

# National Electrical Contractors Ireland

The New Voice For Electrical Contractors



National Electrical Contractors Ireland.  
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The Chairman.  
The Labour Court.  
Tom Johnson House,  
Haddington Road,  
Dublin 4.

February 11, 2010

**Re: APPLICATION FOR VARIATION OF REGISTERED EMPLOYMENT  
AGREEMENT FOR THE ELECTRICAL CONTRACTING INDUSTRY**

In relation to the above Application to Vary the Registered Employment Agreement for the NECI hereby applies to the Labour Court for an adjournment of the public hearing

1. The High Court heard proceedings relating to the validity of the REA, the constitutionality of the legislation providing for the REA and the Labour Court's refusal to cancel the REA during the first two weeks in December 2009. We currently await the Judgement of Judge Hedigan in relation to these proceedings. The NECI respectfully submit that it would be prudent to await the Decision of the High Court regarding the validity of the REA. If the REA is adjudged to be invalid then the Application to Vary the REA would be moot.

Further, or in the alternative, in relation to the above Application to Vary the Registered Employment Agreement for the Electrical Contracting Industry, the NECI hereby strenuously object to the Labour Court granting such Variation on the following grounds:-

1. The Trade Union Act 1941, section 6 (1) provides as follows:  
"It shall not be lawful for any body of persons, not being an excepted body, to carry on negotiations for the fixing of wages or other conditions of employment unless such body is the holder of a negotiation licence."

Furthermore the Trade Union Act 1941, section 6 (2) provides as follows:

“Where any body of persons acts in contravention of this section, the members of the committee of management or other controlling authority of such body and such of the officers of such body as consent to or facilitate such act shall each be guilty of an offence under this section and shall each be liable on summary conviction thereof to a fine not exceeding ten pounds, together with, in the case of a continuing offence, a further fine not exceeding one pound for every day during which the offence is continued.”

And the Trade Union Act 1941, section 6 (3) provides that:

“ In this section the expression "excepted body" means any of the following bodies, that is to say:—

- ( a ) a body which carries on negotiations for the fixing of the wages or other conditions of employment of its own (but no other) employees,
- ( b ) a body which is registered under the next following sub-section of this section,
- ( c ) a civil service staff association recognised by the Minister for Finance,
- ( d ) an organisation of teachers recognised by the Minister for Education,
- ( e ) the Agricultural Wages Board,
- ( f ) a trade board established under the Trade Board Acts, 1909 and 1918, and
- ( g ) a body in respect of which an order under sub-section (6) of this section is for the time being in force.

Two of the signatory parties (being the Irish Branch of the UK Based ECA and the AECI) to the REA are not, and never have been, the lawful holders of a negotiating licence, as defined by the Trade Union Act 1941. Nor are the same two signatory parties to the REA an “excepted body” as defined by the Trade Union Act 1941, section 3. Thus they have no legal authority

to negotiate terms and conditions of employment and wage rates for the Electrical Contracting Industry.

In this submission the NECI would refer the Labour Court to correspondence, dated June 2, 2008, attached hereto and marked **NECI 001**.

2.. The Industrial Relations Act 1946 in Part V provides for the Registered Joint Industrial Councils. The 1946 Act in section 59 provides that

“the expression "qualified joint industrial council" means an association of persons which complies with the following conditions:-

- ( a ) that it is substantially representative of workers of a particular class, type or group and their employers,
- ( b ) that its object is the promotion of harmonious relations between such employers

and such workers,

( c ) that its rules provide that, if a trade dispute arises between such workers and their employers a lock-out or strike will not be undertaken in support of the dispute until the dispute has been referred to the association and considered by it;  
the expression "the register" means the Register of Joint Industrial Councils;

the word "registered" means registered in the register;

the expression "registered joint industrial council" means an association which is for the time being registered in the register.

The existing ENJIC is not and never has been a “registered JIC” for the purposes of the Act. This fact was recognized by another division of the- Labour Court in its **Determination No. REP091**. See **NECI 002** attached

In its Recommendations in Part III the Labour Court

“recommends that the parties consider applying to the Court, pursuant to section 61 of the [1946] Act, to register the Council.”

The NECI submits that there are 5275 Electrical Contractors registered to conduct electrical installations within the State. About 4500 of these Electrical Contractors are considered to be employers. The Irish branch of the UK Based Electrical Contractors Association represents 45 Employers. The Association of Electrical Contractors of Ireland represents 165 Employers. The NECI therefore submits that the current ENJIC is not “substantially representative” as required by the Industrial Relations Act 1946, section 59 (a).

Furthermore in the same **Determination No. REP091** the Labour Court stated that

“The current parties to the Council should also consider affording representational rights to any permanent body, which is representative of employer interest in the sector.”

The NECI are clearly a trade association coming within these terms, yet despite written requests the NECI was not afforded such representation, see **NECI 003 and 003A** attached.

