

MECHANICAL ENGINEERING & BUILDING SERVICES CONTRACTORS' ASSOCIATION

Construction House, Canal Rd, D06C6T2 Tel: (01) 4066000 Email: m&e@cif.ie Website: www.cif.ie

16 December 2020



Mr Kevin Foley
Chairman
The Labour Court
Lansdowne House
Lansdowne Road
Dublin 4

Re : Application by Connect & Unite Trade Unions for an SEO in the Mechanical Sector

Dear Mr Foley

Please see attached submission in respect of an application by Connect and Unite trade unions under s14 of the Industrial Relations (Amendment) Act, 2015 in respect of an SEO in the mechanical engineering and building services contracting sector.

Yours sincerely

A handwritten signature in cursive script that reads "Jean Winters".

Jean Winters
Director
Industrial Relations & Employment Services

Encl 1



Mechanical Engineering and Building Services Contractors Association



Submission in Respect of a Sectoral Employment Order in the Mechanical Engineering and Building Services Contracting Sector

December 2020

1. INTRODUCTION

In September 2020, Connect Trade Union and Unite the Union jointly applied to the Labour Court under s.14 of the Industrial Relations (Amendment) Act 2015 to request the Court to examine the terms and conditions relating to the remuneration and pension/sick pay scheme of craftworkers and apprentices in the Mechanical Engineering and Building Services Contracting Sector.

The Mechanical Engineering and Building Services Contractors Association (MEBSCA) is a trade Association affiliated to the Construction Industry Federation (CIF). The Association is supportive of the unions' application for a new SEO in the sector. MEBSCA comprises of approximately 50 contractors nationally, and the Association collectively employs approximately 3,500 craftworkers and apprentices in the sector. The Association has traditionally negotiated rates of pay and terms and conditions of employment with Connect Trade Union and Unite the Union. These two unions represent plumbers, pipefitters and welders employed by our members. These workers were covered by the previously Registered Employment Agreement and, since its introduction in March 2018, are now covered by the SEO in the Mechanical Engineering and Building Services Contracting Sector.

Together with providing good hourly rates of pay, pensions and sick pay for mechanical workers, the first SEO in the sector in 2018 provided certainty to contractors with regard to labour costs when tendering for projects. Labour costs account for approximately 40% of the cost of a project, therefore, a mechanism to ensure that contractors can compete for work on a level playing field with regard to labour costs is essential in a sector where competition for work is intense.

The first SEO in the sector was introduced in March 2018. Labour costs have risen in the intervening period due to growth in the sector. A new SEO is required to reflect current terms and conditions of employment to ensure the benefits of the system, for both employers and workers, can be maintained.

2. INDUSTRIAL RELATIONS (AMENDMENT) ACT 2015

An SEO in the Mechanical Engineering and Building Services Contracting Sector is desirable for the following reasons:

- The SEO to apply to the following workers in the sector:
 - Plumbers
 - Pipefitters
 - Qualified plumbers and pipefitters who have acquired additional or advanced welding qualifications and who are required to operate as welders on a day-to-day basis
 - Apprentice plumbers and pipefitters

- It is normal and desirable practice to have terms and conditions relating to remuneration, pensions and sick pay in the mechanical contracting sector. From the late 1960s up to 2013, the terms and conditions of employment for workers in this sector were covered by the REA for the general construction industry, with a higher rate payable to mechanical workers in recognition of additional skills attained. In 2013, the Supreme Court declared that Part 3 of the Industrial Relations Act 1946 was unconstitutional, with the effect that all REAs in existence at that time were struck out. However, MEBSCA continued to negotiate with Connect and Unite on rates of pay and terms and conditions of employment for mechanical

workers to provide certainty and stability for both contractors and workers in the sector. The first SEO in the sector was introduced in 2018.

