Richard Bruton TD, Ebilou,

Minister for Jobs Enterprise & Innovation, Loughlinstown,

23 Kildare Street, Celbridge,

Dublin 2. Co. Kildare

29th July 2015

Dear Minister,

I wish to thank you and your officials for taking the time to meet with members of the Executive Committee of the ESB Retired Staff Association (ESBRSA) on Monday 27th July 2015 at your office in Kildare Street. I also wish to thank you for your commitment that you and your officials will investigate the serious concerns that ESBRSA have regarding official recognition of our Association and our right to officially represent our members in discussions and negotiations with our former Employer, ESB.

Our discussion on the day was wide ranging, including access for “former workers” to the State’s Industrial Relations Machinery, our Association’s recent experience with the Equality Tribunal, Labour Court & Pensions Authority and the Tanaiste’s recent initiative granting collective representation rights to pensioners when a Section 50 application has been made to the Pensions Authority by Trustees of a Pension Scheme.

The specific circumstances that you agreed to investigate is where an Actuarial Valuation of ESB Pension Scheme reports a deficit in the Pension Scheme, or any other situation where a deficit in the Scheme is reported, that ESBRSA representing the majority stakeholder (66%) in the Pension Scheme will have the right to enter talks, along with the other stakeholders, ESB, and the ESB Unions representing serving staff, to address a Scheme deficit. This situation where a deficit was reported in the Pension Fund has already arisen in recent years. In 2010 ESB and ESB Unions entered into an Agreement/Arrangement on pensions to the exclusion of pensioners to address a Scheme deficit. The resulting Agreement, to which ESBRSA, representing pensioners, had absolutely no input, greatly disadvantaged pensioners as a group. This Agreement reneged on” Pension Promises” given by former Chief Executives and Senior Managers to pensioners, who, under the terms of the 2010 Agreement, were subjected to an “indefinite pay freeze” making an increase conditional on the Fund passing a solvency test, and breaking the traditional link between staff salaries and pensions.

ESBRSA also believe that this agreement entered into by these two parties is detrimental to pensioners who were not party to the agreement and is unconstitutional as demonstrated in a previous Supreme Court Ruling in relation to Registered Employment Agreements (REAs) i.e. It is unconstitutional for two private parties to make an agreement which attempts to be binding on a third party when that third party was not party to the original agreement.

As former ESB workers, our contract of employment is with ESB. It was a condition of employment in ESB that permanent staff were required to become members of the Pension Scheme. This was not a discretionary matter for staff and the age at which one was required to join was specified. ESB pensioners have also contributed in full for their pensions for 40+ years and in some cases 45 years+. Those contributions together with Employer contributions are held in Trust by the Trustees of the Pension Scheme to invest and manage on behalf of Scheme members. They are, in effect, the property of the Scheme member and to deny members, or the mandated representatives of those members, the right to enter discussions/negotiations where the management of the Pension Scheme Assets are the subject of those discussions is an infringement of the property rights of those members and is therefore, unconstitutional.

The right to engage meaningfully with an Employer and the Trustees of an associated pension scheme is the very essence of pensioner grievance. Pensioner representatives, as of right, should be afforded meaningful equality of esteem with Unions representing workers, by having formal input to any or all discussions or negotiations that may bear on pension entitlements - entitlements that flow from the collectively agreed industrial relations employment contract that bound us throughput our working careers and continues to collectively bind us in retirement. We hope that you will take careful note of the issues raised at our meeting and in this letter when you consider their implications, and investigate the setting up of a mechanism to deal with our grievances as outlined above.

I look forward to hearing from you and a positive outcome to your investigation.

Yours sincerely,

Michael MacNamara,

Hon Secretary National Executive,

ESB Retired Staff Association.

Copy to Liam Kelly, DJEI

Copy to ESB Retired Staff Association website administrator