

**Croft Metals, Inc. and International Brotherhood of
Boilermakers, Iron Shipbuilders, Blacksmiths,
Forgers and Helpers, AFL-CIO, Petitioner.**
Case 15-RC-8393

June 21, 2002

DECISION ON REVIEW

BY CHAIRMAN HURTGEN AND MEMBERS COWEN
AND BARTLETT

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Acting Regional Director's Decision and Direction of Election. The Employer's request for review is granted as it raises a substantial issue warranting review solely with respect to the adequacy of notice of hearing provided to the Employer. Having carefully considered the matter in light of the undisputed facts and the Employer's request for review, we find that the Acting Regional Director erred in finding that the Employer had been given sufficient notice of the hearing. Accordingly, we remand this case to the Acting Regional Director to reopen the hearing.¹

The Petitioner seeks to represent production and maintenance employees at the Employer's Magnolia facility in McComb, Mississippi. It is undisputed that the Petitioner filed the instant petition on April 5.² It is also undisputed that on Wednesday, April 10, the Employer received notice from the Regional Office that a hearing would be held on Monday, April 15. At the beginning of the hearing, the Employer objected to the inadequacy of the notice, contending that it had inadequate time to interview witnesses and to prepare for the hearing. Despite this objection, the Employer went forward at the hearing and presented evidence supporting its argument that its leadmen should be excluded from the unit as statutory supervisors, that its interplant driver had a community of interest separate from the production and maintenance employees, and that several other employees should be excluded as "office clericals." Prior to the hearing's conclusion, the Employer requested that the hearing remain open so that it might present additional evidence. The Employer also made an offer of proof outlining the

evidence it would provide if its request to reopen the hearing were granted. The hearing officer denied the request and closed the hearing. The Acting Regional Director affirmed the hearing officer's ruling, finding that the Employer was provided adequate notice of the hearing.

We disagree. Although, the Board has never explicitly set a minimum notice requirement in representation cases, the NLRB Casehandling Manual suggests that Regional Directors provide parties with 5 days' notice of a hearing, in the absence of "unusual circumstances." We believe that the suggestion of the Manual makes good sense. Accordingly, we have decided to make it a requirement. We will require that parties to a representation case must receive at least 5 days' notice of the hearing date, absent unusual circumstances or clear waiver by the parties. Further, because this period of time is less than 7 days, intermediate Saturdays, Sundays, and holidays are excluded in the computation. Section 102.111(a) of the Board's Rules and Regulations.

Here, the Employer was served on Wednesday, April 10, for a hearing to begin on Monday, April 15. Excluding the intervening Saturday and Sunday, the Employer was given only 3 days' notice of the hearing. In the absence of unusual circumstances or waiver by the parties, we conclude this notice was insufficient.³

In sum, we hold that parties in representation cases must receive notice of a hearing not less than 5 days prior to the hearing, excluding intervening weekends and holidays. By providing parties with at least 5 working days' notice, we make certain that parties to representation cases avoid the Hobson's choice of either proceeding unprepared on short notice or refusing to proceed at all. In the absence of sufficient notice, we remand this matter to the Acting Regional Director to reopen the hearing to receive additional evidence on the issues raised by the Employer.

³ The Acting Regional Director neither articulated any "unusual circumstances" justifying less than the minimum 5 days' notice nor found that the Employer had clearly waived its notice rights.

¹ In addition to its notice arguments, the Employer argued on review that the Acting Regional Director erred by (1) finding that its leadmen and load supervisor were *not* statutory supervisors, (2) including material inventory clerks in the petitioned-for production and maintenance unit as "plant clericals," (3) voting three other clerical employees under challenge, (4) including the interplant driver in the unit found appropriate, and (5) failing to find that Carpenter's Local 2280 had not been given proper notice of the hearing. Because we are remanding this matter for further hearing, we do not pass on these issues at this time.

² