Labour Court Report to the Minister for Business, Enterprise and Innovation pursuant to section 16 of the Industrial Relations (Amendment) Act 2015 ("the 2015 Act") for the making of a Sectoral Employment Order for the Electrical Contracting Sector.

Background

The matter before the Court arises from a request by Connect Trade Union for the Court to examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme of the workers of a specified class type or group in the Electrical Contracting Sector.

Section 14 of the 2015 Act provides as follows:

> *(1) Subject to subsection (3)—*
>
> *(a) a trade union of workers,*
>
> *(b) a trade union or an organisation of employers, or*
>
> *(c) a trade union of workers jointly with a trade union or an organisation of employers,*
>
> *may request the Court to examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of the workers of a particular class, type or group in the economic sector in respect of which the request is expressed to apply.*
>
> *(2) A request under this section shall include confirmation, in such form and accompanied by such documentation as the Court may specify that—*
>
> *(a) where the request is made by a trade union of workers or jointly with the trade union of workers, the trade union of workers is 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*
>
> *(b) where the request is made by a trade union or an organisation of employers or jointly with a trade union or an organisation of employers, the trade union or organisation concerned is substantially representative of the employers of the workers specified in paragraph (a).*
>
> *(3) Where the Minister has made a sectoral employment order in relation to a class, type or group of workers in a particular economic sector, the Court shall not consider a request under subsection (1) in relation to the same class, type or group of workers in that sector, until at least 12 months after the date of the order, unless the Court is satisfied that exceptional and compelling circumstances exist which justify consideration of an earlier request.*
>
> *(4) A request under subsection (1) shall be in a form prescribed by the Court.*

The Court confirms that the Section 14 request and all accompanying documentation was published on the website of the Court www.labourcourt.ie on 1st June 2021 and that all submissions in connection with a hearing convened in accordance with Section 15 (4) of the Act were similarly published on the 22nd July 2021 which was in advance of the hearing convened on the 23rd and 24th September 2021.

Receipt of a section 14 request

On the 9th March 2021, the Court received a request from Connect, a trade union of workers to examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of electricians and apprentices in the electrical contracting sector.

The request was accompanied by a Statutory Declaration from Mr P Kavanagh the General Secretary of Connect trade union, a report from the Nevin Economic Research Institute, and two appendices one contained a definition of the Electrical Contracting Sector, and the other appendix defined the class type or group of Workers to which the request related. The sector defined in the request was as follows:

> *The installation, repair, demolition(de-install), Fabrication, & Prefabrication, commissioning or maintenance of electrical and electronic equipment including the marking off and preparing for the wiring whether temporary or permanent) of all electrical and/or electronic appliances and apparatus, fitting and erecting all controllers, switches, junction section distribution and other fuse boards and all electrical communications, bells, telephone, radio, telegraph, x-ray, computer and data cabling, instrumentation, fibre optics and kindred installations; fitting and fixing of metallic and other conduits, perforated cable tray and casing for protection of cables, cutting away of walls, floors and ceilings etc., for same; erection care and maintenance of all electrical plant, including generators, motors, oil burners, cranes, lifts, fans, refrigerators and hoists; adjustments to all control, rheostats, coils and all electrical contracts and connections; wiring of chassis for all vehicles; erection of batteries and switchboards; erection of crossarms, insulators overhead cables (LT and HT); fitting of stay wires, brackets, lightning arrestors, etc and underground mains having regard to any advances in technology and equipment used within the industry*.
>
> *The Sectoral Employment order will not apply to employees in state and semi-state companies who are engaged in similar activities and are covered by other agreements. Neither will it apply to electricians, and apprentices employed directly by manufacturing companies for the maintenance of those companies' plant.*

The class type or group of Workers to which the request related were defined as:

> *Electricians: The Electricians must have successfully completed the statutory apprenticeship and therefore hold a National Craft Certificate (or equivalent).*
>
> *Apprentice Electrician: The Apprentice must be registered with SOLAS within two weeks of commencing employment as an apprentice and must complete 7 phases of training (on the job and academic studies combined) over a minimum period of 4 years in training. Upon successful completion of the apprenticeship training the individual will receive the National Craft Certificate or equivalent*.

<u>The procedure followed by the Labour Court</u>

On 24th May 2021 the Court met to consider the documentation submitted by the applicant Trade Union.

Section 14(2)(a) of the Act

The Trade Union, in the documentation submitted in pursuance of the request made under Section 14(1) of the Act, provided the detail of the numbers in their membership of the relevant class, type or group of workers employed in the Electrical Contracting Sector. The matter before the Court in Section 14(2)(a) of the Act is to determine, for the purposes of deciding whether the request meets the statutory requirements of the Section, whether the Trade Union has provided confirmation in such form and accompanied by such documentation as the Court has specified, that the Trade Union is substantially representative of the workers to whom the request relates.

Section 14(2)(a) of the Act states as follows:

> *(2) A request under this section shall include confirmation, in such form and accompanied by such documentation as the Court may specify that—*
>
> > *(a) where the request is made by a trade union of workers or jointly with the trade union of workers, the trade union of workers is 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*

The Court, at its meeting of 24th May 2021, determined that the request of the Trade Union was accompanied by confirmation in the form the Court had specified in its Rules drawn up in accordance with Section 20 of the Industrial Relations Act, 1946, as regards the number of workers of the class, type or group to which the request related who were members of the Connect trade union. Those Rules are entitled **Labour Court (Sectoral Employment Orders) Rules 2016** (the Rules of the Court) and are published on the Court's website *www.labourcourt.ie*.

The Rules of the Court at Rule 3 specify that an applicant that is a Trade Union must furnish the Court with a statutory declaration within the meaning of the Statutory Declarations Act, 1938 made by a person authorised on its behalf by the Trade Union which details, inter alia, (a) the number of workers of the class, type or group to which the request relates who are members of the trade union of workers on whose behalf the request is made, and (b) the number of workers of the class type or group to which the request relates who are normally employed in the sector to which the request relates.

The statutory declaration accompanying the request of the Connect Trade Union confirmed that 10,349 workers of the class, type or group to which the request relates were in membership of Connect Trade Union. It also confirmed that the number of workers of the class, type or group to which the request relates who are normally employed in the Electrical Contracting Sector was circa 16,650.

The Court decided, having regard to the requirements of Section 14 of the Act and the Rules of the Court, that the Trade Union had provided, in the form specified by the Court, confirmation that the Trade Union is substantially representative of the workers to which the request was expressed to apply.

The Court's decision in this matter arises in the context of Section 14 of the Act and the obligation set out therein, that, in effect, the requirements of the Rules of the Court referred to above have been complied with. The Court will be required separately under Section 15 of the Act to address the question of substantial representativity as a condition precedent to the Court undertaking an examination in accordance with that Section of the Act.

Section 14(3) of the Act

The Act at Section 14(3) provides as follows:

> *(3) Where the Minister has made a sectoral employment order in relation to a class, type or group of workers in a particular economic sector, the Court shall not consider a request under subsection (1) in relation to the same class, type or group of workers in that sector, until at least 12 months after the date of the order, unless the Court is satisfied that exceptional and compelling circumstances exist which justify consideration of an earlier request.*

The last SEO, (S.I No. 251/2019) made in relation to this particular class of workers in this particular sector was made in 2019. This statutory instrument was struck down by the High Court on the 23rd

June 2020 and subsequently that decision of the High Court was upheld by the Supreme Court in **Naisiúnta Léictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaoichta - and - The Labour Court, The Minister for Business, Enterprise and Innovation, Ireland and the Attorney General [2021] IESC 36.** On that basis, the Court decided at its meeting on 24th May that it was satisfied that at least 12 months had elapsed between the date of making of the last SEO and the date of receipt of this request.

Section 14(4) of the Act

Section 14(4) of the Act provides as follows

> *(4) A request under subsection (1) shall be in a form prescribed by the Court.*

The Court, at its meeting of 24th May 2021, determined that the request of Connect Trade Union was in the form the Court had prescribed in its Rules drawn up in accordance with Section 20 of the Industrial Relations Act, 1946. Those Rules are entitled **Labour Court (Sectoral Employment Orders) Rules 2016** (the Rules of the Court) and are published on the Court's website *www.labourcourt.ie*.

Consideration of the documentation prior to the conduct of any examination

The matter before the Court concerns a request by Connect Trade Union under Section 14 of the Act.

The Act at Section 15(1)(a)(i) provides as follows:

> *(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—*
>
> > *(a) following consideration of any documentation submitted under subsection (2) of section 14 —*
> >
> > > *(i) the trade union of workers is 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 in satisfying itself in that regard, the Court shall take into consideration the number of workers in that class, type or group represented by the trade union of workers, and*

The Section requires the Court, in satisfying itself as to whether the Trade Unions are substantially representative of the workers of the particular class, type or group in the economic sector to which the request is expressed to apply, to take into consideration the numbers of such workers represented by the Trade Union concerned. The Act requires the Court to so satisfy itself following consideration of any documentation submitted under subsection (2) of section 14.

McMenamin J. in the Supreme Court decision **Naisiúnta Léictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaoichta - and - The Labour Court, The Minister for Business, Enterprise and Innovation, Ireland and the Attorney General [2020] IESC 36** states as follows:

> *181. Given the lesser significance of the concept under the Industrial Relations (Amendment) Act 2015, the fact that the concept is concerned solely with the numbers of workers represented is not unconstitutional. It is a legitimate legislative choice to say that an entitlement to make an application should be restricted to organisations which represent, directly or indirectly, a substantial number of workers in the economic sector concerned.*

In that decision the learned Judge also considered the nature of the consideration to be given by the Court under Section 15(1)(a)(i) of the Act when he found

"In truth, it entails no more than a threshold which must be met in order to make an application to the Labour Court. Once this threshold is met, the applicant enjoys no special status in the subsequent examination to be undertaken by the Labour Court. The applicant is but one of a number of interested parties who are all entitled to be heard in the context of the Labour Court's examination of the relevant economic sector. This is to be contrasted with the status which a "substantially representative" trade union or employers' organisation had enjoyed under Part III of the Industrial Relations Act 1946. Under that legislation, such bodies were, in effect, the authors of the delegated legislation."

This Court's decision under Section 15 (1)(a)(i) of the Act is, therefore, a decision on a threshold matter which may be further addressed in the written and oral submissions of parties interested and desiring to be heard at a hearing of the Court convened in accordance with the Act at Section 15(4) and, in those circumstances, would fall to be further considered by the Court in consideration of any such submissions.

The Court decided at its meeting on 24th May 2021 that, based on a consideration of the documentation submitted by the requesting Trade Union, (a) the number of workers of the class, type or group in membership of the Trade Union was 10,349, (b) that this number was substantial in the sense that this word is normally understood, and (c) that, because the workers are in membership of the Trade Union, that Trade Union is representative of those workers.

The Court decided that any consideration as to whether these factual parameters allow a conclusion that the Trade Union was substantially representative of the workers of the class, type or group to whom the request relates should, reasonably, have regard to the overall presence of such workers in the sector concerned. The Court did not however consider that the statute requires that any specific or general numerical or percentage relationship between numbers in membership of the Union and numbers in employment in the Sector overall must exist in order to allow a conclusion that the test of substantial representativity is reached. In the view of the Court, its consideration of the matter of numbers employed in the sector overall is contextual and in the manner of ensuring that any conclusion as regards substantial representativity takes reasonable account of the relevant context within the sector of the level of representation by the requesting Trade Unions of workers to whom the request relates.

The Court noted that the requesting Trade Union had confirmed in the documentation submitted that a total of circa 16,650 such workers were normally employed in the sector. On this basis, the number of such workers in membership of the Trade Unions as a percentage of all such workers normally employed in the Sector is between 56.9% and 68.5% of the workers in the proposed sector.

The Court concluded, based on the number of workers of the class, type or group represented by Connect Trade Union and having regard to the overall number of such workers estimated to be employed in the sector, that it is reasonable to conclude that Connect Trade Union are substantially representative of such workers.

The Court therefore was satisfied that the request made by Connect trade union meets the requirements of the Act at Section 15(1)(a)(i).

As the requestor was a Trade Union of workers only, the Court was of the view that **section 15(a)(ii)** was not applicable to the immediate request and as such did not need to be considered.

Section 15(1)(b)

The Act at Section 15(1)(b) provides as follows:

(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—

(b) the request is expressed to apply to all 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,

The request of Connect Trade Union made under Section 14 of the Act stated that the request related to "*the Electrical Contracting Sector contained in appendix 1 "* and to *"persons employed in the sector as Electricians or Apprentice Electricians" a*nd these definitions are as set out earlier in this report.

The Court, at its meeting of 24th May 2021, decided that the request therefore was expressed to apply to all 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,

Section 15(1)(c)

The Act at Section 15(1)(c) provides as follows:

(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—

(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, and

The application set out that remuneration, sick pay and pension entitlements are currently determined by a National Collective Agreement for the sector which is negotiated by Connect Trade Union and the following employer bodies AECI and ECA. The negotiations are carried out under the auspices of the Electrical Industry National Joint Industrial Council (EINJIC) at the Workplace Relations Commission.

The Court, on the basis of the information in the application, concluded that it is normal and desirable practice to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of the class, type or group to which the request of Connect Trade Unions relates.

Section 15(1)(d) of the Act

The Act at Section 15(1)(d) provides as follows:

(1) Where the Court receives a request under section 14 it shall not undertake an examination in accordance with this section unless it is satisfied that—

(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.

The Court notes that a Recommendation of the Court will result in an SEO which will include procedures that shall apply in relation to the resolution of a dispute concerning the terms of a sectoral employment order. The Court concluded that the presence of procedures which shall apply in relation to the resolution of disputes between employers and workers to whom such a recommendation would relate will promote harmonious relations between those parties.

In an environment where such procedures did not apply, it is reasonable, in the Court's view, to expect less orderly dispute resolution practices and consequently less harmonious relations between parties.

Furthermore, the documentation submitted established that the requester represented in the region of between 56.9% to 68.5% of the workers to which the request was expressed to apply and the Court was satisfied that in those circumstances that any recommendation that encompassed that level of support in the sector was likely to promote harmonious relations between workers and employers of that particular class type or group in the economic sector to which the request is expressed to apply in accordance with section 15(1)(d) of the 2015 Act.

For all of those reasons, the Court, at its meeting on 24th May 2021, was satisfied that 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.

Section 15(2) and (3) of the Act

Having regard therefore to its consideration of the Act at Section 15(1)(a) to (d), the Court concluded that the requirements of that Section which must be satisfied before the Court can publish a notice of its intention to conduct an examination under the Section were satisfied.