- An SEO in the mechanical sector which sets legally binding rates of pay, pension and sick pay contributions, will contribute to a large extent towards ensuring harmonious relations between employers and workers in the sector.
- An SEO provides a mechanism for resolving disputes in an orderly manner without recourse to industrial action. A legally binding disputes resolution procedure is essential in a sector that employs substantial numbers of workers.
- Prior to the striking down of the REAs in 2013, it was a statutory requirement for workers in the mechanical sector, aged between 20 and 65, to be registered in a pension and sick pay scheme. Since the introduction of the SEO in March 2018, the mandatory provision of pensions and sick pay has been restored for mechanical workers. MEBSCA is supportive of the inclusion of these schemes in an SEO, as an income upon retirement, as well as payment for absence due to illness, is undoubtedly beneficial to the workers concerned. Due to the transient nature of the industry where workers move from site-to-site and employer-to-employer on a regular basis, it is essential that pension and sick pay schemes are transferable.
- An SEO provides certainty and stability to contractors, mechanical workers and ultimately the client, as it establishes legally binding rates of pay.
- The setting of legally binding rates of pay creates a level playing field, and in turn eliminates the opportunity to erode employment conditions as a means of undercutting a competitor and securing a project.
- Where minimum labour costs are set for every contractor in the sector, contractors must look to gain a competitive advantage elsewhere when tendering for projects. This will lead to investment in new technologies, training and health and safety.
- Employment levels in the sector are determined by the level of work available. As the economy grows, there will be greater need for new entrants. 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.

In the intervening period between the striking down of the REAs in 2013, and the introduction of the SEO in the mechanical sector in 2018, contractors from outside the State, with a lower cost base, enjoyed a competitive advantage over Irish mechanical contractors. It is almost three years since the first SEO was introduced and labour costs have increased in the intervening period. A new SEO is required to reflect current terms and conditions of employment to ensure that all mechanical contractors, regardless of origin, can tender for work on a level playing field. A new SEO will benefit those contractors operating in the border counties in particular.

SUMMARY

In summary, an SEO that provides fair and sustainable remuneration, pensions and sick pay will benefit the mechanical sector insofar as:

- An SEO will ensure contractors can tender on a level playing field with regard to labour costs.
- An SEO will promote harmonious relations between employers and workers in the sector.
- An SEO will provide certainty with regard to labour costs for a minimum of one year.
- An SEO will provide stability in terms of dispute resolution procedures. This 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.
- An SEO which establishes fair and sustainable rates of pay will serve to attract bright, young people into the sector.
- An SEO will encourage contractors to invest in new technologies, training, health, and safety etc., in order to gain a competitive advantage.
- An SEO will make the sector more attractive to investors, both nationally and internationally.

3. TRAVEL ALLOWANCES

MEBSCA is strongly opposed to travelling allowances being included in an SEO for the following reasons:

Background

- Mechanical workers were covered under the previously Registered Employment Agreement for the Construction Industry. This agreement provided for travel allowances in the urban areas of Dublin, Cork, Limerick, Waterford and Galway. Outside of the Dublin City area all other travel agreements were conditional. There was no provision for travel allowances outside the urban areas.
- Since the REAs were struck down by the Supreme Court in 2013, MEBSCA members have continued to pay a travelling allowance to employees. In 2011 when the industry was in the midst of a very severe recession, agreement was reached between MEBSCA, Connect and Unite to incorporate the first hour of travel into the hourly rate.

SEOs

- The SEO provides a mechanism for setting remuneration, pensions and sick pay for all workers in a sector on a national basis. The REA provided for travel allowances in the urban areas only. To include travel allowances in an SEO would place an undue financial burden, and in many cases an unsustainable burden, on contractors located outside the urban areas, where travel was never paid in the past.
- Travel allowances were not provided for in any SEO introduced since 2017, namely:
 - o The first SEO in the construction sector, introduced in 2017
 - o The current SEO in the mechanical sector, introduced in 2018
 - o The second SEO in the construction sector, introduced in 2019
 - o The SEO in the electrical sector, introduced in 2019
- The mechanical and electrical sectors are closely linked, and many mechanical contractors also operate in the electrical sector. To include travel allowances in a new SEO in the mechanical sector would undoubtedly lead to knock-on claims in the electrical sector.
- The provision of a travel allowance in a new mechanical SEO would also lead to knock-on claims in the general construction sector, which in turn could lead to industrial unrest.
- To introduce sector-wide travelling allowances now would result in significant costs and place an undue financial burden on mechanical companies who are not members of MEBSCA in particular.
- As outlined above, MEBSCA members pay travel allowances, with the first hour incorporated in the rate. However, outside of MEBSCA, the current practice in the industry is that many contractors pay a subsistence allowance/country money, tax free, to workers who are transferred to sites which are over 20 miles from the contractor's base. This payment is €182 approx. (tax free) per week and is made in accordance with Revenue Commissioner Guidelines.

