Guidance Notes on Selection for Redundancy Criteria in the Construction Industry

Introduction

The attached note is intended to provide general guidance on selection for redundancy mechanisms to Unite Full Time Officers, Shop Stewards and Workplace Representatives (hereafter collectively referred to as the Unite Representative) in the UK construction industry.

On occasions where the selection process is not prescribed in the relevant national collective agreement, Unite Representatives will need to adhere to the guidance and be familiar with relevant legislation.

Principles

The Union policy is to oppose redundancies wherever possible and particularly any attempt to introduce compulsion.

When faced with a potential redundancy situation the Unite representative should make it clear to the employer that the method of selection is ultimately their responsibility. It should also be made clear that the Union expects open and transparent consultation to take place.

Where redundancies are enforced despite our opposition, it is the responsibility of the Unite representative to ensure that the criteria used by an employer to select employees for redundancy are both reasonable and fairly applied.

The Selection Criteria

The Unite representative should seek to ensure that only objective criteria are used in the process of selecting employees for redundancy.

As far as possible an employer should seek to establish criteria for selection which do not depend upon the opinion of the person making the selection, but can be objectively checked against such things as experience and efficiency at the job.

It is not acceptable for selection to be based on the personal opinion of the person making the selection.
The Unite representative must make it clear that the final selection criteria is the employer's decision and reserve the right to challenge it through an internal and/or external appeal process.

Employers need to show that in selecting a particular employee they had compared him or her in relation to the selection criteria with those others who might have been made redundant. Any selected employee should be consulted.

The dismissal of an employee selected for redundancy will be unfair if it is discriminatory on the grounds of race, age, sex or disability or on the grounds of a person’s trade union activity.

**National Collective Agreements**

In those circumstances where there is an agreed process covering ‘Selection for Redundancy’ in the national collective agreement the Unite Representative will need to be familiar with the provisions and ensure they are applied consistently with the terms of the agreement.

The National Agreement for the Engineering Construction Industry (NAECI) is such an agreement, where the selection process is prescribed.

Unite Representatives are strongly advised to familiarise themselves with all aspects of the agreement, and specifically with **Rule 16.4** before embarking on representing members in a potential redundancy situation.

In the first instance the employer is required to consult with the Union on its proposed selection pool and selection criteria.

In accordance with 16.4 (b) “The first consideration will be the need to maintain a balanced and productive workforce composed of employees whom management considers have the skills and experience most appropriate to the company’s needs”.

As stated in 16.4 (e) length of service may form part of the selection process where the short term nature of the employment precludes any other basis for differentiating between employees or where two individuals are awarded equal scores in an objective matrix.

NAECI does not define ‘short term’ however the nature of members employed under the agreement is such that competencies of qualified craftspeople are measurable at a relatively early stage, likewise other factors that may be included in an agreed matrix.

It is recommended that if by agreement with Unite selection is not based on a matrix the reason for applying LIFO (last in first out) is recorded and explained to relevant employees.
The Rule goes onto state that:

“(f) Where an employer is proposing to base selection for redundancy on individual employees’ performance against a matrix of factors, it should take reasonable steps to demonstrate during consultation that:

(i) The selection criteria and scoring systems set out in the matrix are objective and/or verifiable. Examples of such criteria include (but need not be limited to):

- Attendance
- Timekeeping
- Disciplinary record
- Job knowledge/ skills
- Relevant qualifications/ training
- Assisting/ developing/ training others
- Measurable quality
- Health and safety

In accordance with the Rule where an employee does not agree with the decision to select them for redundancy they will have access to the company appeals procedure.

Finally it is incumbent on the employer to prepare a list of the names of the employees to be made redundant and notify them accordingly. The list should then be made available to the Unite Representatives.