Having so concluded, the Court, in accordance with Section 15(2) of the Act, placed a notice of its intention to undertake an examination under Section 15. That notice was published on the 2nd June 2021 in the following newspapers/publications: Irish Times, Irish Independent, Irish Examiner, Seachtain and Iris Oifigiúil; and on the Court's website www.labourcourt.ie The Court was satisfied that this manner of publication was best calculated to bring the request to the notice of all interested persons concerned. That notice, in accordance with Section 15(3) of the Act, invited representations to be made to the Court from any interested parties by 5pm on 29th June 2021 which was not later than 28 days after the date of notice.

Section 15(4) of the Act

Written representations were received within the specified timeframe from the following organisations by the closing date and time specified*:*

- *National Electrical Contractors Limited[NECI]*
- *Electrical Contractors' Association [ECA]*
- *Construction Workers' Pension Scheme [CWPS]*
- *Dolores Rogers*
- *Association of Electrical Contractors (Ireland) [AECI]*
- *Mount Street Group*
- *Connect Trade Union*

NECI on their headed paper describe themselves as the largest Trade Association for Electrical Contractors. No further information in relation to the nature of the organisation or its membership was contained in their submission.

The ECA in its submission set out that it consists of 40 members who range in size from small, medium to large contractors who employ substantial numbers of electricians and apprentices. It was their

submission that ECA members carry out approximately 80% of all electrical projects in both the public and private sector.

The CWPS described itself in its submission as trustees of the Construction Worker's pension and sick pay scheme. It submitted the scheme was an industry wide occupational scheme with active members of 44,114 and 2,819 active employers.

Ms Dolore Rogers in her submission stated that with her husband and his business partner they ran Kenetics Electrical & Data Services Ltd consisting of 4 electricians and 4 apprentices.

AECI in their submission stated that they represented approximately 200 Electrical Contractors who employ approximately 2,300 Electricians and Apprentices.

Mount Street Group in their submission describe their services as an alternative scheme designed to provide additional choices for pension, life cover and health benefits.

Connect said in its submission that it is the largest Craft Union and is recognised both nationally and internationally as Ireland's union for electrical workers.

The written submissions of all seven parties were published by the Court on its website www.labourcourt.ie on 2nd July 2021.

The Court, at a meeting on 16th August 2021, decided that the seven parties who had made written representations within the time allowed were the only parties appearing to the Court to be interested and desiring to be heard in relation to the request. The Court on that date also decided, in accordance with Section 15(4) of the Act, to hear these parties at a hearing in public.

The Hearing

The Court, on 23rd August 2021, published on its website and social media platforms a notice of the time and date of the hearing which was 23rd and 24th September 2021 at 11.30am. That notice advised the public that the hearing would be held in a virtual Court room and advised of the means to secure the appropriate details in order to be able to attend the hearing.

The hearing took place over the course of two days on the 23rd and 24th September 2021 (Mount Street Group did not attend on the second day). It was a hearing in a virtual Court room and open to members of the public to attend.

At the outset the Chairman advised the parties that it had reached conclusions as regards the threshold issues set out at Sections 14 and 15(1)(a) to (d) of the Act. In relation to Section 15 it decided as follows:

(a) that the applicant Trade Union was substantially representative of the workers to whom the request relates, (b) that it was expressed to apply to all workers of the class, type or group to which the request was expressed to relate, (c) that it is normal and desirable practice to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of such workers and (d) that any Recommendation of the Court is likely to promote harmonious relations between these workers and their employers in the sector to which the request relates.

The Chairman informed the parties that the Court was aware that the issue of substantial representativity remained a live issue at the hearing. The Chairman proceeded to invite all interested parties to address the Court initially on this issue and thereafter the Court would deal with the other issues raised in the submissions and the legislative requirements. The written submissions of all

parties are appended to this report and should be read as part of the report. The parties read their submission with the exception of the Mount Street Group who by agreement wanted their submission to be taken as read.

Issues

This threshold or preliminary finding by the Labour Court at the section 15(1) stage does not of course prevent anyone from challenging the representivity of Connect at the examination stage. The Court noted that two of the seven submissions disputed the fact that Connect were substantially representative and went on to hear the parties on that issue in the first instance.

(1) Substantially representative

Summary of arguments put forward by NECI as to why Connect is not substantially representative of workers in the sector

NECI submitted that the pivotal issue to be determined by the Court was whether Connect Trade Union was substantially representative of workers/or employers in the economic sector to which the request relates. NECI also sought clarification from the Court as to what test it applied when assessing and determining the issue of whether or not Connect was substantially representative of the workers when determining the matter on the documentation submitted in accordance with section 15(1) of the 2015 Act. NECI set out the main reasons as to why it felt Connect was not substantially representative of the workers in the sector to which the application relates. It was their submission that not all 10,349 workers that Connect purports to represent are comprehended by the SEO. In support of this position NECI referenced previous applications made by Connect to the Court and the fact that the figures in the statutory declarations provided on each occasion, varied over the different years.

NECI further submitted that given that Connect recognised within its 2019 EYDKM report (copy of report not provided to the Court) some 1,700 electrical sector workers employed by the state, semi-state companies and in the manufacturing sector, the Labour Court must explain whether Connect Trade Union has counted such electrical workers within the 10,349 figure that it is currently seeking to rely on. If they are counted in that number, then this would reduce the true figure of represented workers in the electrical contracting sector to 8,649. This would constitute representation of a mere 36% of workers in the economic sector to which the application relates.

NECI submitted that the data supplied by Connect in relation to this application should not be relied on to establish the number of workers in the sector. They submitted that the more reliable data, was data contained in the Register of Electrical Contractors of Ireland (RECI). According to this register there are 4,200 electrical contractors with approximately 24,000 workers. The representative for NECI in his submission to the Court read a letter NECI had received from RECI confirming these numbers. NECI further submitted that applying the membership numbers submitted by Connect to the RECI numbers, this equates to a representation of only 43.1% of that sector. This is considerably less than half of the electricians and apprentices who would be affected, significantly, by an SEO in the sector. NECI submitted that both the figure of 43.1% and the figure of 36%, result in a minority attempting to bind the majority of the economic sector with the terms and conditions the minority seeks. In response to a question from the Court NECI stated that if Connect represented more than 50% of workers in the sector then they would accept that they were substantially representative.

NECI submitted that Connects' statutory declaration is incorrect, and that the onus is on Connect to show that it is correct. The figure of 24,000 in the sector as referenced by RECI is in NECI's view a

minimum number as NECI are of the belief that many contractors who register with Safe Electric under-represent the number of employees they have in order to pay a lower membership fee. It was NECI's submission that Connect is not representative of workers who are employed by small contractors. Connect represent workers in medium and large contractors and are trying to impose their terms on smaller contractors. It is NECI's position that a small contractor is someone with ten or less workers. NECI's final point on this particular issue was that the fact that Connect did not have someone from the Nevin institute present at the hearing to talk through their report undermines the validity of the report.

Summary of arguments put forward by Ms Dolores Rogers as to why Connect is not substantially representative

Ms Rogers submitted that the Labour Court could not have determined that Connect Trade Union was substantially representative of the sector on Connect's Statutory Declaration alone and that at a minimum it should have asked to see Connect's membership figures and its accounts to properly interrogate the figures supplied by Connect.

Ms Rogers advised following a question from the Court, that she was not in a position to indicate where the Act requires the Court to request the membership and accounts of the requester as she did not expect to be asked questions about the relevant legislation.

Ms Rogers submitted that the Labour Court has a duty to engage in proper due diligence and that it is not up to her to prove that the figures supplied by Connect are incorrect. The burden rests with the Court to show that they are correct. It is Ms Rogers submission that the Nevin report is not an independent report as the Nevin Institute is supported by Trade Unions and therefore the Court should not rely on same. Ms Roger's submitted that the application was an incomplete application in that it did not reference NECI even though everyone knows NECI is an interested employer body. Ms Rogers submitted that this showed bias on the part of the Court, Connect and the larger employer bodies.

Summary of arguments put forward by other interested parties as to why Connect is/ is not substantially representative

Mount Street Group indicated that they had no submission to make on the issue of substantial representativity.

AECI indicated that it had no submission to make on the issue of substantial representativity.

CWPS indicated that it had no submission to make on the issue of substantial representativity.

ECA submitted that it accepts that Connect Trade Union is substantially representative of workers in the sector and accept the figures in the Nevin report furnished by Connect. ECA noted that the figures in the Nevin report are based on CSO figures and that CSO figures were the most reliable figures for the purposes of establishing the number of workers in the sector. ECA did not accept that RECI figures were the more reliable figures because they included figures for self-employed electricians which are not encompassed by the sector. No breakdown of the RECI figures that NECI were seeking to rely on had been provided. In relation to NECI's contention that, at best, Connect represented 43% of workers, even if that was the case, it is ECA's submission that it was still a high percentage of workers and there was nothing in the legislation to say Connect must have a majority of workers in the sector in membership in order to be said to be substantially representative. ECA know from its own membership that a large number of workers employed by their members are members of Connect. Connect have represented electricians in the sector for decades. They represented electricians in

relation to the old REA and continue to do so in relation to the NJIC. ECA submitted that it was of the view that there were approximately 17,000 electricians in the sector.

Connect submitted that their figures were based on the Nevin report and their own Statutory Declaration which is the only statutory declaration on numbers before the Court. The figures contained in both those documents only relate to Connect's members in the sector intended to be covered by the SEO. The Connect submission clearly states that the SEO is not intended to apply to electricians employed by the State, semi-State bodies or those employed in manufacturing. Nor does it include self- employed electricians.

Connect accepted that the Commission for Regulation of Utilities (CRU) issued the license to the Register of Electrical Contractors of Ireland (RECI) to operate as a Safety Supervisory Body and that Safe Electric is a statutory regulatory scheme for electrical contractors and is operated by the Register of Electrical Contractors of Ireland (RECI) on behalf of the Commission. All contractors are required to register with Safe Electric. However, it is their submission that no breakdown of the figures cited by NECI or supporting documentation in respect of these numbers has been supplied to the Court or made available to the applicant or the other parties present at the hearing. It is Connects submission that some contractors have numerous company names, and all of these can be registered with RECI, so there can be an element of double counting. In addition, for electrical contractors to register with RECI there is no need to show proof of qualification. Some of those registered might not necessarily be qualified electricians. Connect submitted that the figures are not an accurate representation of all electrical contractors and their employees. In preparation for this hearing Connect looked at Safe Electric's website and it says it has 3,644 electrical contractors registered with it. This does not tally with the figures given by NECI. The register also covers electricians from other sectors not covered by the SEO. It is clear from the Safe Electric website that its numbers include many individuals operating as sole traders and that of the figure of 3,644 registered contractors, 50 percent are individuals and therefore not covered by this application. The information available also indicates that 103 of the electrical contractors registered are based outside of Ireland. Connect submitted that when registering, electrical contractors are not asked how many employees they have. The RECI figures are not credible for the purpose of this exercise and are not acceptable as an accurate representation of the number of workers in the sector covered by this application. The figures in the Nevin report give an estimate of the number of workers in the sector to account for any anomalies. No one knows for certain the precise figure at any given point in time as it varies from day to day, but the Nevin report contains the most accurate information on the figures relying as it does on CSO information. Connect submitted that it was clear from their submission and the Nevin report that their figure of 10,349 does not include electricians employed by public bodies, in the manufacturing sector or self-employed electricians with no employees. It is Connects submission that based on NECI's submission alone it was accepted that they represented 43.1% of workers in the sector which by any measure would have to be considered to be substantially representative.

Court's findings in respect of substantial representativity and reasons for those findings

The Court notes that, at its lowest, NECI accepts that Connect represent 36% of workers in the sector. This is based on the assumption that Connect have included in its membership figures all of the 1,700 workers not encompassed by the SEO and an overall figure of 24,000 of workers in the sector.

The Connect figures are set out in its Statutory Declaration at para (d) which is headed:

Numbers of workers of the class, type or group to which the request relates who are members of the trade union of workers on whose behalf the request is made.

The information sought is specific to the sector and Connect have confirmed that the figures given relate to this and that the sector is not intended to encompass employees in state and semi-state companies who are engaged in similar activities and are covered by other agreements. Neither will it apply to electricians and apprentices employed directly by manufacturing companies for the maintenance of those companies' plant. Connect have confirmed at the hearing that the figure of 10,349 excludes workers outside the sector as defined. The Court does not accept that there was a wholesale incorporation of the figure of 1,700 by Connect and no details has been put to the Court to show that is the case.

In addition, the percentage figure of 36% is also predicated on the fact that the sector encompasses 24,000 workers on the basis of the RECI figures. The RECI figures provide details of all electricians registered with it from all sectors and regardless of their qualification and/or status of employed or self-employed. No details were provided to the Court in respect of the breakdown of the RECI figures and whether or not they contained contractors from outside the sector or self- employed electricians without employees as submitted by Connect and the ECA.

The Nevin Institute report was commissioned by Connect for the purposes of ascertaining the number of workers in the sector and having conducted its analysis the authors concluded that there were between 15,000 to 18,200 workers in the sector. These figures specifically excluded electricians employed by public bodies, electricians employed in the manufacturing sector and self-employed electricians with no employees. The Nevin report figures were sourced from the CSO Labour Force Survey which breaks down figures by occupational groups and the CSO Structural Business Statistics which describes enterprises according to economic sector.

The Court does not accept the argument of Ms Rogers that the Nevin Report is not independent on the basis that the institute is supported by the trade unions affiliated to the Irish Congress of Trade Unions of which Connect is a member. Even if that is the case, it does not follow that the integrity of the research is necessarily compromised by virtue of any such relationship.

Apart from section 15(1)(a)(i) of the Act which states that *'the Court shall take into consideration the number of workers in that class, type or group represented by the trade union of workers'*, the Court recognises that no guidance is given in the Act as to the meaning of the term 'substantially representative'. NECI in, its submission, makes reference to the fact that based on their calculations of Connect's membership, that Connect trade union do not represent a majority of workers in the sector. It was their submission that it would accept that a majority number would constitute substantial representativity. There is no reference to the word majority in the relevant sections of the legislation. It is the Court's belief that the if the Oireachtas had intended the word's '*substantially representative*' to mean a majority, the Act would have stated that and therefore '*substantially representative'* must mean something other than a majority.

Outside the 36% figure which is addressed above, the submissions before the Court in this case show that Connect represent between 43.1% (NECI's second figure) and 56.9% to 68.5% (Connect figures). The 43.1% figure is based on the number of contractors in the sector provided by RECI and the Connect member figures as contained in the application. No details were provided to the Court in respect of the breakdown of the RECI figures and whether or not they contained contractors from outside the sector or self- employed electricians without staff as submitted by Connect and the ECA and who would not fall within the remit of the SEO.

