



National Electrical Contractors Ireland

The New Voice For Electrical Contractors

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The Labour Relations Commission
Tom Johnson House
Haddington Road
Dublin 4

The Chairman

Re: Talks Regarding Electrician's Proposed Strike on 6th July 2009

Date

02 July 2009

Dear Labour Relations Commission Chairman,

The considered Legal opinion obtained by National Electrical Contractors Ireland indicates that the current employer body's purporting to speak for all 5275 employers in the ENJIC are in breach of Section 6.—(1) of the 1941 Trade Union act. (See appendix 1 attached) Neither the Association of Electrical Contractors Ireland (AECI) nor the Irish branch of the UK Based Electrical Contractors Association (ECA) are holders of a valid negotiation licence. Nor is either employer bodies an "*excepted body*" under the terms of the same act. This is because the existing ENJIC is not and never has been a "*Registered JIC*" Our Legal advice also informs us that it is not possible to "Borrow or Transfer" a negotiation licence from any organization which a trade association may be affiliated to.

The act clearly states "*It shall not be lawful for any body of persons, not being an excepted body, to carry on negotiations for the fixing of wages or other conditions of employment unless such body is the holder of a negotiation licence*"

We would like to draw your attention "*Supreme Court Case ILDA Vs. CIE 2001*". The Supreme Court judgment deemed it unlawful to negotiate terms and conditions of employment and wage rates without being the lawful holders of a negotiation licence.

Therefore we at NECI are of the opinion that AECI and ECA are acting unlawfully by entering these talks, Particularly when the outcome of these talks will be legally binding for all 5275 employers in the Industry. AECI and ECA are also in breach of the 1946 Industrial Relations act in they are not and never have been "*substantially representative*" as required by Section 27.—(3) of the said act. (See appendix 2 attached)
As we previously advised the commission (02/06/2009) it would also be an illegal act to register the ENJIC under Section 61 of the Act as the employer representatives are not as required by Section 59—(a) "*substantially representative*" (See appendix 3 attached)

As the employer body's AECI and ECA are not acting in accordance with the law, NECI would now respectfully advise the commission that any outcome of the current talks can only apply between members of AECI, ECA and the members of the TEEU.

We would also take this opportunity to state that as the recommendation to afford "*representational rights to any permanent body*", by Chairman Duffy in his determination No. REP091 in February 2009 (See appendix 4 attached) has been totally ignored by the current parties to the ENJIC, we will be instructing our members not to apply the terms of any outcome from these talks.

Denis Judge

Appendix 1

Extract from the 1941 TRADE UNION ACT

6.--(1) It shall not be lawful for any body of persons, not being an excepted body, to carry on negotiations for the fixing of wages or other conditions of employment unless such body is the holder of a negotiation licence.

Appendix 2

Extract from the 1946 INDUSTRIAL RELATIONS ACT

27.--(3) Where an application is duly made to the Court to register in the register an employment agreement, the Court shall, subject to the provisions of this section, register the agreement in the register if it is satisfied—

(c) that the parties to the agreement are substantially representative of such workers and employers,

Appendix 3

Extract from the 1946 INDUSTRIAL RELATIONS ACT

61.—(1) *Where an association claiming to be a **qualified joint industrial** council applies to the Court to be registered in the register, the Court shall, if satisfied that the claim is well-founded, register the association in the register.*

Section 59 of the 1946 act defines “*qualified joint industrial council*” and clearly states,

59.—*In this Part—*

the expression “qualified joint industrial council” means an association of persons which complies with the following conditions—

(a) *that it is substantially representative of workers of a particular class, type or group and their employers,*

Appendix 4

Extract from 2009 LABOUR COURT DETERMINATION REP091

‘The current parties to the Council should also consider affording representational rights to any permanent body, which is representative of employer interest in the sector. Should any issue arise as to the extent to which any body is representative, that issue should be referred to the Court for final adjudication.
