

Lawlor, Shannon (LABOR)

From: Lawlor, Shannon (LABOR)
Sent: Wednesday, May 06, 2009 12:13 PM
To: Faraone, Janet M (LABOR); Colavito, Maria L (LABOR)
Cc: Connell, Joan (LABOR); Jones, Kevin E (LABOR); Golden, Kenneth L (LABOR); Hartnett, Timothy (LABOR); Grossi, Richard (LABOR); Fellner, Janice (LABOR)
Subject: RE: Stuyvesant Fuel Company - Follow Up

Hi Janet,

Counsel's Office agrees with your assessment that Stuyvesant Fuel is the entity responsible for providing the WARN notice.

Section 921-1.1(c)(4) of the regulations state:

Where an employer has sold all or part of his business, the selling employer shall be responsible for providing notice for any plant closing, mass layoff, or a covered reduction in hours in accordance with this section, up to and including the effective date of the sale. After the effective date of the sale of all or part of the employer's business, the purchasing employer shall be responsible for providing notice for any plant closing, mass layoff, or a covered reduction in hours in accordance with the Act and this Part. Any individual who is an employee of the selling employer as of the effective date of the sale shall be considered an employee of the purchasing employer immediately after the effective date of this sale.

This section of the regulations is inapposite to the instant matter as the employees still work for Stuyvesant.

Under the transition agreement between Stuyvesant Fuel and Hess, the entities agreed that the Stuyvesant employees would remain Stuyvesant employees until March 31, 2009. Further, in two memos written by Stuyvesant, Stuyvesant notified its employees that they were, in fact, still Stuyvesant employees. Hess had until February 15th to decide which, if any, of the Stuyvesant employees it would offer future employment. Accordingly, Stuyvesant should have provided WARN notice to all affected employees 90 days prior to April 1, 2009.

Shannon J. Lawlor
Attorney 1
Counsel's Office
New York State Department of Labor

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From: Faraone, Janet M (LABOR)
Sent: Thursday, April 30, 2009 4:10 PM
To: Colavito, Maria L (LABOR)
Cc: Connell, Joan (LABOR); Lawlor, Shannon (LABOR); Jones, Kevin E (LABOR); Golden, Kenneth L (LABOR); Hartnett, Timothy (LABOR); Grossi, Richard (LABOR); Fellner, Janice (LABOR)
Subject: FW: Stuyvesant Fuel Company - Follow Up

Based on reviewing the information provided below, it appears that Stuyvesant Fuel would be responsible for filing a WARN notice to all appropriate parties; however, may I request a legal opinion on the below ? Thank you for considering this request.

From: Grossi, Richard (LABOR)
Sent: Thursday, April 30, 2009 10:53 AM
To: Faraone, Janet M (LABOR)
Cc: Hartnett, Timothy (LABOR); Foehr, Linda (LABOR); Fellner, Janice (LABOR)

Subject: Stuyvesant Fuel Company - Follow Up

<< File: Stuyvesant Fuel Service.tif >>

Returned the voicemail of Tiera Roper/Human Resources/Stuyvesant Fuel Company (718-304-1232). **The question is which company is responsible for filing a WARN notice - Stuyvesant Fuel or Hess?** This might be considered as a referral to our Counsels Office for opinion or require the need to send a letter toward formalizing information.

The company has three different FEIN numbers:

- Stuyvesant Fuel Service Corp -12-1821639
- Stuyvesant Fuel Terminal LLC- 12-3867475
- Stuyvesant Energy LLC-13-3981937.

Attached is notice as provided to the employees on 11/07/08 and 02/03/09.

Summary of discussion:

- 134-135 employees were attached to the Stuyvesant Fuel Company.
- Majority of employees have long term experience with the company (as per Ms. Roper, possibly on average over 8 years).

11/01/08

- Assets of Stuyvesant Fuel were purchased by Hess. **Any regular expenses incurred by Stuyvesant Fuel regarding the employees after the sale of the company are being reimbursed by Hess.**

11/04/08

- Hess issued notice to the employees and advised that they would be retained during the transition period of at least 5 months.
- Last day of work was expected to be 03/31/09 at a minimum.
- Severance will be paid 1 week for each year of service. A 2 week minimum would be provided for all employees. If an employee remains through the transition period and is not offered employment with Hess ... Stuyvesant would provide a severance package. Should the employee resign during the interim then no severance would be provided. If a job offer is extended by Hess and the employee accepts ... no severance package would be offered.
- 40 unionized employees (Service Technicians) (Teamsters Local 553) and 5 non-unionized employees (Sales Representative) were offered transfer opportunities to Hess.

12/31/08

- 4 employees laid off.

January 2009 through 04/30/09

- 7 employees laid off.

02/03/09

- Hess issued notice to the employees and advised that most would be retained through 05/31/09. All employees continue to be the responsibility of Stuyvesant Fuel during the transition period. If alternate employment is found after 03/15/09, the extension will not affect the existing severance agreement. Notification would be provided by 04/15/09 if Hess wishes to extend an offer of employment.

During the interim ...

- Some employees have been issued verbal notification that they would be retained through 06/15/09.
- Some employees have been issued written notification that they would be retained through 08/31/09.