The Connect figures are based on a statutory declaration from the General Secretary of the Trade Union and a report carried out by the Nevin Economic Research Institute. The Court was provided with a copy of the report which contained the parameters of their research, the sources relied on and the basis for their conclusion that Connect represents between 56.9% and 68.5% of workers covered by this application for an SEO. The Court is satisfied that the Nevin Report provides a reliable indicator of Connect's membership in the sector and based on those figures that Connect is substantially representative of workers in the sector. It is supported in this view by ECA's assertion that it is of the view that there are approximately 17,000 workers in the sector. Even if NECI was correct that, at most, Connect was representative of 43.1% of the workers in the sector this figure, in and of itself, is not insubstantial in terms of numbers. The Court is satisfied having considered all the submissions made that Connect, as a trade union of workers, is 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 Court does not accept that the application was incomplete for the purposes of section 14 by the failure of Connect to reference NECI as an employer body and concludes that NECI suffered no detriment by this and has had the same opportunity as all other parties to participate in the hearing.

(2) Economic sector

Connect drew the Court's attention to an error whereby the word 'alteration' was omitted from the definition submitted with their application (page 1 above) but is contained in the definition contained within their submission. Connect submitted that the word 'alteration' should be contained in the definition of economic sector. Connect stated that in the interest of completeness and to avoid any confusion that it had set out what the definition of the sector is but also what it is not, namely that it does not apply to "*employees in state and semi-state companies who are engaged in similar activities and are covered by other agreements. Neither will it apply to electricians and apprentices employed directly by manufacturing companies for the maintenance of their companies' plants".* The inclusion of what it was not, was to clarify a misunderstanding that arose in previous applications. The Connect application also set out that the class/ type or group of workers to be covered by the agreement were Electricians who hold a National Craft Certificate or equivalent and Apprentice Electricians who were employed by Electrical Contractors.

Summary of NECI's submission on the scope of the economic sector

It is NECI's submission that the definition submitted by Connect is all inclusive but non-specific in a wide ranging and very diverse industry. NECI submitted that there are existing demarcations in the industry that excludes small and medium contractors from the tendering process and there should be an exclusion within the SEO for small contractors. It is their submission that the electrical contracting business is not a 'one size fits all'. NECI submitted that the ECA and the AECI have 80% of the electrical contracting business in the country and that they are not representative of the smaller electrical contractors who do the remaining 20% of the electrical work which includes domestic work. It is NECI's submission that they believe that the recent decision of the Supreme Court supports their position that the Labour Court could exclude small contractors. They are seeking to have smaller contractors excluded from the definition of the sector and any related SEO. It is their submission that the Connect definition of the sector is so wide that, by default, anyone that touches a cable is covered. In the same way that Connect have excluded state and semi-state employees they should also exclude small contractors. NECI submitted that in a previous application Connect had proposed to exclude from the definition of the sector new build one-off housing, low density housing developments of 20 units or less and the repair and replacement of electrical equipment in single residential and domestic units

and while they did not proceed with that application, NECI does not see why it could not do something similar again to exclude small contractors. This could be done by excluding from the sector

(a) New build one off houses

(b) Low density housing developments of twenty units or less

(c) The repair, replacement and modification of electrical equipment in existing single private residential and domiciliary units.

The definition of the sector put forward by Connect is a blunderbuss definition and should not cover small contractors. NECI submitted that if the Court was of a mind to recommend an SEO to the Minister, small contractors should be excluded from the definition of the economic sector by including the exclusions as set out above.

Summary of submission by Ms Rogers on the scope of the economic sector

Ms Rogers submitted that the definition was a catch all definition and that one size does not fit all in the sector. Ms Rogers submitted that the medical profession comprises nurses, doctors and others and it is not realistic to impose the same terms and conditions on all of those distinct categories. The same argument applies in relation to small contractors. Ms. Rogers defined small contractors as contractors with 15 employees or fewer. It was Ms Rogers submission that small contractors are mainly located within the domestic/residential part of the sector. They do not work on big construction projects and should be excluded from the SEO.

Summary of ECA's submission on the scope of the economic sector

The ECA submitted that the definition of the sector set out in its submission is the same as that contained in Connects request except for the inclusion of the word 'alteration' which was omitted from the definition in the Connect application. They have no difficulty with the exceptions set out by Connect. The ECA submitted that in principle they are not opposed to the exclusion of new build housing from the definition but do not believe the legislation allows for this. The definition in defining the scope of the economic sector sets out the nature of the work carried out by Electricians and Apprentices and does not identify where that work falls to be carried out. The ECA do not accept the NECI assertion that they do not represent small contractors. It is clearly stated in their submission that they have small contractors in membership.

Summary of AECI submission on the scope of the economic sector

The AECI submitted they have no difficulty with the sector as proposed by Connect and contained in the ECA submission. They do not accept NECI's assertion that they are not representative of small contractors. In AECI's experience it is not unusual for small contractors to combine together to compete on large projects. Big project work is not the exclusive preserve of the bigger contractors.

Summary of CWPS submission on the scope of the economic sector

The CWPS submitted that an SEO should apply to all electrical contractors within the defined sector.

Summary of Mount Street Group submission on the scope of the economic sector

The Mount Street Group had no submission to make in respect of the scope of the economic sector

Summary of Connect submission on the scope of the economic sector

Connect submitted that the SEO is intended to apply to all qualified electricians and apprentices in the sector as qualified electricians can and do move within the sector. Connect does not accept that you can exclude from the sector those workers that are employed by small contractors. Connect submitted that, based on NECI's assertion in respect of under registration by some contractors when registering with RECI, attempting to define small contractors by the number of employees they had could encourage manipulation of the number of employees by employers. If on NECI's own admission, contractors underestimate the number of their employees when they register with RECI in order not to have to pay an increased membership fee, restricting the application of the SEO to medium and large electrical contractors could result in a similar practice. It is not correct to say that Connect only represent workers in medium and large companies. Connect represents workers across the industry both in the domestic and commercial sector. All workers in the sector are qualified and it is not possible to sub-divide the sector into smaller units. Some of the biggest contractors to-day were small contractors 20/30 years ago. The legislation does not allow for what NECI is asking for regarding the sub-division of the sector either by removing small contractors or excluding certain projects such as one-off housing.

Court's findings in respect of economic sector and reasons for those findings

The Court acknowledges that it has a discretion to define the economic sector. This was made clear in the High Court proceeding and endorsed by the Supreme Court at para 47 of MacMenamin J's judgment where he says:

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 "rubberstamping" 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.

The issue is whether the Court has the power to define it in the manner proposed namely by expressly excluding small contractors and/or expressly excluding new build one off housing, low density housing developments of twenty units or less and the repair, replacement and modification of mechanical systems and equipment in existing single private residential and domiciliary units (hereinafter referred to as "specific projects").

The Court considered both the written and oral submissions of all parties on this issue. The Court notes that both NECI and Ms Rogers were submitting that the Court could amend the definition to exclude small contractors and/ or specific projects such as one of housing.

Neither party submitted what changes they believed would be required to be made to the definition of the sector to allow for this exclusion to apply. The Court notes that NECI define a small contractor as someone with ten or less employees and that Ms Rogers defines small contractors as someone with fifteen or less employees. This suggests to the Court that even amongst the parties present at the hearing there is no agreement as to what a 'small contractor' is. Even if the Court was to be persuaded by their arguments (which it is not for the reasons set out below) and considered excluding small contractors no agreed definition of small contractor was put before the Court for consideration.

Section 13 of the Act states that an economic sector *"means a sector of the economy concerned with a specific economic activity requiring specific qualifications, skills or knowledge."*

The sector in the economy is the electrical contracting sector and the economic activity in which that sector is engaged in is set out in the Connect and ECA submissions.

Section 16 (2) (e) of the Act states "*that the sectoral employment order shall be binding on all workers and employers in the economic sector concerned*."

It was not submitted to the Court by any of the parties that workers employed by small contractors or employed on specific projects were of a different class, type or group to other Electricians and Apprentices employed by medium and large contractors. They are self-evidently not. Similarly, it was not submitted to the Court by any of the parties that workers employed by small contractors or employed on specific projects were engaged in different work to that of other electricians/ apprentices in the sector. On that basis the Court does not see how, without going outside the remit of the legislation, it could exclude small contractors, a sub-section of employers in the same sector howsoever it was defined, from the SEO.

In respect of NECI's argument that small contractors/ specific projects could be excluded from the ambit of any SEO in the same way electricians and apprentices employed in state/semi-state and employees directly employed by manufacturing companies are, the Court does not concur with this reasoning by virtue of the fact that such state/semi-state/ manufacturing employers are not engaged in contracting out their employees' services. They are not electrical contractors.

In respect of the argument of Ms Rogers regarding the medical profession the Court does not accept that it is analogous. Nurses and doctors do not have the same specific qualifications, skills or knowledge in the same way as qualified electricians do.

In respect of the definition of the contracting sector submitted by Connect, the Court notes that there were no objections to the word 'alteration' being included in the definition or no alternative wording in respect of the definition of the sector put forward by any party present. The Court notes, based on the submissions made, that, while it was not unanimous, there was a high degree of consensus around the proposition contained in the ECA submission that the definition of the economic sector submitted by Connect with the inclusion of the word alteration had been and continues to be the accepted definition of the sector and sees no reason to depart from this. On that basis the Court finds that the request is expressed to apply to all workers of the particular class, type or group and their employers in the economic sector as required by section 15 (1) (b) of the Act.

Section 15 (1) (c) and (d)

15(1) (c): *Whether it is a normal and desirable practice or it is expedient to have separate terms and conditions 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*

15(1)(d): *Whether any recommendation is likely to promote harmonious industrial relations between workers of the particular, class, type or group in the economic sector in respect of which the request is expressed to apply.*

Submissions from the parties in respect of Section 15 (1)(c) and (d)

Summary of NECI's submission on Section 15 (1) (c) and (d).

NECI submitted that the unregistered national agreement referenced in Connect's request form was not sufficient for the Court to be satisfied that section 15(1)(c) & (d) of the Act was complied with. Connect's application refers to a current unregistered "national collective employment agreement" which is negotiated under the auspices of the unregistered EINJIC. They say that the current arrangement can at best be described as a "*gentleman's agreement*" and does not apply to NECI's members. NECI's members have engaged in one-to-one agreements with their own employees and negotiated mutual agreeable terms and conditions which suit the particular requirements of each unique business. NECI submitted that having an unregistered '*gentleman's agreement*' was not sufficient and does not satisfy the requirements of section 15(1)(c) or 15(1)(d). NECI submitted that the Court should not have proceeded to the examination stage on the basis of the information supplied. NECI is not aware of any unharmonious relations in the sector since 2015 at a time when no SEO was in place. Small contractors engage directly with their employees in collective bargaining. It was their submission that small contractors' employees are not transient and by and large they stay for 5 -10 years as working for a small contractor is a lifestyle choice. NECI submitted that while the rate set now might be acceptable, that might not be the case in 6 months' time. Small contractors typically do not let employees go but might have to if they cannot change the rate if bound by an SEO. They went on to state that in the northern counties they may have to let employees go because they will be competing with contractors from the North who will not apply the rate.

Summary of Dolores Rogers submission on Section 15 (1) (c) and (d)

Ms Rogers is not aware of any industrial unrest apart from some problem with ESB workers in the last number of years when no SEO was in operation. Her concern is that if an SEO is brought in it will encourage growth in the black economy**.**

Summary of ECA submission on Section 15 (1))(c) and (d)

ECA submitted that it has been and continues to be normal practice for ECA to negotiate with Connect in relation to terms and conditions for the people they represent in the sector. The EINJIC is open to all employers in the sector who want to join and participate in negotiations. Having set terms and conditions in the sector provides stability and certainty in circumstances where everyone knows what the terms and conditions are in the sector. ECA submitted that the stability and certainty undoubtedly create harmonious industrial relations.

It is its submission that this particular sector is labour intensive with a transient workforce. If a dispute occurs it is important that there is a dispute resolution procedure that allows for issues to be resolved in a timely manner. One of the elements of an SEO is the provision of a dispute resolution procedure. The ECA submitted that having a decent rate of pay and a disputes procedure will promote harmonious industrial relations. It was also their submission that having an SEO will ensure contractors do not use labour costs to compete. It will incentivise employers to invest in training and preserve high standards of training.

Summary of AECI's submission on Section 15 (1)(c) and (d)

AECI submitted that it has been normal practice for it to negotiate with Connect in relation to terms and conditions for people they represent in the sector. It is its submission that having an agreement that includes dispute resolution measures is essential in terms of ensuring projects are completed on time and within budget. AECI submitted that having a legally binding rate of pay pension and sick pay will undoubtedly promote harmonious relations as having employment by employment pay negotiations can often be fraught. AECI submitted that they have engaged with their members about the problem of contractors from the North undercutting them and believe an SEO will assist in

resolving this issue. In AECI's experience it is not unusual for small contractors to combine together to compete on large projects. Big project work is not the exclusive preserve of the bigger contractors.

In relation to the pay rate being set by an SEO, the whole purpose of an SEO is that they can come back to the Labour Court if there is an issue. It is the AECI submission that an SEO sets a minimum rate and so there is nothing to stop an employer compensating the better workers by paying a higher rate if they so wish.

Summary of Connect's submission on Section 15 (1)(c) and (d)

It is Connect's submission that they have been involved in negotiating terms and conditions for workers in this sector for decades with various employers and employer groups. Their records show that the first collective agreement they did in the sector with the ECA was in January 1938 and with the AECI was May 1955. Since that time, it has been normal practise to have agreed terms and conditions for the workers they represent in this sector. If it was not desirable practise or expedient to do so they would not have continued to engage in this manner for such a lengthy period of time.

Connect submitted that one way of ensuring industrial harmony is to ensure workers working for small and large contractors are paid the same rate when working on the same site. At the moment there is a massive skills shortage and if a worker working for a small firm is not being paid the same as other workers they will move. That in itself will create disharmony. The way to keep qualified electricians with small contractors is to pay them the same rate as the large ones.

Mount Street Group's submission on Section 15 (1)(c) and (d)

Mount street Group indicated that they had no submission to make on this issue

CWPS submission on Section 15 (1)(c) and (d)

The CWPS submitted that providing access to a pension scheme and sick pay promotes harmonious industrial relations.

