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 **AMALGAMATED PLUMBING & HEATING CONTRACTORS OF IRELAND**

 Gas Junction House,

 Finglas,

 Dublin 11,

 D11NW22

 12 September 2022.

The Labour Court

Lansdowne House

Lansdowne Road

Ballsbridge

Dublin 4

***By Registered Post and Email:*** ***info@labourcourt.ie***

**Re: Application pursuant to Section 14 of the Industrial Relations (Amendment) Act, 2015, as amended (“the Act”) and intended examination pursuant to Section 15 of the Act, in respect of the Mechanical Engineering Building Services Contracting Sector, as defined in the Section 14 application**

 **Submission of the Association of Plumbers and Heating Contractors Ireland (APHCI) and Heating and Plumbing Association of Ireland (HAPI)**

Dear Sir/ Madam,

We are the Association of Plumbers and Heating Contractors Ireland (“APHCI”) and the Heating and Plumbing Association of Ireland (“HAPI”)(“**APHCI and HAPI**”).As part of these submissions, we raise enumerated queries to the Labour Court in respect of the within application which are necessary for us to properly engage with the application process. We respectfully request that the enumerated queries be answered by Labour Court, either at any examination hearing which might take place as part of this process or within any recommendation / report which might follow the examination process in due course, failing which we reserve our position entirely including if necessary to seek relief from the court in respect of any failure on the part of the Labour Court to properly do so which may affect our members’ rights.

We are the largest employer representative body in the plumbing and pipe fitting (mechanical engineering building services contracting) industry in the country. We understand from the representations made by the Labour Court during the High Court and Supreme Court proceedings in ***Naisiunta Leictreach Contraitheoir Eireann*v*The*Labour Court*, The Minister for Business, Enterprise & Innovation, Ireland and The Attorney General***(respectively bearing record numbers **[2020] IEHC 303** and**[2021] IESC 36**) that the sole factor used by the Labour Court in assessing and determining the substantial representativity of an organisation of employers for the purposes of Chapter 3 of the Industrial Relations (Amendment) Act, 2015, as amended, is counting the number of workers employed in the particular class, type or group in relevant economic sector by the employers represented by the organisation of employers concerned. In this regard, we represent approximately **1000 employers** which as we understand employ approximately **5000 workers** in the particular class, type or group in the economic sector defined within the current Section 14 application (we are currently undertaking a survey to ascertain the precise number of our members and their workers). Even when provisionally assessed against the alleged overall figure of 8,656 to 9,728 workers in the defined sector as relied upon by the applicants in this process (which we challenge and in respect of which we reserve our position), the amount of workers employed by our members appears to be, to borrow a phrase used by the Labour Court itself in a previous application, “*a substantial number by any measure*”. Whilst we, as a party interested and desiring to be heard in the process, are not required to deliver a Statutory Declaration regarding our representativity, please note that, if required, we are prepared to do so (and respectfully reserve our entitlement to do so in the event that any controversy may arise as to the accuracy of our representations in this regard).

Accordingly, for the purposes of substantial representativity under the Chapter 3 process, we respectfully suggest that we appear to independently meet the numerical requirements to make a Section 14 application ourselves, if we were minded to make such an application. Whilst we are not so minded, we make this point to emphasise the degree of substantial representativity which we possess in the economic sector concerned. Our voice is an extremely loud one. Where we diverge from any position put forward by the applicants herein, particularly in areas concerning (1) the issue of desirability or expediency of having separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in the defined economic sector, and/or (2) assessing the promotion of harmonious relations between workers and their employers in the economic sector, our stated position must, invariably, carry serious weight.

For the avoidance of doubt, our representative capacity is larger than that of either of the two applicants. Crucially, and as such, in the event that we might agitate that any matter pursued by the applicants herein shall result in disharmonious relations between workers and their employers in the sector, we have a sufficiently large representative capacity to render this agitation as being factually correct. In these circumstances, we respectfully suggest that every item under consideration as part of this process must, inevitably, be viewed through this prism.

