



STATUTORY INSTRUMENTS.

S.I. No. 593 of 2019



EMPLOYMENT REGULATION ORDER (ENGLISH LANGUAGE
SCHOOLS JOINT LABOUR COMMITTEE ESTABLISHMENT ORDER)
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WHEREAS I, PAT BREEN, Minister of State at the Department of Business, Enterprise and Innovation, being in receipt of a recommendation from the Labour Court under sub-section (2) of Section 39 of the Industrial Relations Act, 1946 and being satisfied having regard to the recommendation referred to in subsection (2) of that section that the provisions of sub-section (1) of Section 39 of the Industrial Relations Act, 1946, has been complied with.

NOW, I, PAT BREEN, in exercise of the powers conferred on me by subsection (2) of section 42C (inserted by section 12 of the Industrial Relations (Amendment) Act 2012 (No. 32 of 2012)) of the Industrial Relations Act 1946 (No. 26 of 1946) (as adapted by the Enterprise, Trade and Innovation (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 245 of 2011) and the Jobs, Enterprise, and Innovation (Delegation of Ministerial Functions) Order 2017 (S.I. No. 6 of 2017) hereby make the following order:

1. This Order may be cited as the Employment Regulation Order (English Language Schools Joint Labour Committee Establishment Order) 2019.
2. This Order shall come into effect on the 2 December 2019.
3. This Order confirms the terms of the recommendation set out in the Schedule.

SCHEDULE

Section 36 Request

The matter came before the Court by way of a request in writing from the Minister of State for Trade, Employment, Business, EU Digital Single Market and Data Protection (the Minister) dated the 6th August 2019 pursuant to Section 36(a) of the Industrial Relations Act, 1946.

Notification of necessary parties

For the purposes of this application, the Court is satisfied that the parties with which it was deemed necessary to consult were Marketing English of Ireland (MEI) (66 Members), Progressive College Network (PCL) (8 schools), Independent Language Schools Group (ILSG) (14 schools), ICTU, UNITE and SIPTU. By letter dated 21st August 2019, the Court wrote to these parties informing them that it was in receipt of an application from the Minister for the establishment of an English Language Schools Joint Labour Committee pursuant to Section 36(a) of the Industrial Relations Act, 1946 and of the Court's intention to meet with them for the purposes of consultation and the preparation of a draft establishment order pursuant to Section 38 of the Industrial Relations Act, 1946.

Consultation with necessary parties

A meeting of the Court, for the purpose of the aforementioned consultation, was held on 3rd September 2019 at the offices of the Court in Lansdowne House. It was attended by representatives from employer representatives PCL and ILSG, and trade union representatives ICTU, UNITE and SIPTU.

Notification to the Public

Following this meeting, the Court prepared a draft establishment order in accordance with Section 38(a) of the Act and a notice was published in the Irish Times, Irish Independent, Irish Examiner and on the Labour Court's website on 4th September 2019 in accordance with Section 38(b) of the Act to the effect that the Court intended holding a public inquiry into the application on 4th October 2019, that a copy of the draft establishment order was available to be downloaded from the Court's website and that any objection to the draft establishment order should be made in writing to the Court on or before 12 noon on Thursday 3rd October, 2019.

Objections received

The Court received one objection by way of a comprehensive written submission from Marketing English in Ireland (MEI) a copy of which was uploaded on to the Court's website. The ICTU notified the Court in writing that it, SIPTU and UNITE agreed with the content and scope of the draft establishment order.

Conduct of Public Inquiry

A public inquiry took place on Friday 4th October 2019 pursuant to section 38 of the Act. It was attended by a representative from UNITE, SIPTU and representatives from MEI. MEI was afforded an opportunity by the Court to set out its objections and UNITE and SIPTU set out their support for the establishment order and were afforded an opportunity to comment on the objections received.

The Court's Deliberations

Following the hearing, at which all parties were given an opportunity to be heard on all relevant matters, the Court retired to consider the application in the context of the information before it and the requirements of Section 39 of the Industrial Relations Act, 1946, as amended.

Section 39(1) of the Act, as amended, states:

(1) where the Court has held, in pursuance of Section 38 of this Act, an inquiry into an application for an establishment order, the Court may, subject to Section 37 of this Act, if it is satisfied that to do so would promote harmonious industrial relations between workers and employers and assist in the avoidance of industrial unrest, make a recommendation to the Minister in either the terms of the draft establishment order prepared in accordance with Section 38, or with such modification of those terms as it considers necessary.

Section 37 of the Act prohibits the Court from making an establishment order unless it is satisfied :-

(a) In case the application is made by an organisation or a group of persons claiming to be representative of such workers or such employers, that the claim is well-founded, and

(b) That either-

(i) There is substantial agreement between such workers and their employers to the establishment of a joint labour committee, or

(ii) The existing machinery for effective regulation of remuneration and other conditions of employment of such workers is inadequate or is likely to cease or to cease to be adequate, or

(iii) Having regard to the existing rates of remuneration or conditions of employment of such workers or any of them, it is expedient that a joint labour committee should be established.

As the within application was made by the Minister in accordance with Section 36(a) of the Act, the requirements of Section 37(a) are inapplicable.

Having considered the requirements of Section 37(b) of the Act, the Court is satisfied that there is no existing machinery for the effective regulation of remuneration and other conditions of employment of workers in the English Language Schools sector.

The Court is required to satisfy itself that the making of a recommendation to the Minister for an establishment order would promote harmonious industrial relations and assist in the avoidance of industrial unrest.

MEI addressed this point and submitted that the JLC proposal was driven by the desire to organise trade union membership in the English Language Schools sector with the aim of imposing collective bargaining on that sector and that such an imposition is counter to harmonious industrial relations. It referred to the recent picket UNITE placed on one of the English Language Schools and contended that it was part of a strategy by UNITE to achieve its objective and timed to influence the Court. Furthermore, MEI stated that neither UNITE nor SIPTU are representative of employees in the employment of MEI members.

In response UNITE said that had there been a process in place such as a Joint Labour Committee there would be no need for it to place pickets outside language schools and the timing of the dispute was co-incidental.

MEI said that it was not opposed to an examination by the Court in relation to a Sectoral Employment Order where the true representative nature of SIPTU and UNITE in the sector could be examined.

MEI further stated that it is a standards driven association and takes a lead role in setting sector standards to optimise quality assurance in respect of the services provided and is seeking to establish, maintain and develop standards in the sector.

In a letter to the Court dated 30th September 2019, ICTU wrote to confirm that together with SIPTU and UNITE it was strongly of the view that the establishment of a Joint Labour Committee for the sector would promote harmonious relations between workers and employers and avoid industrial unrest.

The Court's Recommendation

The Court is satisfied that the proposed establishment order will assist in the promotion of harmonious industrial relations and assist in the avoidance of industrial unrest in the sector.

Having concluded its inquiry the Court recommends that the Minister should make an establishment order in the terms annexed hereto.

GIVEN under my hand,
27 November 2019

PAT BREEN,
Minister of State at the Department of Business, Enterprise and
Innovation

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purpose to be a legal interpretation.)

The purpose of this Order is to fix from 2 December 2019 the statutory minimum rates of remuneration and other conditions of employment for academic, administrative, maintenance, cleaning and security staff in English Language Schools in the Republic of Ireland which provide education and training in English as a foreign language and other English language related training courses.

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