

LCR21304

FULL RECOMMENDATION

CD/16/208

RECOMMENDATIONNO.LCR21304

SECTION 26(1), INDUSTRIAL RELATIONS ACT, 1990

PARTIES :

BEAUMONT HOSPITAL

(REPRESENTED BY IRISH BUSINESS AND EMPLOYERS' CONFEDERATION)

- AND -

CRAFT GROUP OF UNIONS

DIVISION :

Chairman: Mr Haugh

Employer Member: Ms Cryan

Worker Member: Mr McCarthy

SUBJECT:

1. The alleged breach of a 2001 Agreement.

BACKGROUND:

2. This dispute relates to a claim by the Unions that Beaumont Hospital breached a 2001 Agreement when seeking to fill vacancies.

- The Unions said the Agreement is in place since October, 2001 which was agreed with all parties concerning the filling of vacancies.

The Employer said the employment situation has moved on in those 15 years and the hospital merely wishes to find the best person for the job.

- This dispute could not be resolved at local level and was the subject of a Conciliation Conference under the auspices of the Workplace Relations Commission. As agreement was not reached, the dispute was referred to the Labour Court on the 8th July 2016 in accordance with Section 26(1) of the Industrial Relations Act, 1990.

A Labour Court hearing took place on the 25th August 2016.

UNION'S ARGUMENTS:

3. 1. The Employer has changed a long standing practice of the internal advertising of posts and has advertised externally without consultation or agreement, breaching the 2001 Agreement.
2. The 2001 Agreement states "The hospital is agreeable to the request whereby all future promotions across all maintenance shops will be advertised internally in the first instance. Where no successful candidate is found, the post will be advertised by open competition."
3. The Unions are not seeking to prevent competition. Where no internal candidate is successful it can be opened to external candidates.

EMPLOYER'S ARGUMENTS:

4. 1. The Hospital is not excluding current staff members from competing for the posts. In fact it has offered them coaching and assistance to prepare for interview.
2. The Public Service Agreements speak of "...ensuring the best possible management of our human resources, through improved workforce planning, best practice recruitment and promotion procedures.
3. The Hospital merely seeks the best candidate for these positions.

RECOMMENDATION:

Background to the Dispute

The within dispute arises from a decision by Management at the Respondent to advertise the position of Mechanical Foreman and Electrical Foreman externally on 7 February 2016 without first holding confined, internal competitions for these posts.

Unions' Position

The Unions submit that there is a 2001 collective agreement in place that makes specific provision for the method by which Craft Promotional Posts are to be filled. That agreement states:

“The Hospital is agreeable to the request whereby all future promotional posts across all shops will be advertised internally in the first instance. Where no successful candidate is found the post will be advertised by open competition.”

The Unions further submit that no discussions have taken place with them in relation to the possible variation of this agreement. They are seeking that the promotional posts referred to above be advertised internally and that a confined competition for them be held.

Employers' Position

The Respondent submits that its decision to advertise the posts in question externally was to ensure that the most suitable and qualified people available would be appointed to fill them. It also takes the view that the 2001 agreement has effectively been superseded by developments in employment law and industrial relations' practice and in particular by the Public Service Agreements and the commitments therein to “the application of merit-based and competitive promotion policies, based on best practice, at all levels.”

The Respondent also informed the Court that it was concerned that it would be in breach of the provisions of the Employment Equality Act 1998 were it to hold a confined competition for the posts, the subject of this dispute, having regard to the particular demographic of the existing mechanical and electrical staff.

Recommendation

The Court recommends that both posts be advertised internally and that a confined competition is held to fill them, in the first instance, in accordance with the relevant provision of the 2001 Agreement. The selection panel should include at least one suitably qualified and experienced person to be agreed in advance with the Unions. Only in the event that one or both posts remain unfilled thereafter should the Respondent proceed to consider external applications.

Any variation of the 2001 Agreement required at a later date should be discussed and agreed by the parties.

The Court so recommends.

Signed on behalf of the Labour Court

Alan Haugh

CR

22nd September, 2016. Deputy Chairman