As the Labour Court is aware, we have been participants in previous Chapter 3 application processes. We appeared and made submissions at the examination hearing dated 11 November 2019 in respect of a joint application by Connect Trade Union and Unite Trade Union at that time. That process did not result in an SEO. We further appeared and made submissions at the examination hearings pertaining to the same applicants’ Section 14 application dated 25 September 2020. These hearings took place in September and October 2021 and February 2022. Our criticisms of, and issues taken with, that application process ultimately resulted in the process being caused to collapse.

Connect Trade Union and Unite the Union are acutely aware of our interests in any Chapter 3 process which might affect our members’ interests. For this reason, we are disappointed and, quite frankly, concerned that neither Connect nor Unite have made any attempts to engage with us prior to initiating yet another Section 14 application which shall demonstrably affect our members’ interests.

We are further concerned at what is, yet another, haphazard-like approach taken by Connect and Unite in attempting to materially modify our members’ rights and obligations in law. We refer to the largely bald and perfunctory manner in which the application papers have been prepared. The applicants do not meet the requirements imposed by the Act. The paucity of material put before the Labour Court in support of this application is concerning. For example, in attempting to substantiate a claim that they are substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, the applicants enclose a single page e-mail from an individual whose qualifications are neither disclosed nor explained, together with three attached tables. The individual concerned, at the request of Unite, purports to provide extrapolated calculations of the amounts of plumbers and pipefitters in Ireland. At the heart of these calculations is the purported baseline figure of 9,061 plumbers in Ireland. It is upon this figure that the extrapolation calculations are premised. The applicants, however, in representing this figure as constituting 9,061 plumbers, mislead the Labour Court. This figure of 9,061 workers is, in fact, is a 2016 CSO calculation of **both** “*plumbers*” **and** “*heating and ventilating engineers*” – an entirely separate and distinct job type. The CSO categorisation bundles “*plumbers*” and “*heating and ventilating engineers*” in the same category (5314) - in the same manner that it bundles “bricklayers” and “masons” into the same category (5312). Just as a bricklayer is not the same as a stone mason, a plumber is not the same as a heating and ventilating engineer. As the proposed SEO shall only apply to pipefitters and plumbers, it appears that heating and ventilating engineers shall fall outside of the remit of the proposed SEO.

Despite this, however, these heating and ventilating engineers have nonetheless been counted in for the purposes of the Section 14 application. It is entirely unclear as to what the breakdown between “plumbers” and “heating and ventilating engineers” is in the 2016 CSO statistic. The one-page email provided by the applicants does not address this issue, nor do the three tables that accompany it. The application in its current form leaves the Labour Court entirely in the dark as to how many plumbers actually form part of the overall 9,061 figure. This is most unsatisfactory, particularly whereby both applicants rely exclusively upon this one-page email and its three attached tables as their only means of knowledge for the purpose of purporting to make Statutory Declarations regarding *inter alia* the total number ofworkers of the particular class, type or group in the economic sector in respect of which the request relates. These documents are impermissibly flawed.If these documents do not disclose the number of plumbers (as opposed to heating and ventilating engineers) how can the applicants, if relying exclusively upon these documents, have any meaningful understanding or means of knowledge of the overall number of plumbers in the country? Moreover, in the absence of such information, how can the applicants make sufficiently robust representations to the Labour Court to enable the Labour Court to exercise its functions under Section 15 of the Act? The simple answer is that they cannot.

The infirmities of the information provided to Unite are compounded even further by the fact that the writer, Mr Ciarán Nugent, expressly disclaims and prohibits third parties from disclosing, copying, distributing or taking action in respect of the contents of the email – which notably are marked as being confidential and intended for use only by the recipient and other persons authorised to use it. Without prejudice to the lack of reliability of the represented figures generally, there is nothing obvious in the application papers which demonstrates any authorisation or consent having been provided by the writer for their use in the manner agitated for by the applicants.

