Submission by Dolores Rogers to the Labour Court re Examination into T's & C's of Electrical Contracting Industry. (5th Application)

Introduction

My name is Dolores Rogers, together with my husband and his business partner we run Kenetics Electrical & Data Services Ltd, (4 electricians, and 4 apprentices) I am responsible for wages, accounts and HR in the business. I have for the last 16 years also 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 20 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 thecentre 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 and membership of the NECI and the former NECTA I feel I have extensive knowledge of how a REA/SEO works and its impacton 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 inthis now 5th 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 10,806 members.

The TEEU merged with UCATT and formed Connect, does their figure include members who are not electricians, or ESB workers who don't fall under a SEO?

I would hope the Labour Court will ask 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"

As someone with accounts experience, it has always baffled me why the Labour Court have never sought to view the accounts of parties applying for an SEO in order to satisfy their legal requirement to ensure that the party applying for an SEO is as per the legislation "substantially representative". . "

A simple division of the "sales" figure by the membership amount will give you the "active" membership of that organisation in any given year.

In respect of Connect, you then simply extrapolate the non electricians, ESB and Public Service workers and you have a definitive figure.

In my experience workers join a Trade Union when a site they are working on require it, in the main "Government" projects, otherwise they 100% do not tick the "Trade Union Box" on their new starter form.

In over 20 years of employing electricians, apprentices, and construction workers I have never ever been asked to deduct a Trade Union subscription.

As Electrical Contractors have to be signed up to Safe Electric, the numbers of contractors can be definitely established by the Labour Court with a request to Safe Electric.

How does the Labour Court propose to establish that the AECI and ECA employees' number is correct? How many are subcontracted in? Are employees currently on the books?

"Where the applicant is a trade union of workers, please enter the name andaddress 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 applyto non members or NECI employers.

However if they seek to impose a SEO on the rest of us, then this is blatantly and 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 these "wage fixing" mechanisms 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 non constitutionality status.

As recent as the High Court judgement of June 2020, taken by the NECI and Supreme Court ruling of June 2021, *it can't be claimed by either the ECA, AECI, Connect or the Labour Court, that we are not known to these parties or don't qualify as "Interested Parties" as per the legislation*

The Court again and for a 5th 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.

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 5th application.

In this tech age I do not feel that the courts requirement to *"bring the request to thenotice 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 4 submissions, would fulfil the courts obligation.

(c) 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,

Can the Labour Court, the ECA, the AECI tell me what is happening now in the industry that would make the imposition of an SEO be desirable???

(d) 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.
Can the Labour Court, Connect, the ECA and AECI point to any current/past disharmony in the industry, which would be elevated by the imposition of a SEO

CWPS (Construction Workers Pension)

The CWPS seem to have a monopoly in the market, and this was further underpinned by it being actually mentioned in the last SEO produced by the Labour Court, and to which both the High Court and the Supreme Court had much to say about.

Pension Equivalent to CWPS
The last SEO 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.

During Covid I applied for sick pay for 8 of our workers (Construction) this was difficult as "Lockdown" had just hit and getting the paperwork, and sick notes over to me presented challenges.

It wasn't till weeks later, that one of the workers informed me that he did not get paid; no one from CWPS had contacted me or the worker.

I had to chase CWPS who informed me that they had introduced a "enhanced sick pay" application process and were now not in fact going to pay out the workers sick pay.

When I contacted the WRC and informed them of a breech of the SEO I was told that there was in fact no mechanism for an employer/employee to bring a case against the CWPS a party to the SEO.

Enquires by the workers to their Trade Unions SIPTU and Connect led to nothing. It has to be stated that these two Trade Unions , have/ had Trustees on the CWPS

It seems that when you have one pension in the construction sector, they can change the rules, unlike the rest of us, who if this SEO is granted will be bound by it with only the courts to go to with our grievances.

An SEO attracts high calibre applicants into the Trade.

The first point of pay on the SEO Apprentice Electrical scale is €9.16. a full 38.7% below the minimum wage of €12.70 per hour.

I am at a loss to understand how this rate of pay attracts high calibre candidates into the industry, apart from it being in my opinion immoral to ask anyone to work for under the minimum wage.

Our company, with the exception of our first apprentice never paid REA/SEO Apprentice rates as we felt anything under the "minimum wage" was unacceptable.

Conclusion

Having reviewed the last report the Labour Court sent to the minister in support of the introduction of an SEO, and the reporting of my contribution to the hearing, including many inaccuracies, our company have absolutely no faith in either being heard or finding any justice or fairness at the Labour Court who seem determined regardless of any legislation to uphold the status quo despite any objections or adverse impacts on small contractors.

Has the Labour Court any idea about how a small/medium company is run? Does it understand that this year alone, small employers had to deal with a hike the minimum wage, the introduction of Statutory Sick Pay and next year auto enrolment?

It is crystal clear, when attending Public Hearings in the Labour Court that it's a one sided business, employers such as Kenetics and the NECI are tolerated, but what is wanted is a return to the old players and game of introducing a mechanism that works for only those who sign up for it, as opposed to those who they wish to impose it on.

For years the NECI, and their members have been treated as little more than an irritation and disdain at the Labour Court, employers who dared to question or look for accountability from the court.

In the past a hearing into the old REA was collapsed because a Labour Court member hearing the case was seen having coffee in the break with the Trade Union rep.

As those seated at the top table, once where seated at the table of the Trade Union and the Employers Groups, it hardly gives small employers faith that they will get a fair hearing in the Labour Court.

Small employers get the message loud and clear that the parties in this arena are all interlinked, and unless you are a member of IBEC, the AECI, ECA or a Trade Union you are on the outside of this process.

We have had to resort to the High Court and Supreme Court to in effect force the Labour Court to do its job as per the legislation.

It seems this court is answerable or accountable to no one, indeed no Minister I have dealt with either understands our plight, or are brave enough to question the Labour Court.

But then the Labour Court and uninformed Government Ministers have a never ending supply of funds courtesy of the Irish Tax payers.

Based on this recent application which even now is breeching the legislation, and still the court continues to examination, I am sure we will end up in the same place as we have before, in the courts,

Dolores Rogers 23/07/2024