Court's findings and reasons for those findings

NECI and Ms Rogers submitted that since the introduction of the 2015 legislation there has not been an operative SEO in the electrical contracting sector. It is their submission that during that period there has not been any industrial unrest and that harmonious relations exist between workers and their employers particularly where small contractors are the employers. Both NECI and Ms Rogers submitted that it is their practice to engage directly with their employees who make a lifestyle choice to work for small contractors. It is their submission that an SEO is not needed to promote harmonious relationships and they also submitted that the market decides the appropriate rate of pay.

Connect, ECA and the AECI submitted that even in the absence of an SEO it was normal practice within the sector to negotiate in relation to terms and conditions for the sector. This is normally done through the EINJC under the auspices of the WRC. This process had helped to maintain industrial peace but did not have the weight behind it that an SEO would have, particularly where an element of the SEO would be the inclusion of dispute resolution procedures for individual and collective issues. The parties pointed to the transient nature of the workforce and the need to have a dispute resolution process. It is their submission that having a rate for the job and a dispute resolution procedure will promote harmonious industrial relations.

Connect submitted that it has been involved in negotiating terms and conditions for workers in this sector for decades and it is expedient to have separate terms and conditions relating to remuneration and related issues.

The ECA and AECI submitted that having an SEO will address the concerns raised by NECI in respect of contractors from Northern Ireland tendering for jobs as they too will be bound by the SEO.

The Court, having considered the submissions both written and oral of all the parties, finds that it has been the norm to have collective negotiations in respect of Electricians and Apprentice Electricians terms and conditions relating to remuneration, sick pay and pension schemes albeit not all employers in the sector engaged with that process. However, it was not disputed, when submitted by the ECA, that the process was open to all employers to participate in the EINJC if they so wished.

While the Court notes that both NECI and Ms Dolores Rogers submit that harmonious relations exist between employers and their workers in the absence of an SEO, the Court is swayed by the submissions of the ECA, AECI and Connect that the combination of a set pay rate and a dispute resolution procedure for a set period of time will promote harmonious relations for the duration of the SEO and will provide certainty for employers within the sector. The Court also concludes, based on the submissions of the parties, that it has been the practice for the parties, albeit not all of the parties present at the hearing, to engage in respect of the terms and conditions of the workers represented by Connect in the sector.

In circumstances where there is a history of negotiation and collective agreement by the trade union with various employers and employer groups for separate terms for workers in the sector, and in circumstances where employees of different contractors, both large and small, may find themselves working on the same site/project and engaging in the same work, the Court is satisfied that it is expedient to have separate terms and conditions relating to remuneration, sick pay and a pension scheme in respect of workers of that particular class, type or group in the economic sector in respect of which the request is expressed to apply.

In relation to section 15(1)(d) it is, in the Court's view, reasonable to expect that in the absence of a universally applicable SEO dispute resolution clause, dispute resolution will be more fragmented and less orderly and consequently that there will be less harmonious relations between the parties.

It is the Court's view that most industrial disputes relate to pay. In these circumstances the Court is satisfied that a recommendation that sets out a universal rate of remuneration 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.

In addition, the fact of a binding dispute resolution clause is likely to promote harmonious relations between workers and employers in the sector. The Court having heard all the parties in respect of the criteria set out in section 15 (1) (a) to (d) concludes on the basis set out above that the requirements of the Section have been satisfied.

The terms of any recommendation

The submissions in relation to the terms of any recommendation can be summarised as follows:

Connect

Pay

Connect submitted that historically Electrical Contractors were paid higher rates of pay than that paid to comparable craft workers in the Construction and Mechanical Contracting Sector. For reasons related to the challenge to the 2019 SEO, the workers they represent in the electrical contracting sector have not had a pay increase since 1st September 2019 and therefore have fallen behind those comparable craftworkers who now have a higher rate of pay than the workers they represent. Connect also referenced in their submission the CSO reports that indicate inflation is on the way up. It is Connects submission that an increase is required to address the current lagging pay rates and to future proof against inflation.

It is Connect's submission that the workers to be covered by this application are Electricians and Apprentice Electricians as defined in their application. They submitted that it should also include Chargehands and Foreman.

Chargehand are Electricians given responsibility for a job and the labour force assigned to the job if there are more than two and not more than six. The Chargehand continues to operate as an Electrician and Supervisor. The Chargehand is currently paid a differential of 10%

Foreman are Electricians given responsibility for a job and the labour force assigned to the job once the workforce exceeds six. The Foreman continues to operate as an Electrician and Supervisor and is currently paid a differential of 20%. Connect submitted that the existing rates for the worker's covered by this application at the time of the application were as followed:

Electricians

Category 1 First year out of time	€23.49
Category 2 Third year out of time	€23.96
Category 3 Sixth year out of time	€24.34

Connect submitted that in respect of electricians the SEO should provide for two payments over an eighteen-month period. They are proposing an initial increase of 2.7% on the existing rates on implementation of the SEO and a further 3.6% twelve months later to be applied to each of the three categories. In respect of Chargehands and Foremen they submitted that the existing percentage differential be maintained. It is Connects submission that the SEO should expire within 18 months of the date of the first payment.

They further submitted that the existing apprentice rates are as followed:

Apprentice Year 1	€7.05
Apprentice Year 2	€10.57
Apprentice Year 3	€15.27
Apprentice Year 4	€18.79

These rates are calculated as a percentage of the Electrician rate. Currently the percentages are as follows:

1st year apprentice 30%

2nd year apprentice 45%

3rd year apprentice 65%

4th year apprentice 80%

Connect are seeking to have the rates changed as follows:

1st year apprentice 40%

2nd year apprentice 50%

3rd year apprentice 65%

4th year apprentice 77% (A Rate)

4th year Apprentice 90% (B rate)

Connect are seeking to have a new 4th year B rate added to the existing 4 rates to cater for apprentices who through circumstances outside their control have been unable to complete their apprenticeships for various reasons including Covid. Connect submitted that this would be a temporary arrangement that would last for the duration of the SEO.

Normal Working Hours

Connect submitted that the SEO should set out the normal/basic working week which currently consists of 39 hours worked between Monday and Friday each week and that the normal daily working hours shall consist of eight consecutive hour's work, undertaken between 7am (normal starting time) and 5pm (normal finishing time) Monday – Thursday inclusive and between the 7am (normal starting time) and 4pm (normal finishing time) on Friday taking into consideration the relevant breaks and rest periods. Connect submitted that the existing provisions of paid rest and unpaid rest periods remain as follows and should be included in an SEO:

15- minute break (paid) in the morning

30- minute lunch break (unpaid)

15- minute break (paid) where 2 hours or more of overtime is required to be worked.

Connect also sought to include situations where an emergency leads to workplace closures (for example due to extreme weather condition/safety issues) after a worker has arrived for work, the Union suggests that payment of any hours impacted should be protected through the order.

Other Hours Worked

Connect submitted that the following existing premium payments be paid in respect of overtime/unsocial working hours as follows:

Hours worked between normal finishing time and Midnight Monday to Friday inclusive	Time plus a half
Hours worked between Midnight and normal starting time Monday to Friday	Double time

First four hours worked where work commences any time between 7am and 9am on Saturday	Time plus a half
All other hours worked on Saturday	Double time
All hours worked on Sunday	Double time
All hours worked on Public Holidays	Double time plus an additional day's leave

Connect submitted that the current special late start shift arrangement to facilitate short term arrangements for multiple shifts should be included in the SEO as follows:

Where for specific projects hours are required to differ from those set out at "Normal Daily Working Hours" above, the following rates should apply:

> *Where the starting time is before 1pm - 8 hours (worked consecutively) at time plus one quarter. Additional hours should be paid at time plus a quarter by the appropriate overtime premia. (i.e hours worked from 8pm until 12am should be paid at time plus a quarter by time plus a half. Additional hours worked after midnight should be at time plus a quarter by double time).*
>
> *Where starting time is after 1pm - 8 hours (worked consecutively) at time plus one third. Additional hours should be paid at time plus a quarter by the appropriate overtime premia. (i.e., hours worked from 8.pm to 12am at time plus a third by time plus a half. Additional hours worked after midnight should be at time plus a third by double time.)*

Connect submitted that all breaks to be payable during either of the above shifts.

Annual Leave

Connect proposed that an additional day of paid leave be provided bringing the total annual leave entitlement to 22 days.

Travelling time

Connect submitted that travel time has been a feature of industry agreements in this sector from the outset. Many employers pay travel time, and it is Connects belief that workers will often leave one employment to take up employment with an employer that pays travel time. While it is not disputed that non-compliance in respect of the payment of travel time exists that cannot be a basis for not including it in an SEO. Connect are seeking that travel/time be included in the SEO but they are not seeking that the existing rates be changed except in respect of Country money where they are seeking payment of €50 per day for each of seven days worked in the week.

Pension Sick Pay and Death in Service Benefit.

Connect wish to nominate the CWPS for inclusion within the SEO the terms of which are set out in Appendix 7 to its submission. In the event the SEO allows for more than one provider, then the benefits should be the same as those provided by the CWPS. Connect submitted that the pension contribution should be a direct percentage of the average rate of pay within the craft sector and requested that the Labour Court provide for the following level of contributions which they submitted are based on 7% of the basic rate that would apply following the application of the pay increases that they are seeking.

Employer Contribution	Employee Contribution	Combined Contribution rate
Daily rate €8.19	Daily rate of €5.46	Daily rate of €13.65

Connect are seeking that the pension contribution be capable of being paid based on a five- day week €68.25, six- day week 81.90 and seven- day week € 96.55

In respect of a sick pay scheme Connect submitted that a worker covered by the SEO should be entered into a sick pay scheme by their employer. It is their submission that the scheme should contain both employer and employee contributions and they proposed the following rates.

Employer Contribution	Employee Contribution	Combined Contribution rate
€1.34 per week or part thereof	€0.67 per week or part thereof	€2.01 per week or part thereof.

Connect submitted that workers covered by the SEO should be entered into a Death-in-Service Benefit scheme which should contain both employer and employee contributions. Connect proposed the following rates

Employer Contribution	Employee Contribution	Combined Contribution rate
€1.17 per week or part thereof	€1.17 per week or part thereof	€2.34 per week or part thereof

It is Connect's submission that entry to all these schemes should be open to every worker from the time they enter the workforce to the time they reach their retirement age and or the national retirement age.

Disputes Resolution Procedure

Connect proposed the following disputes resolution procedure should be applied for matters related to the Sectoral Employment Order**.** If a dispute occurs between workers to whom the SEO relates and their employers no strike or lock-out, or other form of industrial action shall take place until the following procedures have been complied with.

Individual Dispute

a) The grievance or dispute shall in the first instance be raised with the employer at local level with a requirement to respond within 5 working days. Notice in writing of the dispute shall be given by the individual concerned or his/her trade union to the relevant organisation representing employers or to the employer directly.
b) If the dispute is not resolved it shall be referred to the Adjudication Service of the WRC
c) Either party can appeal the outcome of the Adjudication Hearing to the Labour Court.

Collective Dispute

a) The grievance or dispute shall be raised in the first instance with the employers with a requirement to respond within 5 working days. Notice in writing of the dispute shall be given by the workers concerned or their trade union to the relevant organisation representing employers or to the employer directly.
b) If a dispute is not resolved the issue shall be referred to the Conciliation Service of the WRC
c) If the issue remains unresolved, it shall be referred to the Labour Court for investigation and recommendation.

ECA submission and response to submission of the other parties.

Pay

The ECA submitted that the currently hourly rates of pay as set out in the Connect submission were agreed between the ECA, AECI and Connect Trade Union. The ECA are open to a two- year agreement as it provides stability in terms of cost and industrial relations.

The ECA are proposing a 2.3% increase on the electricians pay scale with the 1st 3rd and 6th year out of time rates to be included in the SEO which should take effect from the date of introduction of the SEO. The ECA are also proposing in the context of a two year pay deal a further increase 12 months after the date of the first increase of 1.6%.

In respect of the rates for apprentices the ECA are proposing that a rebalancing of apprentice rates is required to attract apprentices into the sector. The ECA submitted that currently because of the existing rates there is little or no incentive for 3rd or 4th year apprentices to complete their exams as the rates are relatively high. The ECA is proposing that rebalancing is done in a way which will see an apprentice no worse off over the four- year period. They are proposing the following amendment to the current percentage relativity between apprentices and electricians:

1st year apprentice change from 30% to 40%

2nd Year apprentice change from 45% to 50%

3rd Year apprentice change from 65% to 60%

4th year apprentice change from 80% to 70%

The ECA are totally opposed to the introduction of an additional rate for 4th year apprentices as proposed by Connect. The current issue of apprentices not moving through the system is a temporary situation and it is not appropriate for it to be addressed through the SEO.

Normal Working hours.

The normal working week is 39 hours Monday to Friday. The ECA is not in favour of the breaks being included in the SEO and it is their submission that section 16 (5) does not provide for same.

The ECA submitted that it is opposed to bad weather payments being included in the SEO and submitted that it is outside the provisions of section 16(5) of the Act. It is their submission that custom and practice in the industry is that such payments are paid and there is no need to include them in the SEO.

Other hours worked

The ECA support the overtime rates as set out by Connect.

In respect of the special late start shift arrangement the ECA submitted that the following rates should apply:

Where starting time is before 1pm	*8 hours at time plus a quarter*
Where starting time is after 1pm	*8 hours at time plus a third*

The ECA are opposed to any additional payment and or including a requirement that all breaks during the above shifts would be paid.

Annual Leave

The ECA are opposed to an additional day's leave being included in the SEO. It is their submission that to give an additional day's leave would create knock on claims in the sector and it is their submission that the legislation is very specific and doesn't extend to annual leave.

Travelling time

The ECA submitted that they were opposed to the inclusion of travel time in the SEO. It is their submission that travel allowance has not been provided for in any SEO introduced since 2015. It is their submission that the provision of a travel allowance in the electrical contracting sector would lead to knock-on claims which could lead to industrial unrest. In respect of country money, it is the ECA's submission that the rate for country money is set by the revenue commissioners and is not appropriate to an SEO.

Pension Sick Pay and Death in Service Benefit

The ECA submitted that they are supportive of the principal of pensions, sick pay and death-in -service for electrical workers who are aged between 20 and 65. They do not believe it is appropriate to reduce the entry age to 15 as this would mean apprentices would be included and this would erode their take home pay. They are opposed to the Unions proposal to increase contributions to 7%. The same rate has traditionally been set for the constructions industry as a whole. They are opposed to pension contributions being linked to overtime. It is their submission that contributions should be made based on a five-day week. If it is extended beyond this, it will be creating a precedent for other sectors in the industry and it will be difficult to administer. The ECA is opposed to a pension contribution rate applying to overtime. The ECA submitted that the pension, sick pay, death in service benefit contributions in the CWPS submission are the contributions that their members and their members employees are currently paying and that any increase should be applied to that rate. The ECA are proposing an increase of contributions by 2.3% from the implementation of the SEO and by 1.6% from twelve months later.