We have highlighted very serious, material deficiencies and errors in the figures provided by Connect and Unite for the purpose of supporting their contention that they are ‘substantially representative’ of the workers in the sector to which the request is expressed to apply.

This is not a trivial issue; it is a threshold requirement for the applicants to meet prior to the Labour Court making a recommendation under Section 16 of the Act. It is for applicants which request an examination to substantiate their claim that they are substantially representative of the employers or workers concerned, as the case may be. Neither Connect nor Unite can just *assume* that they together are substantially representative of workers in a sector and then *assume* that the Labour Court shall just accept that proposition as a given. The introduction of an SEO is a hugely significant measure which seriously infringes upon the constitutional rights of Irish citizens. If it is to be done, it must be done correctly and in accordance with the provisions of Chapter 3 of the Act. The documentation put before the court falls dismally short of even supporting, let alone establishing, a sustainable claim for substantial representation.

It appears to have now reached a point where these applicants simply expect that an SEO shall be introduced upon their request for same, without any meaningful engagement with or substantiation of the required statutory criteria. This is a far cry from the level of inquiry and assessment in the carefully reasoned and detailed determination, REP 091, made by the Labour Court itself in an earlier application to vary the earlier registered agreement made between the ECA, the AECI, and the then TEEU. Whilst we appreciate that not every application requires the degree of detail and investigative standard reached in REP 091, Chapter 3 processes which materially impact the lawful rights and entitlements of persons affected by an SEO certainly require significantly more care and substantiation than what is contained in these application papers.

**Query 1:**

1. Which, if any, steps did the Labour Court take to satisfy itself that the applicants have complied with the provisions of Section 14 of the Act?
2. When were such steps undertaken?
3. By which Division of the Labour Court were such steps undertaken?
4. Which evidence, if any, did the Division of the Labour Court rely upon in reaching a decision that the applicants have complied with the provisions of Section 14 of the Act?
5. Which issues, if any, did the Division of the Labour Court direct its/their minds to in determining that Section 14 (2) of the Act had been adequately complied with?
6. Which issues, if any, did the Division of the Labour Court direct its/their minds to in determining that Section 14 (3) of the Act had been adequately complied with?
7. Which issues, if any, did the Division of the Labour Court direct its/their minds to in determining that Section 14 (4) of the Act had been adequately complied with?

The application papers purport to provide data for the purpose of enabling the Labour Court to conduct an examination under Section 15 of the Act. The application papers, however, are entirely silent as to (1) whether it is a normal and desirable practice, or that it is expedient, to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply and/or (2) whether any recommendation is likely to 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.

For the avoidance of doubt and whilst we await sight of the applicants’ submissions, APHCI and HAPI, which represent over 1000 employers which employ over 5000 employees, emphatically and unequivocally maintain that the imposition of any mandatory terms and conditions of employment which involve a material increase in employers’ obligations for wage rates, pension contribution rates, sick pay rates or death in service rates shall promote ***disharmonious*** relations between employers and workers in the economic sector to which this request is expressed to apply, contrary to the intended objective of Chapter 3 of the Act. As we have previously set out in submissions delivered in earlier applications, the industry can be divided roughly into three parts: heavy industrial, commercial, and domestic.

By and large, wages and conditions are negotiated and agreed at a high level between major players in the industry without any input from or discussion with the smaller contractors who in fact employ far greater craftsmen that the smaller group of larger contractors.

While it is right and proper that all workers are well paid, the ability to pay must also be taken into account – and not simply at the enforcement stage. It is controlled by what the market will bear. Rurally based contractors in particular are not able to achieve the rates required to satisfy the conditions of the current SEO, never mind a further increase.

A worker living and working in, for example, a western county has cheaper living costs than in Dublin but this is also reflected in rates available to the employer. Even in major urban areas, a domestic or light commercial contractor cannot hope to charge rates anything near those enjoyed by those working on major projects. The effect of this is that the small and medium contractors will be forced out of business to be replaced to a degree by a large number of one-man operators. However, in the main, the work will be lost to the so-called black/grey economy.