Increase in Travel Allowance

- MEBSCA members are firmly opposed to any increase in what is already being paid.
- Since the travel allowance clause was first introduced in the previously registered employment agreement, the urban areas have become much more accessible with improved infrastructure and transport links.
- In 2019 the unions served a claim on MEBSCA members for an additional hour's travel. One hour's travel equates to a pay claim of approximately 13%. This claim was simply unsustainable and was rejected was MEBSCA.
- Hourly rates of pay for mechanical workers increased by 2.7% in September 2019 and a further 2.7% in September 2020. Travel allowances are based on hourly rates and, therefore, an increase in hourly rates automatically results in an increase in travel allowances.
- The rate of pay for newly qualified mechanical workers is 20% higher than the craft rate set out in the new Construction Sector SEO, with the top rate being approximately 25% higher. MEBSCA members simply cannot afford further increases on top of what has already been agreed on pay. To recommend a further increase in labour costs in the form of travel would put mechanical companies significantly out of line with other workers in the industry.
- To increase what is already being paid by MEBSCA, and include this allowance in the SEO, would result in unsustainable costs for mechanical contractors, particularly those who are not members of MEBSCA.

SUMMARY

- MEBSCA is opposed to the inclusion of travel allowances in the SEO.
- MEBSCA is opposed to increasing the allowance currently being paid.

4. SUBMISSION ON CONTENT OF NEW SEO

MEBSCA respectfully requests the Court to provide for the following in a new SEO in the sector:

4.1 Definitions / Scope

Definition of the Economic Sector

For the purposes of this Sectoral Employment Order the Mechanical Engineering Building Services Contracting Sector means the sector of the economy comprising the following economic activity: —

The installation, alteration, fabrication, fitting, repair, maintenance, commission, removal and demolition in any building or its sites of articles, fittings, pipes, containers, tubes or instruments, storage facilities, etc. (including central heating apparatus, central plant apparatus, machinery and fuel containers connected thereto) for heating, cooling, including domestic hot and cold water systems, medical and process gases, process pipe services, utility pipe services and compressed and vacuum services of such buildings.”

Definition of a Worker

A “worker” has the following meaning: -

“any person aged 15 years or more who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, whether it be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour”.

For the purpose of this definition apprentice and apprenticeship has the same meaning as it has in the Industrial Training Act 1967.

Scope

We respectfully request that this Sectoral Employment Order applies to the following categories of worker who are directly employed or employed through an employment agency within the meaning of the Employment Agency Act 1971 and or the Protection of Employees (Temporary Agency Work) Act 2012 in the Mechanical Engineering and Building Services Contracting Sector:-

Qualified Plumbers (Craftsperson) and Registered Apprentice Plumbers and Qualified Pipefitters (Craftsperson) and Registered Apprentice Pipefitters working in the Sector.

For the avoidance of doubt qualified plumbers and pipefitters who have acquired additional or advanced welding qualifications and who are required to function as welders on a day-to-day basis within the sector come within the scope of this Order.

REMUNERATION, PENSIONS, SICK PAY AND DISPUTE RESOLUTION PROCEDURES

4.2 Rates of Pay

An agreement on pay is currently in place between MEBSCA and Connect and Unite (see Appendix 1). This agreement provides for the following:

- 2.7% increase in hourly rates of pay on 1st September 2019
- 2.7% increase in hourly rates of pay on 1st September 2020

The rates of pay are to apply to the following categories of workers:

Category 1

A basic minimum hourly rate of pay to apply to all newly qualified Plumbers and Pipefitters employed in the sector.