Dispute Resolution Procedures

The ECA are supportive of a dispute resolution process and have no issue with the procedure proposed by Connect. However, they are opposed to such a scheme being confined to only matters covered by the SEO. It is their submission a dispute resolution procedure should cover all disputes otherwise it would not promote harmonious relations.

ECA's response to the other submissions

The ECA submitted in respect of the submission by the Mount Street Group they have no difficulty in supporting any scheme that provides the same benefits as the current scheme their members are in.

In respect of the NECI submission the ECA refute the suggestion that the SEO will not apply to sub-contractors. The ECA clarified in respect to a point raised by Ms Rogers that they are not an applicant in this process they, just like her, are an interested party.

In respect of the CWPS submission the ECA are supportive of the CWPS as it was set up by employer and worker representatives. They are satisfied with the benefits provided and the contributions rates.

AECI submission and comments on other submissions

Pay

The AECI submitted that the current rates of pay are as set out by Connect and the ECA in their submissions. In respect of the increases sought by Connect it is the AECI submission that they are too high. The AECI are agreeable to an increase of 2% for a twelve-month period. They are not opposed to the SEO being for a longer period. The AECI submitted that they support the ECA proposal in respect of apprentices but are opposed to the Connect proposal to create in effect a five-year apprentice.

Normal Working hours.

The AECI agree with the ECA submission on normal working hours and other hours worked. It is their submission that the daily breaks should not be part of SEO. These issues are covered under the organisation of Working time Act.

Annual Leave

The AECI submitted that they are opposed to additional annual leave day and do not believe annual leave falls within the remit of an SEO.

Travelling time

The AECI submitted that under no circumstances should travel time be included in the SEO.

Pension Sick Pay and Death in Service Benefit

In respect of pensions, sick pay and death in benefit they submitted that they could not support the Connect rate of 7% and believe any contribution increase should be linked to the pay increase of 2% that they are proposing. They believe the scheme their members are currently in the CWPS is a good scheme but if there are alternative schemes out there that can offer the same benefits for the same contributions, they are happy to go with them as well. They are opposed to extending the pension age beyond 65 and changing the entry age to allow entry from age 15. It is their submission that they do not want to see anyone having to work beyond 65 to qualify for a pension.

Dispute resolution procedures

The final issues the AECI addressed in their submission was the dispute procedure they were supportive of the procedure outlined in the Connect submission. However, the process should not be limited only to issues contained in the SEO.

CWPS submission and comments on other submissions

The CWPs submitted that their submission is focused solely on issues relating to the provision of pension, sick pay and death in benefit schemes. It is their submission that the provision of minimum terms and conditions and reasonable rates of contributions relating to pension death benefits and sick pay is of immense benefit to workers and their families and that a minimum level of contribution is in line with the Governments policy to increase the number of workers on occupational pension schemes. It is their submission that the provision of a sick pay scheme provides a safety net for workers and death benefits provide a safety net for their families. The CWPS submitted that requirements of a pension scheme should include both employer and employee contributions and that the scheme should be an occupational pension rather than a contract- based product. It is their submission that because of the transient nature of workers in this sector the scheme should be a multi-employer scheme which enables workers to maintain a single pension account that will travel with them from employer to employer. The CWPS submitted that a refund of contributions on leaving an employment prior to retirement should not be an option. They submitted that the scheme should be transparent

in respect of the scheme's charges and who bears them. The CWPS submitted that workers in this sector should have a death-in-service benefit as well as a pension and it should be capable of moving with the worker if they change employment. In terms of sick pay benefit the CWPS submitted that any scheme should be in addition to the state benefits and should be capable of transitioning with the worker if they change employment. CWPS have set out the minimum benefits in their submission and for guidance purposes the schemes current minimum daily levels of contributions payable by workers and employers.

Ms Rogers submission and comments on other submissions

Ms Rogers submitted that she disagreed with the ECA submission that an SEO was good for customers it was her submission that it depends on who your customers are. Her company is competing against 'one-man bands' who are not covered by an SEO. Ms Rogers submitted that no connection can be established between an SEO and good training and that SEO's create issues around subcontracting. Ms Rogers submitted that she had nothing to say on rates of pay other than that the 1st year apprentice rate is too low and should be above the minimum wage. It was Ms Rogers submission that as an employer she pays more than the SEO rate and gives more holidays. Ms Rogers submitted that she has difficulty with the CWPs pension scheme which her employees are currently members of. In respect of dispute procedures Ms Rogers submitted that she does not need an SEO to sort out issues.

Mount Street Group submission and comments on other submissions

The Mount Street Group submitted that their submission is focused solely on issues relating to the provision of pension, life cover and health benefits. It is their submission that there are alternative models to the model used by the CWPS to provide the same or better benefits. It is their submission that they can offer a new scheme with better terms and benefits for contribution rates no less favourable than those currently on offer. It is their submission that the scheme they can offer will allow members choose the providers and funds. In their submission, which is attached to this report, they set out a number of factors to be considered in designing an alternative pension arrangement.

NECI's submission and comments on other submissions

Pay

It is NECI's submission that they accept there is a requirement for a minimum hourly rate that is greater than the minimum wage, but they are not agreeable to having it imposed by an SEO. It is their submission that there should be a minimum rate of €19.25 on an industry wide basis for qualified electricians. This is a minimum rate and people can pay higher rates if they want to.

NECI submitted that the apprentice rate should at least be equivalent to the minimum wage and set out the following rates in their submission:

1st year apprentice a rate of €10.20 (equal to the minimum wage for 20 years old plus)

2nd year apprentice a rate of €11.22

3rd year apprentice a rate of €13.45

4th year apprentice rate of €17.50

Normal Working Hours

NECI submitted that issues like breaks are covered by legislation and should not be part of the SEO.

Other Hours Worked

In respect of overtime, it is NECI's position that the overtime rate should only apply after a minimum of 39 hours.

Annual Leave

NECI submitted that issues like annual leave are covered by legislation and should not be part of the SEO.

Travelling time

NECI are opposed to travel time and country money being dealt with in the SEO.

Pension Sick Pay and Death in Service Benefit

In respect of pensions NECI do not agree with a daily rate. It is their submission that it should be a minimum of a combined figure of 6% of remuneration received. NECI submitted that in terms of pension, sick pay and death in benefit employers should be free to obtain cover from any source of their choosing provided that the cover is for a specified minimum level of benefits. It was NECI's submission that death in service is just life insurance, and it is not an issue for an employer to get it, if required.

Dispute resolution procedures

In terms of dispute resolution procedures, it is NECI's submissions that it does not really apply to them as they engage with their employees on an individual basis.

Connects comments on other submissions

Connect submitted that the 2.3% increase proposed by the ECA will only bring them in line with the rate paid in the mechanical engineering sector whereas previously the electrical contracting rate was nine per cent higher than that rate. In respect of the 4th year apprentice rate a number of people are stuck on that rate as they have not been able to complete the 4th year due to COVID and other delays. In terms of breaks, what Connect have submitted is currently the practice and they are not proposing any changes. The guaranteed week is to protect workers who because of circumstances out of their control cannot attend work. The additional annual leave should not be ruled out on the basis that it might create a precedent. Connect have always been to the forefront in seeking to improve the terms and contributions of their members. Connect are opposed to a daily pension contribution rate that only applies to a five-day week they are seeking that the rate be linked to a percentage of salary and be capable of being applied to a seven- day week. In respect of dispute resolution section 16 (6) of the Act states that it should apply to the terms of a sectoral employment order and that is what Connect is seeking.

<u>Section 16 of the Act</u>

The Act at Section 16(1), (2) and (4) provides as follows:

16. (1) Subject to this section, the Court shall, where it considers it appropriate to do so, having heard all parties appearing to the Court to be interested and desiring to be heard, and having regard to the submissions concerned and the matters specified in subsection (2), make a recommendation to the Minister.

(2) When making a recommendation under this section, the Court shall have regard to the following matters:

(a) the potential impact on levels of employment and unemployment in the identified economic sector concerned;

(b) the terms of any relevant national agreement relating to pay and conditions for the time being in existence;

(c) the potential impact on competitiveness in the economic sector concerned;

(d) the general level of remuneration in other economic sectors in which workers of the same class, type or group are employed;

(e) that the sectoral employment order shall be binding on all workers and employers in the economic sector concerned.

(4) The Court shall not make a recommendation under this section unless it is satisfied that to do so—

(a) would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest in the economic sector concerned, and

(b) is reasonably necessary to—

(i) promote and preserve high standards of training and qualification, and

(ii) ensure fair and sustainable rates of remuneration,

in the economic sector concerned.

The Court, at its hearing, set out the detail of Section 16(1), (2) and (4) of the Act and outlined that, in accordance with the Act, the Court would, in reaching a decision as regards a recommendation to the Minister, have regard to the matters set out therein**.** The Court then took the parties through each subsection of section 16 and asked each party to set out their view on the sub-section orally or to draw the Court's attention to the relevant element of their written submission. The Court heard from the parties as follows and, having had regard to the matter set out in each subsection of Section 16(2) and the parties' submissions relating thereto, reached a conclusion on each subsection as also set out below:

Section 16(2)(a)

The potential impact on levels of employment and unemployment in the identified economic sector concerned.

ECA

There are approximately 17,000 electricians in the sector. They are highly skilled and will be needed for the implementation of the National Development Plan. Good terms and conditions will entice people into the industry. Having such a highly skilled workforce will impact international competition

by giving Ireland a competitive advantage and bringing more work into the country. The ECA submitted that this will encourage companies to invest in training and will have a positive impact on employment levels in the sector.

AECI

The AECI submitted that employment levels in the sector are determined by the level of work available. As the economy continues to recover there will be a greater need for more electricians. A sector that provides good quality employment, with reasonable and sustainable rates of pay and conditions of employment will entice new entrants into the apprenticeship system and will have a positive impact on employment levels.

Ms Rogers

Ms Rogers submitted that it is very difficult to get electricians and at the moment the market rate is paying way over the SEO rates proposed. The market should dictate pay levels and not an SEO. That is the reason why her firm are opposed to an SEO, it is not about money. Ms Rogers stated that small contractors are good employers and people move to small contractors for lifestyle reasons, she cannot see why an SEO should be binding on everyone. Ms Rogers submitted that two employer bodies ECA and AECI, carry out 80% of the electrical work. Ms Rogers submitted that during lockdown Northern contractors were working down here in construction and that the Construction SEO did not stop that.

NECI

NECI submitted that it is hard to identify what impact if any an SEO would have on employment levels. NECI submitted that an SEO was detrimental to small contractors but beneficial to large contractors.

Mount Street Group did not make a submission on this issue.

CWPS did not make a submission on this issue.

Connect

Connect submitted that the sector is currently experiencing labour shortages and an improvement in the minimum rate of pay and conditions of employment will attract workers and impact positively on employment levels.

Conclusion of the Court

A theme common to all submissions is that there is a labour shortage in the sector. In that situation the consideration for the Court must be whether an SEO will have the effect of taking labour out of the sector; attract more labour into the sector or stop any outflow of labour. The Court is persuaded by the submissions of ECA and AECI - who themselves and, this is accepted by NECI and Ms Rogers, carry out 80% of the work in the sector- and Connect, that having an SEO in place with a sustainable minimum rate of pay and other terms and conditions will assist in attracting new entrants into the apprenticeship scheme and help retain workers in a competitive market. For those reasons the Court is satisfied that an SEO is likely to have a positive impact on levels of employment in the sector.

Section 16(2)(a)

> **The terms of any relevant national agreement relating to pay and conditions for the time being in existence:**

ECA

It is the submission of the ECA that agreements between electricians and electrical contractors go back as far as 1922. In 1990 a registered agreement was entered into between the ECA the AECI and Connect and this agreement was varied numerous times over a number of years. There is an ENJIC operating currently in the sector which is open to all employer and trade union representatives in the sector. The parties to the EIJNC have negotiated terms and conditions of employment for workers in the sector. However, there is no current pay agreement in place since 2019 and the details of the last agreed rates of pay are as set out in the Connect submission.

AECI

The AECI submitted that it is not currently party to any national collective agreement on pay in this sector. It accepts that the rates of pay set out by Connect in their submission are the prevailing rates of pay.

Ms Rogers

Ms Rogers did not make a submission on this particular point.

NECI

NECI submitted that there has been no legally binding agreement in the sector since REA's were deemed unconstitutional in May 2013. It is NECI's submission that the ENJIC is an unregistered body and any collective agreements done under its auspices are unregistered.

Mount Street Group did not make a submission on this issue.

CWPS did not make a submission on this issue.

Connect

Connect submitted that there have been collective agreements in place for this industry on pay and conditions of employment going back decades and every part of it has been agreed with the industry. However, at this point in time there is no national agreement relating to pay and conditions in being.

Conclusion of the Court

The Court notes that all the parties that submitted on this issue are in agreement that at this point in time there is no national agreement relating to pay and conditions in being since 2019 and the Court accepts that is the case

Section 16(2)(c).

The potential impact on competitiveness in the economic sector concerned

ECA

The ECA submitted that the absence of legally binding rates of pay, and conditions of employment will provide contractors from outside the State with a lower cost base giving them a competitive advantage over Irish Electrical contractors. It is their submission that an SEO will ensure that all contractors, including those outside the State, can tender for work on a level playing field. The ECA submitted that where labour is taken out of competition, investment in new technologies and training will be required to provide contractors with a competitive advantage when tendering for work.

AECI

The AECI submitted that an SEO would set legally binding rates which would eliminate the opportunity to erode employment conditions as a means of securing projects. They also submitted that an SEO would make the sector more attractive to investors both nationally and internationally and therefore assist in securing more work for the sector.

Ms Rogers

Ms Rogers did not make a submission on this issue.

Mount Street Group did not make a submission on this issue.

CWPS did not make a submission on this issue.

