



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

June 11, 2009

[REDACTED]

Re: Our File No. WARN-09-0005
[REDACTED]

Dear [REDACTED]:

The Department is in receipt of your correspondence dated May 27, 2009, concerning the application of the New York State Worker Adjustment and Retraining Notification (WARN) Act to [REDACTED]

Since the receipt of your previous letter to the Department dated April 15, 2009, the Department has been in communication with [REDACTED] with regard to its plant closing in [REDACTED]. The employer provided information indicating that they did not lay off the minimum number of employees to incur any obligation or liability under the New York State WARN Act.

We were informed that pursuant to their collective bargaining agreement, bumping rights were exercised and employees from the [REDACTED] location were transferred across twenty-two (22) [REDACTED] stores. When all bumping was completed, twelve (12) employees suffered an employment loss as a result of the closing of its [REDACTED] location: seven (7) employees were laid off and five (5) employees' work schedules were reduced to fewer than twenty (20) hours per week at a transferred location.

Under the New York State WARN Act, a "plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period at such site for 25 or more employees, excluding any part-time employees. Further, an "employment loss" shall not result where the employer offers to transfer the employee to any other site of employment, regardless of the distance, with

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no more than a six month break in employment, and the employee accepts within thirty days of the offer of the closing or mass layoff, whichever is later.

The facts of this case do not support a finding that [REDACTED] was obligated to provide ninety days WARN notice under New York Law. If you have any questions or require further information pertinent to this case, please do not hesitate to contact me at (518) 457-4380 or shannon.lawlor@labor.state.ny.us.

Very truly yours,

Maria L. Colavito
Counsel

By:


Shannon J. Lawlor
Attorney II

MLC:SLJ:cmh

cc: Bruce Herman
Janet Faraone
Terri Gerstein

bcc: Colleen Gardner