Finally Messrs Flood and Cassels, in their Report into the Electrical Industry, commissioned by the Minister for Trade and Enterprise and delivered in December 2009, recommended that

“A reformed NJIC should afford representational rights on the Council to the TEEU and to any permanent body of standing which is representative of employer interest in the sector”. See **NECI 004** attached.

3. In **Determination No. REP091** delivered February 26<sup>th</sup> 2009 the Labour Court considered an Application to Vary the Registered Employment Agreement for the Electrical Industry and determined that:-

“In the circumstances in which the Application to Vary the Agreement does not have the support from the Employer Bodies which are party to the Agreement the Court does not consider it appropriate to make an order varying the Agreement.

Accordingly the application is refused.”

Yet in **Recommendation NO.LCR19586**, delivered July 11<sup>th</sup>, 2009 the Court recommended

“Accordingly, and for the reasons referred to above, the Court recommends that the rates of pay currently prescribed in the REA be adjusted in two phases as follows:-

Phase 1: with effect from 1<sup>st</sup> September 2009 – an increase of 2.5% on each point of the scale

Phase 2: with effect from 1<sup>st</sup> January 2010 – an increase of 2.4% on each point of the scale.”

The NECI questions the reasoning of the Labour Court behind this change of heart. Other than a strike by electricians nothing has changed in the intervening period regarding the economic climate in which Electrical Contractors operate their businesses. If anything the recession has worsened. At the public hearing in January 2009 both the ECA (represented by the CIF) and the AECI admitted to the Court that none of the Electrical Contractors they represent could afford a pay increase. The NECI was not afforded representation at the negotiations that led to the Labour Court recommending a two-phase pay increase, despite having requested inclusion in those settlement talks, see **NECI 003 AND 003A** attached. The NECI is at a distinct disadvantage in not having sight of any or all of the material that was put before the Labour Court (and the Labour Relations Commission) that led to the distinct turnaround by the Labour Court in its **Recommendation NO.LRC19586** for a pay increase awarded to electricians at this time of great economic turbulence. The NECI respectfully request the Labour Court to release this material to the NECI to allow the NECI properly consider its position and be able to oppose this Application to Vary the REA.

Finally Minister Dara Calleary recently during a Dail Debate said that he would introduce an “inability to pay” clause in the Industrial Relations (Amendment) Bill, 2009, see **NECI 005** attached. Such an “inability to pay” clause already exists for the National Minimum Wage of € 8.65c, but no such mechanism exists under the current REA. A pay increase in the present economic climate is not sustainable and should not be entertained by the Labour Court.

Yours faithfully,



Mr. Denis Judge CEO NECI

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Mr. Dave Butler CEO Designate

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Mr. John Smith Honorary Treasurer

# National Electrical Contractors Ireland

The New Voice For Electrical Contractors



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Mr Kevin Duffy  
The Chairman

The Labour Court  
Tom Johnson House  
Haddington Road  
Dublin 4

Copies to :

Ms. Mary Coughlan, Tánaiste and Minister for Enterprise, Trade and Employment  
Dara Calleary, Minister of State with special responsibility for Labour Affairs  
Sheamus Sweeney, Chairman Electrical National Joint Industrial Council

Re. Determination No. REP091  
Your Ref CD/09/158  
Date 02 June 2009

Dear Mr. Duffy,

We write to you regarding your recommendations as outlined in part 3 of the determination No. REP091.

Under the heading "Representation" on page 76 we note that you rightly identify that the NJIC for the Electrical Contracting Industry is not a registered NJIC within the meaning of part V of the Act of 1946. We also note your Recommendation "that the parties consider applying to the Court, pursuant to s.61 of the Act, to register the Council. Since s.61 of the Act"

Section 61 States,

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

Section 59 of the 1946 act defines "**qualified joint industrial council**" and clearly states,  
**59.—In this Part—**

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

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

The current employer representation in the Electrical Contracting Industry NJIC is as follows

Association of Electrical Contractors Ireland (AECI) Employers	Representing 165
Electrical Contractors Association (ECA) Employers	Representing 45

There are 5275 Electrical Contractors registered to conduct electrical installations in Ireland. Current informed opinions estimate that 4500 of these Contractors are employers.

We at National Electrical Contractors do not consider the employer representation in the Electrical Contracting Industry NJIC to be “*substantially representative*”

We respectfully request to be informed in writing to the address above if any request has been received or if any request is received in the future to register the Electrical Contracting Industry NJIC.

Yours truly,  
Denis Judge CEO NECI \_\_\_\_\_

**DIVISION:**

Chairman: Mr Duffy

Employer Member: Mr Grier

Worker Member: Mr O'Neill

***Representation***

Arising from the hearings it is clear that the question of representation of employers in negotiation on the REA is a matter of some controversy. It is noted that negotiations are currently conducted through the NJIC for the Industry. **This is not a registered NJIC within the meaning of Part V of the Act of 1946.** Its composition appears to have been established prior to the registration of the REA.

