not have a HR/IR/ER department, and don't have the time to read papers, or monitor the densely populated Labour Court web site.

EPACE Ltd, the Enforcer of the REA (Electrical)
A limited company set up by the parties to the REA, the TEEU, AECI and the ECA to ensure contractors were compliant with their agreement.

The AECI and the ECA received funds from EPACE called "Administration Expenses and in the case of AECI inspection fees.

The ECA handed over their inspection quota to the TEEU to carry out.

Contractors who were targeted by EPACE Ltd where then hauled into the labour court by the TEEU who received substantial funds from EPACE for this service.

I would like to know where the vast amount of monies held by EPACE, CIMA, Employee and Employer Benevolent funds are now, and I would urge the Labour Court to move to have these funds which were collected by CWPS, funds that were not set out in the REA to be returned.

So when we look at the last REA, we see that it was in fact a business operating model. It generated huge amounts of hearings into The Labour Court (funded by the tax payer), indeed the majority if its hearings were alleged breaches of a REA. Vast sums of money were generated and collected (CWPS) and funnelled into companies set up by the REA signatories, (EPACE, CIMA, Benevolent Funds, CWHTS) and through EPACE and CIMA channelled back to the parties to the REA (Electrical) namely the TEEU, AECI 187 members, and ECA 29 members in inspection and administration fees.

The REA became the mechanism which protected the principal contractor's margin, and this was all done under the guise of "Workers Rights"

I have no problem with rates of pay being agreed by the TEEU and anyone else, my issue is the imposing of these largely unknown agreements on contractors who have no say, but have to pay.

If Connect, the AECI and ECA are truly *"Substantially representative"* then they can always do the deal between themselves, and leave us out
Small companies, such as ours will never be any threat, or be in a position to compete with the companies now wishing to enter into a wage agreement with the TEEU.

Last year our employees were awarded double digit wage increases; this is entirely due to their hard work, productivity, and their employer reacting to the market. It had nothing to do with a trade union (they don't belong to) or an employer's trade association we don't belong to who wish wages to be based on what they say and not on the employees/employers hard work, employers, who mostly work alongside them.

Section 15 (d) states that if the Labour Court make an recommendation to the Minister it would
"promote harmonious relations between workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply"

We feel that the imposition of a SEO would in fact do much to foster disharmony in our industry and in fact, it creates a Cartel, and a "Pyramid" mechanism in which the CIF Principal Contractors get the first large slice of the pie, after which the sub contractors get the crumbs at rates that no way reflect the wage increase signed by unions and associations which they and their employees are not members of. We only have to look to the NCH to see the impact of an SEO.

T The definition of the word cartel is
"*An association of manufacturers or suppliers with the purpose of maintaining prices at a high level and restricting competition"*
Having seen how the REA/SEO operates from the inside and the impact on thousands of small contractors the description of the word cartel match very well to the REA/SEO.

It is simply a crazy situation that a wage agreement (SEO) entered into by Trade Unions and big business who, in some cases don't employ staff directly themselves, should then be forced on small electrical companies who are mostly family run with less than 10 employees.

These small companies will never be any threat, or be in a position to compete with the companies now wishing to enter into a wage agreement with Connect.

Its akin to insisting that presenters who work for small radio stations such as Cork 96, Spin 1038 or Nova be paid the same as RTE's Joe Duffy, or Marian Finnucan . Or indeed the chair of my local GAA club is paid the same as the Chair of the Labour Court. with the same pension pile and terms and conditions, it's simply la la land.

Small companies such as ours simply want to continue our business in accordance with the current employment legislation that every other private business in this state is bound by, without interference by Trade Unions and big business insisting that their deals done behind closed doors, deals we had no say or part in, be foisted upon us.

This system in our industry just inflates the Black economy, and in the end leads to job losses and as the Troika called them "Blockages to Employment"

The owners of small companies such as ours do not have HR departments, or Directors of Industrial Relations, or professional Trade Unionists or Director Generals, or funds to produce an expensive fancy report to say what we want it to say. We have worker owners, who are up the ladders with their staff, and don't have the time or skill to fight what is now the 3rd application from the same parties looking for the same thing and entertained by the same tax payer funded department.

But we know all there is to know about productivity and we feel it's a waste of tax payer's money for the Labour Court to facilitate this charade yet again. The Labour Court would use their time more wisely if they brokered a deal with the people who want it, enforce it on the people who made it, and not enforce a "One size fits all" on the rest of us.

As the very same players are now proposing to re install and impose their agreement on the rest of us, we have absolutely no reason not to believe that with the help of the Labour Court the parties will operate in the way they did before, put simply as a *"A vested interest masquerading as a moral principal"*

Dolores Rogers 06/02/2019