Counsel for the Labour Court in *Náisiúnta Leictreach Contraitheoir Eireann v The Labour Court* [2020] IEHC 303 submitted to the High Court that Chapter 3 of the 2015 Act confers a discretion upon the Labour Court to, upon its own volition, define an economic sector to which a given recommendation made pursuant to Section 16 may apply. The High Court accepted this proposition. Specifically, Simons J. determined at paragraphs 75 to 79 of the High Court’s judgment in *Náisiúnta Leictreach Contraitheoir Eireann v The Labour Court* [2020] IEHC 303, that:

“75. In order to resolve this disagreement between the parties, this court must determine the following two related issues. First, whether the Labour Court has jurisdiction to define the limits of the economic sector itself, or, alternatively, whether it is bound by the terms of the application made to it. Secondly, in the event that the Labour Court does have jurisdiction to define the limits, did it act lawfully in doing so in the present case.

76. The jurisdictional issue can be disposed of shortly. The legislation envisages that the Labour Court will carry out its own “examination” of an economic sector with a view to deciding whether to recommend the making of a sectoral employment order. If, following such examination, the Labour Court decides to recommend the making of a sectoral employment order, then it must specify the class, type or group of workers and the economic sector in relation to which the recommendation shall apply (subsection 16(3)(a)).

77. It is apparent, therefore, that the Labour Court has discretion to define the economic sector itself. The Labour Court has an enhanced role under the new legislation, and is not confined to rubber-stamping the application made to it. It must carry out its own “examination”. As the facts of the present case illustrate, the precise parameters of the economic sector may well be one of the principal issues in controversy. Certain interested parties may contend that their activities should not be regarded as falling within the same sector of the economy as those activities in respect of which a sectoral employment order is to be recommended. It would undermine the effectiveness of the consultation process were the limits of the economic sector to be fixed by the terms of the application submitted. Such a narrow view of the Labour Court's jurisdiction would have the practical effect that interested parties would not have a meaningful opportunity to make submissions on the scope of the economic sector. The parties who had requested that the Labour Court carry out an examination would have the whip hand.

78. It follows that the Labour Court does have vires to define the economic sector and is not bound by the terms of the application. This is, of course, subject to the overriding obligation to observe fair procedures. The final definition of the economic sector should not go beyond that which might have been contemplated on the basis of the submissions and the oral hearing. Put otherwise, whereas the Labour Court is not bound by the terms of the application, nor indeed by the submissions of the interested parties, the final definition of the economic sector should not come as a surprise to the parties. Rather, if and insofar as the definition differs from that set out in the application, this is something which should have been evident from the submissions made or from the course of the oral hearing. Interested parties should have had an opportunity to make submissions on the issue. Moreover, the report and recommendation should explain the rationale for the definition of the economic sector, at least in those cases where this had been an issue in controversy in the statutory procedure.”

79. Applying these principles to the circumstances of the present case, the precise parameters of the economic sector had been a live issue in the written and oral procedure. In particular, there had been a debate on the diversity of activities carried out by electrical contractors—ranging from domestic repairs to large scale development projects—and whether a “one size fits all” approach was appropriate. This debate has to be seen in the context of an earlier, abortive application for an examination in March 2017. This application had been made by the Technical Engineering and Electrical Union (now Connect Trade Union). The definition of the “economic sector” put forward at that time had expressly excluded (i) new build one-off houses; (ii) low density new housing developments of three units or less; and (iii) the repair, replacement and modification of electrical systems and equipment in existing single private residential and domiciliary units.”