Category 2

A higher hourly rate of pay to apply to qualified Plumbers and Pipefitters employed in the sector with effect from the commencement of their 3rd year of employment after qualification as a Plumber and or Pipefitter.

Category 3

A higher hourly rate of pay to apply to qualified Plumbers and Pipefitters employed in the sector with effect from the commencement of their 6th year of employment after qualification as Plumber and or Pipefitter.

MEBSCA respectfully submits the rates set out below should be included:

Category of Worker	Hourly Rates
Category 1	€23.97
Category 2	€24.48
Category 3	€24.89

4.3 Apprentices

We respectfully request the Court to amend the current percentage relativity between apprentices and Category 1 craft workers. Currently, apprentices are entitled to the following percentage of the Category 1 rate:

Year 1	33.3%
Year 2	50%
Year 3	75%
Year 4	90%

We request the Court to amend the above relativities to the following:

Year 1	40%
Year 2	50%
Year 3	70%
Year 4	85%

A re-balancing of apprentice rates is required for the following reasons:

- Increasing the 1st year hourly rate from €7.99 to €9.59 will help to entice apprentices into the sector, together with increasing weekly pay for current first years.
- 3rd and 4th year apprentices currently earn €17.98 and €21.57 per hour respectively. These rates are close to the craft rate with the result that there is little incentive for 3rd and 4th year apprentices to complete exams in a timely manner. MEBSCA proposes that the percentage relativity between 3rd and 4th year apprentices and the craft rate should be amended as follows:

▪ 3 rd year	€16.78 (70%)
▪ 4 th year	€20.37 (85%)

The above rates to apply to new 3rd and 4th year apprentices. These rates will continue to provide good wages while at the same time incentivising these apprentices to complete their apprenticeship.

4.4 Normal Working Week

The normal working week shall consist of 39 hours worked between Monday and Friday each week.

4.5 Normal Daily Working Hours

Normal daily working hours shall consist of eight consecutive hours of work undertaken between the hours of 7am (normal starting time) and 5pm (normal finishing time) Monday – Thursday inclusive and seven consecutive hours of work between the hours of 7am (normal starting time) and 4pm (normal finishing time) on a Friday.

4.6 Overtime

Hours worked in excess of the normal daily working hours shall constitute overtime and shall attract the following premium payments. To qualify for overtime payments, employees must have first worked the standard number of hours in that day.

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 after 7am 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

4.7 Pensions, Death in Service and Sick Pay Scheme

MEBSCA members continue to recognise the benefits of contributing to a scheme for pensions, sick pay and death in service for all employees. Workers covered by the SEO should be enrolled in a pension scheme on reaching the age of 20. MEBSCA respectfully submits that the contribution rates set out below are provided for in a new SEO. These contribution rates are the same as those applying in the SEO in the general construction sector. This will ensure that all construction workers, including those in the mechanical sector, will be entitled to the same benefits on retirement.

Pension Contribution

<i>Employer Contribution</i>	<i>Worker Contribution</i>	<i>Total Combined Employer and Worker Contributions</i>
€5.62 per day to a maximum of €28.09 per week	€3.75 per day to a maximum of €18.73 per week	€9.36 per day to a maximum of €46.82 per week

Death in Service Contribution

<i>Employer Contribution</i>	<i>Worker Contribution</i>	<i>Total Combined Contribution</i>
€0.23 per day to a maximum of €1.17 per week	€0.23 per day to a maximum of €1.17 per week	€0.47 per day to a maximum of €2.34 per week

Sick Pay Scheme

<i>Employer Contribution</i>	<i>Worker Contribution</i>	<i>Total Combined Contribution</i>
€1.34 per day to a maximum of €1.34 per week	€0.67 per day to a maximum of €0.67 per week	€2.01 per day to a maximum of €2.01 per week.

4.8 Disputes Resolution Procedures

MEBSCA respectfully submits that the following dispute resolution procedures should apply:

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 the 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.