NECI

NECI submitted that it does not believe that an SEO will impact on competitiveness. Some jobs are too small for large contractors and vice versa. Lots of other issues impact competitiveness apart from an SEO**.** Small contractors compete with the self-employed and the self-employed are not covered by an SEO. NECI is not necessarily objecting to the rate though other terms and conditions may be more problematic. However, it is NECI's submission that SEOs by their nature are anti-competitive and fall foul of competition legislation because there is no benefit to the consumer. NECI in its submission cited an extract from a guidance note by the Competition Authority which they submitted prohibited restriction on competition between firms which they submit is what an SEO seeks to do. Were an SEO controlling labour costs, applied across an industry as diverse as the electrical contracting sector to be imposed, it would be a cartel and would be anti-competitive. Such an anti-competitive agreement would fall foul of competition legislation, particularly, whereas in this instance, there is no benefit to the consumer.

Connect

An SEO establishes a level playing field on wages. Employers will have other ways in which to compete such as competing on upskilling and training, making advances in the use of technology and workplace equipment, and investing in employee welfare.

<u>Conclusion of the Court</u>

NECI in their submission stated that it is their belief that an SEO would be a cartel and fall foul of competition legislation. No particular section of an Act was put forward to support this proposition but NECI cited an extract from a document titled "*Notice on the Activities of Trade Associations and Compliance with Competition Law"*.

This Notice deals with practices or behaviours prohibited by section 4 of the Competition Act 2002. Section 15(e) of the Competition Act makes clear that section 4 does not apply to collective bargaining. The notice itself makes clear that the prohibitions do not relate to the actions of employees and their trade unions. Indeed, McMenamin J in the Supreme Court says at paragraph 118 …

> *the principles and policies in the Chapter were directed at a particular understanding of competitiveness, to be seen as applying on the basis of factors such as productivity, efficiency, education and skill level of the labour force, as well as the quality of goods and services, and the degree of innovation. This understanding is to be contrasted with laissez-faire free market competition, sometimes based on reducing pay and salary levels.*

This is how competition is to be viewed and assessed. The ECA, AECI and Connect referenced that the absence of an SEO has led to the undercutting of rates by contractors from outside the jurisdiction especially along the border counties. The Court is satisfied that an SEO which would be legally binding on all contractors working in the jurisdiction would allow for the enforcement of these rates and thereby act as a deterrent to outside contractors to undercut indigenous contractors.

The Court is persuaded by the submission of the ECA who carry out 80% of all electrical projects in both the private and public sector that the implementation of an SEO in the sector is likely to promote the introduction of new technology and training to secure competitive advantage in circumstances where it cannot compete on wages.

The Court is further satisfied that the clear effect of establishing minimum wage rates which have application across the sector must be understood to have been the intention of the legislation and the effect of this is to force contractors to compete on other grounds.

Having regard to all of these matters the Court concludes that the effect of an SEO on competitiveness in the sector as enunciated by the Supreme Court is likely to be positive rather than negative.

Section 16(2)(d)

The general level of remuneration in other economic sectors in which workers of the same class, type or group are employed.

Connect

Connect submitted that the pay differential that previously existed in the Electrical Contracting Sector has been eroded as the Construction Sector and the Mechanical sector amongst others, received pay increases in 2020, but the Electrical Contracting sector has not had an increase since 2019. Connect submitted in respect of like workers in other sectors that the Public sector had pay increases applied in the intervening period since 2019, under their Building Momentum Agreement.

ECA

ECA submitted that the Mechanical and Electrical sectors are closely aligned and that the rates of pay tend to be closely aligned too. They recognise that Electricians did not receive an increase in 2020 unlike the mechanical sector and that an increase in the rate of pay is warranted.

AECI

The AECI made no submission on this matter.

Ms Dolores Rogers did not make a submission on this particular point

Mount Street Group did not make a submission on this issue.

CWPS did not make a submission on this issue.

NECI did not make a submission on this issue.

Conclusion of the Court

The Building Momentum agreement referred to by Connect and which is applicable to Craftworkers provided for a 1% increase in October 2021, a 1% increase in February 2022 and a further 1% increase

in October 2022. The Court has noted this information and has had regard to it when setting the hourly rate.

Section 16(2) (e)

That the sectoral employment order shall be binding on all workers and employers in the economic sector concerned.

CONNECT

Connect submitted that an SEO, having regard to the provisions of the Act and the operation of the law, will have binding effect on all workers of the class, type or group in the sector and specified in the SEO. Similarly, the SEO, by operation of the law, will have binding effect on employers in the sector defined in the SEO. They submitted that this would apply to all electrical contractors in the sector and remove the ability to use labour costs to as a variable factor in the tender process. This they submitted will provide stability in the workforce in circumstances where all employees have the same minimum rate of pay.

AECI

The AECI supported the position set out by Connect in respect of this issue**.**

ECA

The ECA supported the position set out by Connect in respect of this issue

NECI

NECI submitted that the SEO should not include small contractors. While pay rates proposed now might be in line with the market rate NECI are concerned that if that changes it will not be able to negotiate on rates with employees because of the binding nature of the SEO. NECI members do not typically let people go in a downturn but negotiate on rates. If the rate is contained in an SEO its members will lose that flexibility as they will be bound by the SEO.

Ms Dolores Rogers

Ms Rogers submitted that the SEO should not include small contractors as it will have a detrimental impact on their business as their main competitor is the self- employed contractor who is not covered by the SEO.

Mount Street Group did not make a submission on this issue.

CWPS did not make a submission on this issue.

Conclusion of the Court

The Court has addressed the issue of the proposed exclusion of small contractors raised by NECI and Ms Rogers earlier in this report under the heading of Economic Sector. The Court concluded that by operation of the law, an amended SEO will have binding effect on all workers of the class, type or group specified in the SEO and will, similarly, have binding effect on all employers in the sector defined in the SEO including sub-contractors and posted workers thereby preventing competition on wages at the lower end of the scale. That is the clear intention of the legislation. The binding nature of any SEO

is ameliorated by section 21 allowing for the exemption of an employer in circumstances where the employer is experiencing financial hardship, and this addresses the issue raised by NECI regarding its inability to negotiate on pay rates below the minimum rate. The Court is also conscious that the rates set out in the SEO are minimum rates and the Court when setting the rates must be satisfied that such a rate is fair and sustainable.

Section 16 (4)

The Court shall not make a recommendation under this section unless it is satisfied that to do so-

> *(a)would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest in the economic sector concerned, and*
>
> *(b) is reasonably necessary to—*
>
> *(i) promote and preserve high standards of training and qualification, and*
> *(ii) ensure fair and sustainable rates of remuneration,*
> *in the economic sector concerned.*

Section 16(4)(a)

Connect

Connect submitted that the existence of an SEO in and of itself promotes harmonious relations between workers and employers in the sector and assists in the avoidance of industrial unrest in the sector. The SEO has the effect of removing the issues of conflict in relation to the matters covered by the Order such as pay and in addition, it contains a dispute resolution clause which, by definition, promotes the avoidance of industrial unrest and promotes harmonious relations. In the absence of an SEO, all matters concerning terms and conditions of employment in the sector would have the potential to be disputed between workers and employers and the absence of a binding disputes procedure would mean that such disputes would be more likely to lead to industrial unrest.

ECA

The ECA in their submission have set out a dispute resolution procedure. It is their submission that the inclusion of a dispute resolution clause in an SEO will have the effect of promoting the avoidance of industrial relations unrest and consequently promotes harmonious relations in the sector. The dispute resolution procedure proposed by the ECA for the SEO will have the effect of promoting industrial harmony. If, however, the scope of any disputes procedure was to be so narrow so as to include only matters covered by the order, such a limitation would not have the effect of promoting harmonious relations between workers and employers in the sector and would not promote the avoidance on industrial unrest.

CWPS

The CWPS made no submission on this subsection.

Mount Street Group

The Mount Street Group made no submission on this topic

AECI

AECI submitted that an SEO will promote harmonious relations between employers and their workers and will provide certainty in terms of labour costs. They went on to state that that an SEO will provide stability in terms of dispute resolution procedures which will entice investment as clients will have the confidence in the sector's ability to deliver a project without unnecessary delays due to industrial action.

Ms Dolores Rogers

Ms Rogers submitted that she did not need an SEO to have harmonious relations with her employees as her company deals with their employees on an individual basis. Ms Rogers further submitted that she was not aware of any industrial unrest despite the fact there is currently no SEO in the sector.

NECI

NECI submitted that it is not aware of any unharmonious relations in the sector since 2015 even though no SEO has existed.

Conclusion of the Court

The Court notes the submissions of Connect, AECI and ECA and in particular their shared belief that the existence of an SEO promotes harmonious relations and assists in the avoidance of industrial unrest in the sector. The Court has earlier concluded that the trade union is substantially representative of the workers in the sector. A number of the parties before the Court have submitted that the AECI and ECA account for 80% of the work in the sector and this was not disputed by any of the parties present at the hearing. The Court has carefully considered the submissions from Ms Rogers and NECI to the effect that there has not been an SEO in the sector, and they are not aware of any un harmonious relations. It is the Court's belief that this does not in and of itself mean that the existence of an SEO would not promote harmonious relations.

The proposed SEO, in accordance with the Act at Section 16(6), will contain binding procedures that apply in relation to the resolution of industrial disputes, and the Court is satisfied that this has the effect of ensuring an orderly exercise of such procedures in advance of the occurrence of any strike, lock out or other form of industrial action in the sector.

In addition, an SEO will remove central elements of the relationship between employers and workers such as pay and other conditions of employment from conflict and consequently reduces the potential for industrial unrest in relation to such matters. It is clear that the majority of the parties to this application believe that an increase in pay is required in the sector, and it is also clear that they are in conflict as regards the level of such an increase. An SEO that addresses the matter of pay growth in the sector, pensions and sick pay will, in the view of the Court, remove this conflict between employers and workers in the sector and consequently promote harmonious relations and the avoidance of industrial unrest in the sector in relation to the matter of these issues in the sector.

In all of the circumstances and for the reasons set out, the Court is satisfied that a Recommendation for an SEO will promote harmonious relations and assist in the avoidance of industrial unrest in the sector.

Section 16(4)(b)(i)

Connect

If an SEO did not exist for the sector, workers with high levels of training and qualification would not be attracted to the industry because competition on rates of pay would have the effect of reducing pay levels in the sector over time. Once contractors cannot compete on pay when tendering they will be incentivised to invest in training. Having a rate for apprentices in an SEO protects and preserves training standards. It encourages new entrants into training because it ensures that apprentices are paid the same rate throughout the course of their apprenticeship whether they are on site or in education.

ECA

The ECA agree with the submission of Connect on this point. Additionally, the absence of competition on rates of pay in the sector will encourage employers to invest in training and qualifications of staff as a means of competition both for labour and for work.

AECI

The AECI submitted that an SEO will ensure investment in new technologies, training, health and safety thereby raising the standard of electrical contracting in Ireland.

NECI

NECI agreed that it was necessary to promote and preserve high standards of training and qualification in the sector and ensure fair and sustainable rate of remuneration, but they are not agreeable to an SEO and do not agree that an SEO will ensure this.

Ms Dolores Rogers.

Ms Rogers made no submission on this issue.

CWPS

The CWPS made no submission on this issue.

Mount Street Group

The Mount Street Group made no submission on this issue.

Conclusion of the Court

The Court notes carefully the submissions of the parties and in particular their shared belief that high standards of training and qualifications are important for the sector. The Court has earlier concluded that the trade unions is substantially representative of the workers in the sector to which the application relates and recognises that the ECA and AECI are authoritative voices in relation to the operation of employment relations in the sector.

It is clear that fair and sustainable rates of pay, and reasonable terms and conditions of employment that are binding on the sector are likely to encourage rather than discourage skilled workers and trainees into a particular employment. This logical conclusion has been submitted to the Court by Connect AECI and ECA.

The Court is satisfied that the existence of minimum assured wage rates and other conditions of employment made binding on all workers and employers within the sector will have the effect of attracting workers with higher levels of training and qualifications to the sector and increasing the likelihood of retention of those workers in the sector.

The legal protection of apprentices' pay while working and in education and which is guaranteed by an SEO will, in the Court's view encourage new entrants to participate in the apprenticeship scheme thereby preserving high standards of training. The Court has carefully noted the assertion of the ECA that the elimination of competition between employers based on lower wage rates will encourage employers to invest in training and accepts this assertion as reflecting the view of the many employers in membership of that organisation. The way to ensure this is to have wage rates incorporated into an SEO which is legally binding on everyone in the sector and thereby forces employers to look at ways of competing with competitors, other than on wages.

In all of the circumstances, the Court is satisfied that a Recommendation for an SEO is reasonably necessary to promote and preserve high standards of training and qualification in the sector

Section 16(4)(b)(ii)

Connect

The fact of an SEO in the sector would ensure that fair and reasonable rates of remuneration would be a mandatory minimum standard in the sector. While currently a large section of the sector, have rates of pay agreed by the ENJIC these rates are not binding on employers. The absence of an SEO would mean that competition on rates of pay would, over time, lead to employers competing for work on the basis of lower labour cost leading to lower and unfair rates of pay in the sector. Competition for work based on lower rates of pay would undermine the industry and would not be sustainable.

ECA

The absence of an SEO in this sector would lead to competition, including with employers based outside the State, based on reducing rates of remuneration and such an outcome will not ensure fair or sustainable rates of pay in the sector. The ECA submitted that an SEO that sets realistic and sustainable rates of pay, and terms and conditions of employment will ensure that the sector continues to attract workers.

AECI

The AECI submitted that an SEO which establishes realistic and sustainable rates of pay will serve to attract bright young people into a sector which is forecasted to grow.

NECI

NECI submitted that they accept that there is a requirement for a minimum hourly rate of basic pay higher than the national minimum wage. However, they do not believe it should be imposed by way of SEO.

Ms Dolores Rogers

Ms Rogers submitted that her company generally pays above rate set by an SEO especially for first year apprentices and that the market should be allowed set the rate.

CWPS

The CWPS made no submission on this issue.

Mount Street Group

The Mount Street Group made no submission on this issue.

Conclusions of the Court

The Court notes carefully the submissions of the parties. While NECI submit there should be a minimum hourly rate but not an SEO it did not make any submission on how that could be achieved other than by an SEO. Ms Rogers submitted that her company generally pays rates higher than rates set by an SEO. AECI, ECA and Connect submit that an SEO is required to ensure fair and sustainable rates of remuneration and to attract both workers and investors into the sector. The Court is of the view that absent a SEO which is legally binding on all employers, wages would be used to undercut competitors which ultimately could reduce rates below what is fair to a highly qualified skilled workforce, and which could result in a drain of such workers from the sector thereby making it unsustainable. For all of the above reasons the Court is satisfied that having an SEO in place is reasonably necessary to ensure rates are fair and sustainable.

Proposed terms to be included in an SEO

In this section of the Report the Court addresses the proposals of Connect and the responses of the other parties at the hearing in respect of that submission.