The High Court’s determination that the Labour Court does enjoy a discretion to define the parameters of a relevant economic sector under its Chapter 3 process was accepted as being correct by the Supreme Court. Specifically, McMenamin J., at paragraphs 46 and 47 of the Supreme Court’s judgment in *Naisiunta Leictreach Contraitheoir Eireann*v*The*Labour Court*, The Minister for Business, Enterprise & Innovation, Ireland and The Attorney General* [2021] IESC 36 determined that:

“46…NECI submitted in the High Court, and submit now, that, once it had embarked on an investigation, the Labour Court had no jurisdiction to amend the definition to exclude this latter sub-group. Counsel submits that s.14 of the Act provided only that a trade union of employers or workers might apply to the Labour Court to embark on an assessment of the terms and conditions of such an SEO. It is contended that such application and examination could only concern the “ workers of a particular class, type or group in the economic sector in respect of which the request was expressed to apply ”, as provided for in s.14. NECI argue that, once the application was made identifying a defined group, the die was effectively cast, and the Act simply did not permit the Labour Court to redefine or refine the class, type or group in question.

47. To this, Simons J. responded that the Labour Court must necessarily have a discretion to define the “economic sector”, as that court had been provided an enhanced role under the 2015 Act, which, by contrast to the 1946 Act, was not confined to a task of “rubber-stamping” applications (para. 77). He pointed out that the Labour Court must now carry out its own examination under s.14. He held it would undermine the effectiveness of the consultation process were the limits of an economic sector to be fixed irrevocably by the terms of an application submitted, and that such a narrow view of the Labour Court's jurisdiction would have had the practical effect that interested parties would not have a meaningful opportunity to make submissions on the scope of an economic sector. The High Court judge's reasoning was both full and comprehensive on this issue. I agree with his conclusions.”

Accordingly, it is now well-settled law that the discretion to define any economic sector to which terms and conditions may apply through the promulgation of a Sectoral Employment Order, rests squarely with the Labour Court.

With this determination in mind, we respectfully submit, as the largest representative body of employers in the country, that the a ‘one size fits all’ approach to the delineation of a defined economic sector which pegs our small rural members’ operational costs in largely domestic work to those of the huge industrial / commercial outfits in the greater Dublin area is not only unworkable for our members but seriously adversely (and potentially existentially) affects their commercial positions and futures.

Our members enjoy certain personal and proprietary rights pursuant to Article 40 of the Irish Constitution, including the rights of freedom to carry on a business and freedom to contract with others. The commencement of an SEO which would involve a material increase in employers’ obligations for wage rates, pension contribution rates, sick pay rates or death in service rates would appear to infringe those rights.

The imposition of the minimum terms and conditions of this sort would have severely deleterious effects upon some of our members, particularly our smaller members who work exclusively in rural parts of Ireland – being those furthest geographically, industrially, and economically from the larger economic entities in the industry which have become synonymous with the booming trade in the greater Dublin Area. The question to be considered is whether such infringement on our members’ rights is sufficiently proportionate to the statutory objective such as to render it constitutionally permissible.

There is a well-established presumption that procedures prescribed under legislation will be conducted in accordance with the principles of constitutional justice (*East Donegal Co-operative Livestock Mart Ltd v. Attorney General* [1970] I.R. 317 at 341). This presumption applies in the instant matter to the actions of the Labour Court in the exercise of its functions under Chapter 3 of the 2015 Act and includes an obligation on the part of the Labour Court to have regard to the doctrine of proportionality, the relevant test for which was expounded by the High Court in *Heaney v Ireland* [1994] 3 IR 593 at 607 as being as follows:

‘The objective of the impugned provision must be of sufficient importance to warrant over-riding a constitutionally protected right. It must relate to concerns pressing and substantial in a free and democratic society. The means chosen must pass a proportionality test. They must:

be rationally connected to the objective and not be arbitrary, unfair or based on irrational considerations;

impair the right as little as possible, and

be such that their effects on rights are proportional to the objective.’

In Re Article 26 and the Employment Equality Bill 1996 [1997] 2 IR 321, the Supreme Court provided an explicit endorsement of the doctrine of proportionality, in terms virtually identical to those employed by the High Court in Heaney.