In Summary

To summarise, MEBSCA respectfully makes the following submissions:

1. Contractors cannot afford any increase in labour costs above what has already been agreed with the unions. The hourly rates quoted in this submission reflect an increase in pay of 2.7%, effective from 1st September 2020. This increase is in line with an increase awarded to workers covered by the general construction SEO. Providing for rates above the current agreed rates would be detrimental to the sector, in light of the COVID-19 pandemic effect on private investment and the fall-off in future projects in 2021 and 2022. Additionally, the impact of Brexit could bring further uncertainty and instability to the sector.
2. We request the Court to amend the Apprentice percentages to entice young people to consider a career in the mechanical sector and to incentivise those who have almost completed their apprenticeship to work towards passing their exams.
3. We request that the contribution rates towards pensions, sick pay and death-in-service set out in this submission should be provided for in a new SEO. These rates are in line with contribution rates currently being paid in the construction industry generally.
4. The dispute resolution procedure contained in the current SEO should remain unchanged.
5. Travel allowances should not be provided for in the SEO. The effect of a travel allowance in areas where it has never been paid would impose unsustainable costs on contractors that cannot be recovered. Additionally, it would lead to knock-on claims in other sectors in the industry.

CONCLUSION

MEBSCA is supportive of the unions' application for a new SEO in the mechanical engineering and building services sector. We submit that the increases in pay already agreed with the unions are included in any new SEO. This will ensure uniformity with other workers in the industry. We respectfully request that travel allowances are not included in any future SEO for the reasons set out above. In a time of uncertainty, due to Covid-19 and Brexit, our members simply cannot afford any further increases in labour costs than those set out in this submission.

END

APPENDIX 1

AGREEMENT REACHED AT WRC BETWEEN MEBSCA & UNITE & CONNECT 2019



An Coimisiún um Chaidreamh san Áit Oibre
Workplace Relations Commission

Áras Lansdún, Bóthar Lansdún, Droichead na Dothra,
Baile Átha Cliath 4, Éire.
Lansdowne House, Lansdowne Road, Ballsbridge, Dublin 4, Ireland.

T: 1890 22 02 27 or +353 (0)1 6136700
F: +353 (0)1 6136701

C-163813-18

27 May 2019

Mechanical Engineering and Building Services Contractors Association / UNITE / CONNECT

Pay Claim

After an extensive process of negotiation under the auspices of the Workplace Relations Commission the following proposal was put forward by the Chairman and agreed for recommendation by the parties.

PAY

- 2.7% increase to apply for 12 months from 1st September 2019
- 2.7% increase to apply for 12 months from 1st September 2020
- The parties agree to begin engagement on a successor agreement with talks to commence in January 2021. If necessary, these talks will utilise the WRC in accordance with agreed procedures.

TRAVEL TIME

Despite detailed discussion between the parties in the WRC process they were unable to reach agreement on the travel time element of the union claim. Accordingly, it is agreed by the parties that this issue will be referred separately to the Labour Court under the provisions of section 26(1) of the Industrial Relations Act 1990.

The parties also agreed that the amended rates would be reflected in the Sectoral Employment Order. An application to the Labour Court to have the SEO rates amended will be made by the union side no later than 15 July 2019.

Yours Sincerely



Damien Cannon
Regional Manager



Mary Doherty
Industrial Relations Officer

MEBSCA – RATE SHEET**HOURLY RATES**

MECHANICAL CRAFT WORKERS	06-3-2018 2.5% €	1-9-2019 2.7% €	1-9-2020 2.7% €
1st year out of time	22.73*	23.34	23.97
2nd year out of time	23.05	23.67	24.31
3rd year out of time	23.21*	23.84	24.48
4th year out of time	23.33	23.96	24.61
5th year out of time	23.48	24.11	24.76
6th year out of time	23.60*	24.24	24.89
APPRENTICES			
1st year (33.3%)	7.57*	7.77	7.99
2nd year (50%)	11.37*	11.67	11.99
3rd year (75%)	17.05*	17.51	17.98
4th year (90%)	20.46*	21.01	21.57

* Rates provided for in Mechanical Sector SEO