Basic pay and overtime hours

Connect

Connect say the current basic rates of pay in the sector are the September 2019 rates contained in the previous SEO (*S.I* No. 251/2019) which was struck down by the High and Supreme Court. It is their submission that the rate was implemented by most employers in the sector before the SI was struck down. This is what is meant by the current basic rate. The same applies in relation to the apprentice rates

Connect submitted that there should be an increase on the current basic rates of pay by 2.7% from the date of implementation of the SEO with a further increase of 3.6% twelve months later and that the SEO should expire after eighteen months. They submitted that an increase of this nature was justified as they had not received an increase since September 2019. Connect set out what they understand the existing arrangement in respect of overtime to be. They submitted that they are not proposing any change to those hours.

ECA

The ECA submitted that it is prepared to accept pay increases over a two- year period as follows: The current rate of pay should be amended so as to provide for hourly rate increases of 2.3% on implementation of the SEO followed by a further 1.6% increase twelve months later. In respect of overtime the ECA accept that the rates as set out by Connect are the rates currently paid in the industry.

CWPS

The CWPS had no view on basic pay.

Mount Street Group

The Mount Street Group had no view on basic pay.

AECI

AECI submitted that it would be in favour of a pay increase of 2% for twelve months not to be implemented prior to January 2022. It was their submission that they are not opposed to the SEO containing pay rises over a two- year period.

NECI

NECI submitted that without prejudice to their position that there should not be an SEO, their position was that the rate for electricians should be set at a minimum rate of €19.25 hour. In respect of overtime NECI submitted that overtime rates should only apply after a minimum of 39 hours.

Ms Dolores Rogers

Ms Rogers submitted that the market should set the rate. She also said that the market rate was currently above that of the 2019 SEO rate that was struck down.

Conclusion of the Court

The Court has considered carefully the written and oral submissions of the parties including as regards the economic circumstances of the industry, comparative pay rates and developments in terms of pay growth generally. It is clear that the parties have reached divergent conclusions as regards the level of pay growth that is appropriate in the sector and that is, in the view of the Court, a normal and unremarkable state of affairs.

In its view, the function of the Court in this matter is to evaluate all that has been said and written by the parties and to apply its own understanding of such matters generally across the economy and in the sector itself. In exercise of that function, it is not appropriate to articulate in a detailed manner the basis for any conclusion it might reach as regards the reasonableness of one rate of pay growth versus another. It is rather the function of the Court to make a judgement based on the nature of the submissions of the parties and the divergence between them and on its own understanding, insights and expertise as regards disputation and the resolution of disputes of this nature across the economy generally.

The Court has given weight to the shared view of the parties in respect of the demand for electricians in the sector and the current difficulty in getting electricians. It has also given weight to the fact that craftworkers in the public sector have been granted three 1% increases between October 2021 and October 2022 as a result of public sector pay agreements. The Court notes that submissions were made by parties indicating that they currently pay above the existing rate in the sector to attract electricians. The Court notes that a number of the parties submitted that an increase would be beneficial in attracting electricians to the sector.

The Court is also conscious that, on the submission of a range pf parties to the matter before the Court, traditionally the electrical contracting sector has kept pace with percentage increase in the construction industry. The Court sees no need to depart from this practice and, on that basis, it is the view of the Court that the existing rate of pay as set out earlier in this report should be amended to provide for an increase of 2.8% from 1st February 2022 and further 2.8% from 1st February 2023 which is the same rate as that set by the Court in its recent recommendation to the Minister in respect of the construction sector.

The Court is of the view that the 1st February will provide those impacted by an SEO with sufficient lead-in time to prepare for the increases whilst having regard to the fact that the last increase in the sector was in 2019.

In relation to Changehands and Foremen keeping their differential, the Court is of the view that this is not encompassed by a SEO. Section 16(5)(a) & (b) of the 2015 Act confines the Court to setting a minimum hourly rate and no more than two higher hourly rates of pay. Chargehands and Foremen by

virtue of being qualified electricians will be covered by any rate set in an SEO but any differential paid to them by virtue of their additional responsibilities is not a matter for an SEO

In relation to Connect's argument that the SEO should expire after 18 months. By virtue of law any SEO will remain extant, absent its cancellation or amendment by a further SEO.

In respect of the apprentice rate of pay, Connect, submitted that adjustment be made to the existing 4th year rate and an additional rate be added for workers who due to circumstances outside of their control could not complete their fourth year. The ECA submitted that the four rates should be recalibrated to provide increases for year one and two and decreases for year three and four noting that over the four years the apprentice would still receive the same amount of money. It was their submission that this would attract apprentices into the profession and encourage year 3 and 4 apprentices to complete the apprenticeship in a timely manner. NECI submitted that there should be an increase in the year one and year two rates and a decrease in year 3 and year 4 rates. Ms Rogers noted that the first year and second year rates, were low but did not indicate if she was submitting that the rates should be increased. The Court considered the submissions in respect of the apprentice rates. However, no submission was made by the parties in respect of the impact of the proposed changes on workers currently in the apprentice system. It is the Court's view that before it could consider adding an additional rate or recalibrate the rate it would require a lot more information. However, the Court noted that all the parties that made submissions in respect of this issue indicated that the year one rate was too low. On that basis the Court is recommending that the year one rate be changed to 35% of the Electrician rate.

In respect of the overtime rates set out in Connect's submission it was not disputed that they are the prevailing rates in the sector and the Court was not being requested to make any changes to those rates.

The Court therefore **recommends the following pay rates**:

The following basic hourly rates of pay will apply in the sector from 1st February 2022 to 31st January 2023.

Electricians

Category 1	€24.14 per hour
First year out of time	
Category 2	€24.63 per hour
Third year out of time	
Category 3	€25.02 per hour
Sixth year out of time	
Apprentice	Year 1 – 35% of Category 1 rate
	Year 2 – 45% of Category 1 Rate
	Year 3 - 65% of Category 1 Rate
	Year 4 - 80% of Category 1 Rate

The following basic hourly rates of pay will apply in the sector from 1st February 2023.

Category 1	€24.81 per hour
First year out of time	
Category 2	€25.31 per hour
Third year out of time	
Category 3	€25.72 per hour
Sixth year out of time	
Apprentice	Year 1 – 35% of Category 1 Rate
	Year 2 - 45% of Category 1 Rate
	Year 3 - 65% of Category 1 Rate
	Year 4 - 80% of Category 1 Rate

Guaranteed Week, additional annual leave and the inclusion of breaks in the SEOS

Connect

Connect submitted that the SEO should provide a guarantee to workers of a minimum working week of 39 hours. The current practise is that the standard working week is 39 hours and that overtime payments are payable for hours worked beyond that threshold.

Where work is not possible due to inclement weather, the workers in the sector to whom the application relates have traditionally been paid. A practice has developed in recent years that workers are being sent home without pay in circumstances of adverse weather. For that reason, the SEO should make provision for a guarantee to workers of 39 hours per week.

Connect are also seeking to have the current arrangement in respect of breaks incorporated into the SEO and are seeking that, an additional day annual leave be awarded to Electricians covered by this SEO

ECA

The CIF submitted that the Act makes no provision for inclusion of a guaranteed working week, the inclusion of breaks, or the granting of additional leave to be recommended by the Court. Section 16(5) of the Act allows for a Recommendation to provide for hourly basic rates of pay, pension and sick pay requirements and any pay in excess of basic pay in respect of sick pay, piece work, overtime, unsocial hours working, hours worked on a Sunday or travelling time.

Any provision as regards inclement weather, breaks or annual leave must therefore be excluded from a Recommendation of the Court. In any event, there is no dispute between the parties in respect of breaks and many contractors in the sector do make payment to workers during inclement weather and consequently no requirement exists for that protection to be provided by an SEO. The claim for additional annual leave is not appropriate to an SEO.

AECI

The AECI submitted that they agree with the ECA submission and do not believe that these issues fall within the remit of an SEO.

CWPS

The CWPS made no submission to the Court on this matter.

Mount Street Group

The Mount Street Group made no submission to the Court on this matter.

NECI

NECI submitted that issues like breaks and annual leave should not be part of an SEO.

Ms Dolores Rogers

Ms Rogers made no submission to the Court on this matter.

Conclusion of the Court

The Court notes Connects submission that their claim in respect of the guaranteed working week is in respect of an emergency that leads to a workplace closure, some examples of what that might constitute were given in oral submission. In respect of breaks Connect accepted that the breaks they identified are the breaks that are normally given and in respect of the annual leave it was a straight claim for additional leave. Connect did not address the issue of whether or not the section 16 (5) of the Act provides for these issues to be addressed. The ECA, NECI and AECI all submitted that these issues did not fall within the scope of section 16 (5) and therefore could not be included in an SEO.

Section 16(5) of the Act reads as follows:

> *(5) A recommendation under this section may provide for all or any of the following in respect of the workers of the class, type or group in the economic sector concerned:*
>
> *(a) a minimum hourly rate of basic pay that is greater than the minimum hourly rate of pay declared by order for the time being in force under the Act of 2000.*
>
> *(b) not more than 2 higher hourly rates of basic pay based on—*
>
> *(i) length of service in the economic sector concerned, or*
>
> *(ii) the attainment of recognised standards or skills;*
>
> *(c) minimum hourly rates of basic pay for persons who—*
>
> *(i) have not attained the age of 18 years,*
>
> *(ii) enter employment for the first time after attaining the age of 18 years,*
>
> *(iii) having entered into employment before attaining the age of 18 years, continue in employment on attaining that age, or*
>
> *(iv) have attained the age of 18 years and, during normal working hours, undergo a course of study or training prescribed by regulations made by the Minister under section 16 of the Act of 2000, reduced to the percentage set out in section 14, 15 or 16 of that Act for the category of worker concerned;*
>
> *(d) minimum hourly rates of basic pay for apprentices;*
>
> *(e) any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday, or travelling time (when working away from base);*

(f) the requirements of a pension scheme, including a minimum daily rate of contribution to the scheme by a worker and an employer; and

(g) the requirements of a sick pay scheme.

The Court does not accept that the recommendation as sought in respect of these issues is encompassed by section 16(5) and in those circumstances will not be recommending inclusion of this in an SEO.

Specific Project hours

Connect sought to have the rates of pay for specific project hours included in the SEO. Specific project hours refer to projects where the starting time is other than the normal starting time and falls into two categories starting time before 1.00pm and starting time after 1.00pm. The ECA indicated that it had no objection in principle to the inclusion of same in the SEO, but they were not in favour of any changes to the existing rates. None of the other parties submitted on this issue.

Conclusion of the Court

It was not clear to the Court what the existing rates in respect of specific projects are, and what changes to those rates Connect were seeking. On that basis the Court does not recommend the inclusion of this issue in the SEO on this occasion.

Travelling time and Country money

Connect

Connect submitted that travelling time has traditionally formed an important part of the remuneration of workers in the electrical contracting sector. It is paid in recognition of the fact that workers are required to travel to numerous different work locations which is not their actual place of employment. It is now the case that the significant majority of workers in the sector have an additional payment in recognition of time spent travelling to sites that are not their base. Connect submitted that travel time has always been paid in this sector from the place of employment and therefore provides a universal approach to the payment of same. Connect submitted that the 2015 Act provides for travel time to be included in an SEO. Connect set out the current rates and submitted that they should be included in an SEO.

ECA

The ECA submitted that that they are opposed to the inclusion of travel time in an SEO for a number of reasons. To-date since the introduction of the 2015 Act no SEO has included travel allowance. To include travel allowance in an SEO in the electrical sector would lead to knock on claims in closely linked sectors like the mechanical sector and the general construction sector. The inclusion of travel time in the SEO would result in significant costs and place undue burden on electrical companies who are not members of ECA. While many ECA members currently pay a travel allowance with the first hour incorporated into the rate, the current practice in the industry is that many contractors pay a subsistence allowance/country money to workers who are transferred to sited over 20 miles from the contractor's base.

AECI

The AECI submitted that under no circumstances are they prepared to pay travel time.

NECI

NECI made no observation on this issue

Ms Dolores Rogers

Ms Rogers made no observation on this issue

CWPS

The CWPS made no observation on this issue

Mount Street Group

Mount Street Group made no observation on this proposed amendment

Conclusion of the Court

The Court notes that the submissions of the parties diverge in relation to the degree of application of travelling time in the sector currently with the AECI indicating that they are not prepared to pay travel time in any circumstances. It appears clear that wherever such payments are not currently paid, any inclusion in the SEO to make provision for such payment would result in a substantial increase in remuneration which would not be reflective of the general trends in the economy as set out in the submissions of the parties in the context of their submissions in relation to basic pay. The Court also notes the assertion of the ECA that Travel time has not featured in any SEO to-date since the commencement of the 2015 Act.

The Court concludes that there is no clarity as regards the potential impact of the inclusion of travel allowance in this SEO. It is clear however that the universal application of travelling time across the sector would be a very significant development. Having regard to these circumstances and the fact that the Court is recommending growth in the basic pay provisions of the current SEO; the Court does not recommend the inclusion of travel time in this SEO.

Pension/sick pay/death -in-service scheme

Connect

Connect submitted that a recommendation of minimum benefits and contribution rates would be in line with government policy to increase the number of workers participating in occupational pension schemes in order to reduce sole dependency of workers on the State pension. By including and providing for minimum death benefit entitlements this will ensure that families and their dependents have a sufficient level of protection in the event of death prior to retirement. The availability of sick pay benefits will provide a minimum safety net for workers and assist them when they are in a position to re-enter the workforce. The CWPS have set out the minimum benefits in their submission and for guidance purposes the schemes current minimum daily levels of contributions payable by workers and employers. Connect submitted that these are the rates that the vast majority of their members currently pay. Connects preference is for a percentage payment of 7% to be the rate but acknowledge that the Act provides for daily minimum rates. Connect are looking for the entry level to the schemes to be from age 15 and for the retirement age to reflect the State retirement age and that the daily contribution operates on a 5, 6 and 7 day week i.e. include overtime.

Ms Dolores Rogers

Ms Rogers submitted that the last SEO stated that a pension equivalent to CWPS be paid, the difficulty with that was that there was no other product that included "Sick Pay" as a combined product, only the CWPS, as it was designed complied with the SEO. It was also stated on the CIMA site to be the only pension accepted by the Labour Court. Ms Rogers confirmed to the Court that her current employees are covered by the CWPS scheme, but she has issues with that.