We fear that the consequences of a proposed SEO which further hikes up operational costs and drives small, rural contractors further towards having to keep up with the same rates as those sought and preferred in the greater Dublin area shall, if complied with, likely put those smaller operators out of business whereby unable to earn sufficient income to meet the heightened wage thresholds. We have referenced the need and rationale for lower wage thresholds in the wider rural parts of Ireland as living expenses, including house purchase prices and domestic rental prices are significantly lower than those in the Greater Dublin Area, as are the means of income derived from commercial activity. This is all common knowledge across Ireland.

We are not against the implementation of a Sectoral Employment Order *simpliciter.* Our concerns pertain to the unnecessary and unwarranted conflation of smaller operators who carry out small-scale activity largely in the domestic sphere, on the one hand, and the larger, often multi-national entities which carry out the larger commercial and heavy industrial activity (typically in the Greater Dublin Area) which can at times involve projects worth millions of euros. As we have already indicated in the past, the industry can roughly be divided into three parts; heavy industrial, commercial and domestic. It is submitted that these are, on their face, separate economic sectors and separate economic activities.

Accordingly, with a view to preserving the interests of smaller operators in the country, APHCI and HPAI (without prejudice to its contention that the proposed SEO is unnecessary) submits that if a recommendation is to be made by the Labour Court to the Minister pursuant to Section 16 of the 2015 Act in respect of the within application made jointly by Connect Trade Union and Unite the Union, the Labour Court should use its discretion to delimit the economic sector concerned to exclude otherwise applicable activities which relate to:

1. new build one-off houses;
2. low density new housing developments of twenty units or less; and
3. the repair, replacement and modification of mechanical systems and equipment in existing single private residential and domiciliary units.

It is submitted that the exclusion of these particular activities from the economic sector concerned would provide a measured and proportional balance towards, on the one hand, achieving the objectives sought by the applicants for an examination herein, and on the other, preserving the rights of small operators who do not operate in the same heavy industrial and/or commercial sphere as the larger commercial entities in Ireland, but are predominantly confined to smaller, domestic sphere activities.

Further, not only is this exclusionary-criteria capable of being practicably applied, its inception, detail and specific wording has in fact been formulated by one of the applicants herein, Connect Trade Union (when previously entitled “Technical Engineering & Electrical Union – TEEU”) as part of a previous SEO application in 2017. That application referred specifically to “low density new housing developments of three units or less”, however, APHCI and HPAI believe that “low density new housing developments of twenty units or less” is a more suitable delineation between larger scale heavy industrial and commercial operators and operators in the small, domestic market. Although then made in the context of the electrical sector, its rationale, necessity and substance remain precisely the same now in the context of the mechanical works industry.

It is respectfully submitted that it is incumbent upon the Labour Court, when exercising its function pursuant to Chapter 3 of the 2015 Act, to have regard to the doctrine of proportionality and to properly direct its mind to the issues raised by APHCI and HPAI herein when exercising its discretionary function in determining and delimiting the economic sector concerned in regard to which any potential recommendation might be made. We request that the Labour Court would, irrespective of the outcome of its considerations of this matter, provide an adequately clear written record of the issues, if any, to which the Labour Court has directed its mind when considering same, and adequate reason(s) for any result or conclusion which the Labour Court has reached in respect of same, such as to comply with its obligations in law.

Without prejudice to the generality of the foregoing, it is submitted that the necessity for the Labour Court, if making a recommendation to the Minister, to have proper regard to this request to exercise its discretionary function to exclude the smaller-scale domestic activities identified above from the economic sector concerned is compounded whereby APHCI and HPAI fears that the purported relief provided pursuant to Section 21 of the 2015 Act to an aggrieved party to whom an SEO may apply is insufficient to counterbalance the infringement caused to its members’ Article 40 rights in circumstances in which, *inter alia*, in the first instance it requires a party to have already fallen into financial distress in order to invoke it at all (notwithstanding that such financial distress may have been caused by the SEO) and, further, at its height it confines such purported relief to a period of two years only in any given five year period. APHCI and HPAI respectfully submits that this apparent lacuna is something which the Labour Court ought to have express regard to in formulating any such decision.