The Court recommends that the parties consider applying to the Court, pursuant to s.61 of the Act, to register the Council. Since s.65 of the Act provides that a Registered Joint Industrial Council is an excepted body for the purposes of the Trade Union Act 1941, as amended, registration of the Council would overcome any difficulties which might otherwise arise by the participation in negotiations of bodies which are not the holder of a negotiation licence.

The current parties to the Council should also consider affording representational rights to any permanent body, which is representative of employer interest in the sector.

**Signed on behalf of the Labour Court**

**Kevin Duffy**

**26th February, 2009** \_\_\_\_\_

Mr Ciaran Mulvey,  
Labour Relations Commission,  
Tom Johnson House,  
Haddington Road,  
Dublin 4  
**BY FAX 6136701**

**FL/RMN  
C07159-09**

**8<sup>th</sup> July 2009**

**Re: Our Clients: The National Electrical Contractors Ireland**

Dear Mr Mulvey,

We advise that we act on behalf of the National Electrical Contractors Ireland (NECI) who are the largest employer body in the electrical contracting industry in the state. You may be aware that our clients were a party to a hearing of an application made pursuant to Section 28 (1) of the Industrial Relations Act 1946 and the application to cancel the registration of the Registered Employment Agreement pursuant to section 29 (2) of the Industrial Relations Act 1946 which was listed and heard by the Labour Court over a period of 10 days in January 2009.

You may also be aware of the recommendations made by the Chairman, Mr Kevin Duffy, in his determination made on the 26<sup>th</sup> of February 2009 wherein he states that the question of representation of employers is a matter of some controversy. The recommendations intended to be for the guidance and assistance of the parties further state as follows:-

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

We can advise that our clients, the National Electrical Contractors Ireland, are such a body and the purpose of this letter is to request an invitation to attend the talks at the Labour Relations Commission currently ongoing. You will appreciate that it is in the interest of harmony in the industry to include all parties. If our clients are not afforded a sufficient opportunity to be included in the process they will be severely prejudiced.

We await hearing from you.

**Yours faithfully,**

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**LAWLOR PARTNERS**

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The Labour Relations Commission  
The Chairman  
Tom Johnson House  
Haddington Road  
Dublin 4

## Re: Talks Regarding Electrician's Proposed Strike on 6<sup>th</sup> July 2009

Date  
02 July 2009

Dear Labour Relations Commission Chairman,

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

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

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

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

Section 59—(a) “*substantially representative* (See appendix 3 attached)

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

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

Denis Judge CEO NECI

Appendix 1 (NECI 003A)

***Extract from the 1941 TRADE UNION ACT***

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

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Appendix 2

***Extract from the 1946 INDUSTRIAL RELATIONS ACT***

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

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

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Appendix 3

***Extract from the 1946 INDUSTRIAL RELATIONS ACT***

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

Section 59 of the 1946 act defines “*qualified joint industrial council*” and clearly states,  
**59.—In this Part—**

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

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

---

## Appendix 4

### ***Extract from 2009 LABOUR COURT DETERMINATION REP091***

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

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**CONCLUSION No.1**

*We have concluded that the National Joint Industrial Council should be totally reformed through the introduction of new rules.*

While it is not for us to draft the new rules we are recommending that:

Membership of the reformed NJIC

1. The new rules of a reformed NJIC should afford representational rights on the Council to the TEEU and to any permanent body of standing which is representative of employer interest in the sector.

To be a member of the NJIC, under the new rules, a body would apply for membership and with the application would supply a list of contractors who are members of the organization with details of the number of employees employed by each contractor. Should any issue arise as to the extent to which any body is representative, the new rules should provide that this issue will be referred to the Labour Court for final adjudication.

Concerns were expressed to us that a group might seek representation on the NJIC solely for the purpose of frustrating the work of the Council. To allay these fears the new rules should provide that any representative body in the sector seeking to become a member of the NJIC should subscribe to the objectives of the Council and the new rules of the NJIC.

**Dáil debates**  
**Tuesday, 26 January 2010**

**Industrial Relations (Amendment) Bill 2009 [Seanad]:  
Second Stage**



**Dara Calleary** (Minister of State with special responsibility for Labour Affairs, Department of Enterprise, Trade and Employment; Mayo, Fianna Fail) [Link to this](#)

I wish to highlight several matters in respect of which I intend to bring forward particular amendments on Committee Stage. In addition to proceeding with legislative proposals to strengthen the existing JLC system and the operation of REAs as outlined in the Bill, **I propose to introduce amendments to provide for a mechanism to enable employers to seek a temporary exemption from the strict application of EROs and REAs under certain conditions.** This should go some way towards balancing the current demands of both trade unions and employers in these sectors currently experience under both systems as a consequence of the absence of a mechanism for processing claims for “**inability to pay**”. In the course of the debate in the Seanad, I gave an assurance that the proposed provision would not be a *carte blanche* for derogation from the minimum wages and conditions prescribed in employment regulation orders. The appropriate safeguards and procedures will be put in place to protect the rights of the workers affected.