NECI

NECI submitted that they have a problem with setting a daily rate as it is difficult to see how the Court can assess the workers return on a daily rate. They submitted that the rate should be a percentage rate of remuneration for example 6% of what the pension industry say is a minimum rate. Their concern is in respect of the benefits that workers will get out of the scheme in the end. NECI submitted that they feel there are other options to CWPS that are more beneficial to their employees and employers should be able to obtain cover from any source of their choosing and not tied to the CWPS. The same applies in relation to any sick pay scheme. When asked by the Court to comment on the CWPS submission setting out the minimum benefits NECI said that it did not believe that the Act provided for a death-in-benefit scheme and it had an issue with its inclusion, however if it was required it could be purchased as life insurance rather than being part of the pension scheme. The Court should not promote one scheme. It should set out the criteria so others can deliver alternative schemes. When asked by the Court to comment on the features and benefits of the CWPS scheme that it objected to NECI said they took issue with requirement No 6 which provides '*that bodies that are represented by both employer and unions involved in the sector must appoint the pension scheme trustees. The constitution of the Trustee Board should include representatives of both employers and employees of the sector.'* NECI was of the view that this promoted a single scheme and was anti-competitive and that the Court should not promote one scheme. NECI said the Court should limit itself to setting out the criteria and employers are then free to look to alternative providers to deliver on the criteria set.

Mount Street Group

The SEO currently requires all pension schemes to conform to certain criteria which effectively restricts parties to joining the CWPS. Parties should be given a choice. Mount Street will offer a new scheme with terms, benefits and contribution rates no less favourable than those currently on offer. The structure of the scheme is likely to exceed what already exists in respect of sick pay, contribution rates and death benefits. Benefits at a minimum will match those currently in place at a lower cost. The CWPS fund has been under-performing versus comparable multi-assets funds.

ECA

The ECA are seeking the inclusion of a pension and sick pay scheme for electricians and apprentices who are between the ages of 20 and 65 as currently applies. The ECA are opposed to any change to those age requirements as no information has been forthcoming in respect of the impact of such changes on the benefits that current members of a scheme would expect to receive. It would also impact negatively on the apprentice rates of pay and in effect reduce their take home pay. ECA set out in their submission what they believe the requirements of a pension scheme should be and noted that it should include death in service benefits. They also set out what they believe are the requirements for a sick pay scheme. ECA submitted that in the main their employers enrol their employees in the CWPS scheme and would currently be paying the contributions as set out in the appendix to the CWPS submission. However, if there were other schemes, they have no difficulty in supporting schemes that offer the same benefits as the schemes their members are currently in. ECA support a daily rate based on a five -day week with an increase in the rate linked to an increase in the

rate of pay. They are opposed to the Connects proposals in respect of percentage increases and or basing payments on a seven- day week.

AECI

The AECI submitted that they are opposed to the Connect proposal of a rate of 7%. They submitted that this would impact negatively on the take home pay of their electricians and apprentices. Their members in the main pay into the CWPS scheme and they believe any rate should reflect the rate that is currently being paid plus any increase in pay awarded under this SEO. They are also opposed to any changes in what they believe are currently standard entry (age 20) and exit (age 65) ages for these schemes in this sector.

CWPS

The CWPs submitted that the provision of minimum terms and conditions and reasonable rates of contributions relating to pension death benefits and sick pay is of immense benefit to workers and their families and that a minimum level of contribution is in line with the Governments policy to increase the number of workers on occupational pension schemes. It is their submission that the provision of a sick pay scheme provides a safety net for workers and death benefits provide a safety net for their families. The CWPS submitted that requirements of a pension scheme should include both employer and employee contributions and that the scheme should be an occupational pension rather than a contract- based product. it is their submission that because of the transient nature of workers in this sector the scheme should be a multi-employer scheme which enables workers to maintain a single pension account that will travel with them from employer to employer. The CWPS submitted that a refund of contributions on leaving an employment prior to retirement should not be an option. They submitted that the scheme should be transparent in respect of the scheme's charges and who bears them. The CWPS submitted that workers in this sector should have a death in service benefit as well as a pension and it should be capable of moving with the worker if they change employment. In terms of sick pay benefit the CWPS submitted that any scheme should be in addition to the state benefits and should be capable of transitioning with the worker if they change employment. CWPS have set out in the appendix to their submission the minimum benefits that currently apply in their scheme and for guidance purposes the schemes current minimum daily levels of contributions payable by workers and employers.

<u>Court's findings on pension/sick pay and death in service schemes and reasons for those findings</u>

The Supreme Court, in its decision in **Naisiúnta Léictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaoichta - and - The Labour Court, The Minister for Business, Enterprise and Innovation, Ireland and the Attorney General [2020] IESC 36** makes clear that[1] it is impermissible to

[1] Para 184 of the judgment of Mac Menamin J. judgment: *This is a closely reasoned and succinct summary. The High Court judgment discusses this issue in the context of whether this was an impermissible further delegation from the Labour Court to the trustees of the CWPS, applying the principle delegatus non potest delegare (a delegate may not delegate). I think a slightly narrower approach is more apt. At first sight, resort to an existing pension scheme might appear to have all the attractions of a helpful shortcut and be administratively inconvenient. But, in fact, as Simons J. pointed out, the pay-figures relating to construction workers might be different from those in the electrical contracting sector.*

Para185. Here, it is necessary to refer back to s.16(5) of the 2015 Act. This provides that a recommendation may provide for "… (f) the requirements of a pension scheme, including a minimum daily rate of contribution to the scheme by a worker and an employer …".

provide within an SEO that the requirements of a pension scheme should be '*no less favourable*' than a particular pension scheme which is in being**.** The Court does not accept the argument put forward by NECI that the Court has no power to provide for a death-in-service scheme**.** Death-in-service benefit is a feature of some but not all pension schemes. Having regard to the nature of the sector, the fact that it is labour intensive and involves physical work the Court is of the view that one of the minimum benefits of any pension scheme should be the provision of a death-in-service benefit.

All of the parties are in agreement that workers in the sector should be enrolled in a pension scheme. Disagreement arises because some parties are of the view that the benefit criteria means that the only provider in the market is CWPS thus creating a monopoly.

Having particular regard to this general agreement amongst the parties that workers in the sector should be enrolled in a pension scheme and having had regard to the submission of the Mount Street Trustees the Court is satisfied that there are a number of providers in addition to the CWPS willing and able to provide the minimum benefits set out above.

Connect are looking for the entry level to the schemes to be from age 15 and for the retirement age to reflect the State retirement age. No figures were supplied to the Court in relation to the cost of this on the contribution levels to any such scheme or data supplied to the Court to show that there are pension schemes in existence that currently provide for this. In those circumstances the Court is satisfied the schemes need only to be available to workers over the age of nineteen and under the age of sixty-five.

Having had regard to the submissions made by the parties including the objection by NECI regarding the composition of the Board of Trustees and Ms Rogers' objection to the requirement of linkage between pension and sick pay scheme, and the reasoning of the Supreme Court, the Court is of the view that any pension scheme to which the which the workers and employers are required to contribute should provide the following minimum benefits:

- Employers should be required to contribute to an occupational pension scheme established under trust and regulated by the Pensions Authority.
- Any scheme should enable workers to maintain a single pension account that will travel with them from employer to employer and from job to job during the course of their career within the sector.
- Where a worker leaves the service of an employer, the contributions which have been paid by both the worker and the employer in respect of the employee should vest under the scheme and be retained to provide pension benefits.
- Workers should be required to contribute to any pension scheme.
- The scheme should be required to disclose minimum information about the scheme's charges and who bears them. The total annual charges borne by members should be disclosed and

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But it is then necessary to refer back to the words emphasised earlier, quoted from para. 85 of the High Court judgment. The Labour Court recommendation was that there should be a pension scheme which would contain terms no less favourable, including employer and employee construction rates, than those set out in the Construction Workers' Pension Scheme. But the words "no less favourable" do not comply with what is required by s.16(5)(f) of the 2015 Act. What was required, rather, was to set out a minimum daily rate of contribution to the scheme by a worker, and an employer. This the recommendation did not do. For this reason, what was contained in that part of the recommendation must also be seen as non-compliant with the section, and therefore, itself, ultra vires.

must include all administration costs, fund management costs, actuarial, accounting, legal and auditing fees and all other charges incurred by the scheme.

- Workers in the sector should be entitled to death in service benefits of a reasonably substantial minimum size, separate from and in addition to minimum pension benefits. These benefits should be provided without any restrictive eligibility conditions or any medical underwriting requirements, or reference to previous medical conditions.
- Death in service benefits should be payable in the event of a member dying at any time while he is employed by an employer in the sector.
- Once any initial eligibility condition is satisfied, the worker should remain fully covered on any transfer to a new employer and should not have to repeat any eligibility condition or period.
- If a member has met the requirements for the full lump sum death in service benefit, but then leaves service and dies within a specified time of doing so without being re-employed in the Sector, the SEO pension scheme should provide a modified lump sum benefit in addition to the value of their pension account.

Sick Pay scheme

- Employers should be required to contribute to an independently administered and managed sick pay scheme (which can be either part of or separate to the pension scheme) to cover all their workers in the electrical contracting sector.
- Workers should be able to remain covered for sick pay benefits as they transition between employers, to reflect the flexible nature of employment within the sector.
- Sick pay benefits should be provided without any restrictive eligibility conditions or any medical underwriting requirements, or reference to previous medical conditions.
- Benefits should be in addition to any sickness, illness or invalidity benefits payable by the State through the social insurance system.
- Once any initial eligibility condition is satisfied, the employee should remain fully covered on any transfer to a new employer and should not have to repeat any eligibility condition or period.
- Benefits should be provided on absence from work due to illness or injury. An adequate sick pay benefit should be provided for a specified duration and the benefit and duration should be disclosed to participating employers and members.
- The scheme will not impose any restrictions, such as only accepting employers with minimum staff numbers or earnings.

In relation to the contribution rate the Supreme Court has said that the Court is obliged to set out a minimum daily rate for both the employer and the employee. The contribution rate has to be sufficient to buy the benefits sought. The CWPS in its appendix to its submission set out for the purpose of illustration the daily contribution rate for workers in the construction and mechanical engineering sector to provide the minimum benefits. The daily rate has traditionally been calculated based on a 5 - day week and the Court sees no reason to depart from this in circumstances where contributions based on a 5- day week are sufficient to purchase the benefits set out above. This is a minimum contribution and there is nothing to prevent those employers, including members of NECI, who are of the view that the minimum rate should be set at 6% of workers remuneration from agreeing higher contribution rates outside of an SEO. Having considered all the arguments made in relation to rates the Court recommends the following minimum rates:

Pension Contribution

Pension Contribution from 1st February 2022 Employer daily rate - €5.73 (weekly - €28.65)

Worker daily rate - €3.82 (weekly €19.10)

Total contribution daily into the scheme per worker - €9.55 (weekly €47.75)

Pension Contribution from 1st February 2023 *Employer daily rate - €5.84 (weekly - €29.22)*

Worker daily rate - €3.90 (weekly €19.50)

Total contribution daily into the scheme per worker - €9.74 (weekly €48.70)

Sick pay contributions

Employer €1.27

Worker €0.63

Total €1.90

Death in Service contributions rate

Employer: €1.17 per week

Worker: €1.17 per week

Total: €2.34 per week

Disputes procedure

Connect proposed the following disputes resolution procedure should be applied for matters related to the Sectoral Employment Order**.**

Dispute Resolution Procedure

If a dispute occurs between workers to whom the SEO relates and their employers, no strike or lock-out, or other form of industrial action shall take place until the following procedures have been complied with. All sides are obliged to fully comply with the terms of the disputes procedure.

Individual Dispute

a) The grievance or dispute shall in the first instance be raised with the employer at local level with a requirement to respond within 5 working days. Notice in writing of the dispute shall be given by the individual concerned or his trade union to the relevant organisation representing employers or to the employer directly.

b) If the dispute is not resolved it shall be referred to the Adjudication Service of the WRC

c) Either party can appeal the outcome of the Adjudication Hearing to the Labour Court.

Collective Dispute

a) The grievance or dispute shall be raised in the first instance with the employers with a requirement to respond within 5 working days. Notice in writing of the dispute shall be given by the workers concerned or their trade union to the relevant organisation representing employers or to the employer directly.

b) If a dispute is not resolved the issue shall be referred to the Conciliation Service of the WRC

c) If the issue remains unresolved, it shall be referred to the Labour Court for investigation and recommendation.

Connect

Connect submits that in accordance with section 16(6) of the Act the dispute procedure should only apply to issues covered by the SEO.

ECA

The ECA submitted that they have no issue with the dispute procedure as set out by Connect. However, it is their submission that the procedure should cover all issues in dispute between the parties. The ECA contended that any restriction on the scope of the procedure would not contribute to harmonious relations between employers and workers in the sector and would not promote the avoidance of industrial unrest in the sector.

AECI

The AECI made no submission in relation to this matter

CWPS

The CWPS made no submission in relation to this matter.

NECI

NECI made no submission in relation to this matter

Ms Dolores Rogers

Ms Rogers made no submission in relation to this matter.

Conclusion of the Court

The Court, having regard to the submissions of the parties, concludes that the application of the disputes procedure only to issues contained in the SEO would not contribute to harmonious relations. Regardless of what the dispute is in respect of, a procedure will be required to resolve it. The Court notes that section 16 (6) of the Act states that a recommendation under this section "*shall include procedures that shall apply in relation to the resolution of a dispute concerning the terms of a sectoral employment order*". There is nothing in that section of the Act that would prohibit the dispute procedures applying to other issues outside of the issues covered by the SEO. The Court does not believe that restricting the procedure to SEO issues only will assist in the avoidance of industrial unrest and will be recommending the dispute process without that caveat.

Summary of Court's conclusions

Having regard to the current labour shortages in the sector and the likelihood that these shortages are likely to be a factor over the short and medium term the Court is satisfied for the reasons set out in this report that:

- The SEO is reasonably necessary to ensure fair and sustainable rates in the sector by prohibiting employers from competing on wages below the SEO rate.
- The setting of a legally binding rate will create certainty in an industry that has to compete for work both nationally and internationally thereby resulting in greater employment.
- The SEO will make contractors compete on factors other than wages such as productivity and skills levels.
- The SEO will address any undercutting of wages by external operators operating in the jurisdiction by reason of the fact that the rates set is binding on them.

- The SEO is reasonably necessary to promote and preserve high standards of training and qualification by requiring that apprentices are paid a legally binding minimum rate throughout their apprenticeship including time spent in education.
- The SEO will promote harmonious working relation between employers and workers by ensuring an orderly resolution of disputes by the inclusion of a disputes procedure that is legal binding on the sector.