

Submission by Dolores Rogers to the Labour Court re Examination into T's & C's of Electrical Contracting Industry. (2017 TEEU Application)

Introduction

My name is Dolores Rogers, I am the wife of an Electrical Contractor, (3 electricians, and 3 apprentices) responsible for wages, accounts and HR in the business. I also work for a contractor in the building industry (30+ plus staff) also responsible for wages and accounts and HR.

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 NECTA I feel I have extensive knowledge of how a REA works and its impact on small contractors both in the Electrical and Civil Engineering end of the business.

Therefore I would like my submission to be considered by the court.

Industrial Relations (Amendment) Act 2015 "Substantially Representative"

The Act requires that the Labour Court ensure that the applicant, in this case the TEEU be "*substantially representative*" of the sector it wishes the Labour Court to Examine"

Application for a request to examine Question (d)

The TEEU state they have 8616 members based on their figure of 11,500 (question e) that means they claim to represent over 74% of electricians?

The TEEU in their appendix list of employees who will **not** be covered by a possible SEO in the sector, do their 8616 members include those who will be exempt from any Electrical SEO, I asked the court but was referred back to the legislation and the TEEU two and a half page application.

The TEEU took over UCATT members who are not electricians; again does the 8616 include these UCATT members who are not electricians.

"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"

The TEEU response list only the AECI and the ECA, it does not refer to the NECI, or NECTA or anyone else, despite the fact that the aforementioned 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 last REA due to their non constitutionality

The Court failed to notice the TEEU's blatant omission on the courts own application form in reference to the following question.

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

I asked the court how they had ensured that the employer groups cited in the TEEU application were in fact "substantially representative" as per the 2015 legislation.

I was referred back to the legislation, and the TEEU application and then informed that the court was satisfied they had followed the procedure set out in the 2015 Amendment Act, Furthermore they were not going to enter into a "step by step" discussion with me or anyone else into how they fulfilled their legal obligation.

It should be noted that the TEEU's own company EPACE Ltd (now defunct) and CIMA (also defunct) and currently CAS (Contracts Administration Services) require a higher level of proof and evidence from subcontractors they inspect to proof compliance with an agreement the subcontractor had no act or input into.

It seems that all the Labour Court requires to trigger a tax payer funded examination is a two and a half page, declaration and a two page Appendix.

The 2015 Amendment Act puts the onus firmly on the court to carry out this legislation correctly. It is our opinion that the TEEU application should have been returned by the court as it was incomplete with regards to the courts question in respect of employers or organisation of employers in the industry.

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 their web site.

Despite the fact that both the Labour Court and the TEEU were more than aware of the NECI and others there was no direct contact made regarding this application.

It was by mere chance that the notice was happened upon.

Surely where we live in the age of technology a simple email to those who at least had submitted submission last year would fulfil the courts obligation.

The notice by the Labour did not mention who was making the application and it was only after my enquiry to them that the TEEU application was posted on the Labour Court web site.

Construction Industry SEO hearing

This only came to our attention when we were alerted to the notice of intention to examine the Electrical Sector.

We note that the TEEU is cited in the CIF application, so this is confirmation that the 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 note on their application no question is 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 claim their members employ 20,678 of the estimated 50,000/56,000 employed in the industry.

It does 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 has made a submission.

This astounds us as we see this as 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.

Today the 26/06/2017 a hearing is taking place in the Labour Court on foot of the application and submissions for SEO examination, but no notice was posted on the Labour Court web site, and only "invited" parties can attend.

This is 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 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 will we have deals done behind closed door, by minority groups who then went out and imposed their "One size fits all" on the rest of the industry.

Who knew about the last REA

The first my husband or his partner knew of or even heard the term REA was when I came home from the AECl 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, AECl or ECA web site.

How the last REA protected "Profit Margin"

When the larger 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 Principal Contractor, however the principal then goes on to "Sub" 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 AECl and ECA compliant with their own REA

No, my husband was employed by a major contractor who was a member of the ECA, but was never signed up to the CWPS, and yet the ECA, AECl 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 fund 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, AECl & ECA) funded by levies collected by CWPS, levies not required 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.

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.

EPACE Ltd, the Enforcer of the REA (Electrical)

A limited company set up by the parties to the REA, the TEEU, AECl and the ECA to ensure contractors were compliant with their agreement.

The AECl and the ECA received funds from EPACE called "Administration Expenses and in the case of AECl 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, AECl 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 the TEEU the AECL and ECA are truly "*Substantially representative*" then they can always do the deal between themselves, and leave us out

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 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.

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.

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*"