



ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DEL TRABAJO Y RECURSOS HUMANOS

Hon. Román M. Velasco González
Secretario

October 19, 2004

Opinion Number 15306

This is in reply to your letter of September 7, 2004, that reads as follows:

"We represent a company ("the Company") that operates in Puerto Rico subject to the provisions of Law No. 80 of May 30, 1976, codified at 29 L.P.R.A. §§ 185a-185m, as amended ("Law 80"). Due to an ongoing review of its allocation of personnel resources, the Company is presently considering a reduction in force. In an effort to remain in full compliance with all applicable laws, we are hereby requesting your assistance with several questions that have arisen in structuring the layoff, that we believe are related to Section 3 of Law 80, 29 L.P.R.A. § 185 c (text attached as Appendix A).

The intended reduction in force would affect employees who currently form part of two work groups in the company, to which I will refer here, for simplicity purposes, as "Group 1" and "Group 2"¹ In other words, the employees who will be affected by the reduction in force currently hold one of two job positions, they either work in Group or in Group 2.

¹ Please note that while reference is only being made to two or three current groups of employees in the Company, there are a number of other work groups. However, for the purposes of our inquiry, only employees in Groups 1, 1(a), and 2, as hypothetically defined herein, will be affected by the planed reduction in force. (Our emphasis.)

Employees in Group 1 perform four (4) primary functions and employees in Group 2 perform three (3) primary functions. There is one overlapping function or duty between the two groups, but each group performs this function in a different division of the Company. Put differently, an employee in Group 1 performs the task for Division X of the Company and an employee in Group 2 performs the same task for Division Y of the Company. In addition, there is a "Group 1(a)" category of support employees who have been hired by the Company during the past twelve (12) months. These employees are, in principle, part of Group 1, even though they perform Group 2 functions or duties as well. There are significantly more employees in Group 1, inclusive of those who are part of Group 1(a) (total of approximately 175 employees), than in Group 2 (total of approximately 65 employees).

Using Law 80 language, and specifically the reference made to "several offices, factories, branches or plants" of § 185c(a)-(b), we note that employees in Groups 1, 1(a), and 2 all work at the same location, and do not work in different offices, factories, branches, or plants of the Company.

The planned reduction in force will affect a total of approximately 150 employees from Groups 1, 1(a), and 2. Once the reduction in force takes place, the remaining employees from Groups 1, 1(a), and 2 (almost 90 employees) will be offered a job in yet another work group, Group 3, to perform one of the functions or duties now performed by Group 1.

Our initial inquiry is as follows:

Based on the simplicity of duties, can the Company deem employees of Groups 1, 1(a), and 2 to be within the same "occupational classification" for the purposes of computing seniority in carrying out the lay offs, and, in effect, combine the seniority lists of Group 1, Group 1(a), and Group 2, as if they all had one and same position or "occupational classification"?

If this not a correct work group arrangement, what arrangement would you recommend to be in compliance with the requirements of the applicable laws? Would the Company have to treat all work groups separately; or classify Group 1(a) together with Group 1 only?

Note that in a previous reduction in force undertaken by the Company approximately three years ago, the two work groups were treated separately for purposes of seniority computation. Also, Groups 1, 1(a) and 2 are currently treated separately for purposes of vacation and shift bids. However, the employee job skills required for each of the positions are essentially the same.

Also, another question we have is the following:

Can the Company lay off everyone (150 employees), and then offer the Group 3 positions by seniority? In essence, this would entail reducing the functions or duties of some retained employees, those in Group 1, and modifying the duties for those who previously were in Group 2. . ."

Your inquiry is related to the Act Number 80 of May 30, 1976, as amended. Specifically, your question is regarding to the reduction of work force.

Is important to say that the function of this Office is to give an opinion about the labor laws that are under the jurisdiction of the Department of Labor and Human Resources. However, you are presented a hypothetical situation, and our Office cannot bring an opinion about a hypothetical case. We only can bring our opinion in real situations.

If you need more information, do not hesitate to contact us again.

Cordially,



Román M. Velasco González
Secretary of Labor and Human Resources