**Query 2:**

1. Which overall number of “plumbers” (as opposed to heating and ventilating engineers) did the Labour Court count as existing in the economic sector in respect of which this request was expressed to apply?
2. If the Labour Court relied exclusively upon the single-page email and three attached tables in calculating the figure referred to in (a) above, how did the Labour Court extricate “plumbers”, on the one hand, from “heating and ventilating engineers” on the other - in the apparent absence of any numerical separation of the job-types in the single-page email and three attached tables?
3. Did the Labour Court exercise its role under the Section 14 process on the mistaken assumption (and, indeed, representation made to it) that the documents furnished by the applicants supported a proposition that there was a baseline figure of 9,061 plumbers (as opposed to heating and ventilating engineers) in Ireland in 2016 – yes, or no?
4. If (c) above is answered in the affirmative, does the Labour Court accept that the Section 14 process is fatally flawed as a result of such a fundamental mistake?
5. If (d) above is answered in the negative, please explain carefully and in detail how the Labour Court so maintains that the Section 14 process is not fatally flawed - having specific regard to the fact that (1) the Labour Court, in order to proceed with the process, must be satisfied that the applicants are substantially representative of the  workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and (2) the Labour Court cannot reasonably be so satisfied in the absence of having had adequately robust and reliable details of the overall number of such workers in that defined economic sector been put before it.

**Query 3:**

1. What issues, if any, has the Division of the Labour Court directed its/their minds to in assessing and determining whether (1) it is a normal and desirable practice, or that it is expedient, to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of workers of the particular class, type or group in the economic sector in respect of which this application request is expressed to apply?
2. What issues, if any, has the Division of the Labour Court directed its/their minds to in assessing and determining whether any recommendation made as part of this application process is likely to 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?
3. In the event that the Division of the Labour Court does determine that any recommendation made as part of this application process is likely to 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, such as to satisfy the statutory requirements of ss. 15(1) (c) and (d) of the Act, how does the Labour Court reconcile such a finding against our clear and unequivocal representation, made as the largest employer representative body in Ireland, that any increased rates for employers in a proposed SEO shall in fact do the very opposite by promoting disharmonious relations between employers and workers in the economic sector in respect of which the request is expressed to apply?

**Query 4:**

1. In the event that the Labour Court is prepared to make a recommendation for the introduction of an SEO but which does not delimit the economic sector concerned to exclude otherwise applicable activities which relate to:
2. new build one-off houses;
3. low density new housing developments of twenty units or less; and
4. the repair, replacement and modification of mechanical systems and equipment in existing single private residential and domiciliary units,

please explain and confirm as follows:

1. whether the Labour Court accepts that it can exercise its discretion to delimit the economic sector concerned in the manner requested by the APHCI and HAPI, yes, or no?
2. if query (4(a)(1) is answered affirmatively, please explain in detail why, and upon which, if any, basis the Labour Court has exercised its discretion against delimiting the economic sector concerned in the manner requested by the APHCI and HAPI, having specific regard to the issues raised in these submissions regarding the appropriateness and desirability of doing so particularly for small, rural contractors who operate predominantly in the domestic sphere who would suffer a disproportionate interference with their rights if required to operate on the same scale and obligations of large-scale, high-value contractors in the industrial / commercial sectors mainly in the greater Dublin area.
3. if query (4(a)(1) is answered negatively, please explain in detail how and upon which basis, if any, the Labour Court maintains such a view, having specific regard to the determinations of the High Court and Supreme Court on the issue in NECI, as set out in full above.

We reserve the right to make further submissions / observations orally at any examination hearing which may take place, particularly after having had sight of submissions of the applicants and/or any other parties interested and desiring to be heard.

Finally, in the interests of clarity we request confirmation of whether any examination hearing to be conducted as part of this Chapter 3 process is allowed to be electronically recorded (i.e. audio only).

Yours faithfully,

*Crozier Deane*

Crozier Deane

Administrator

Email: crozier@aphci.ie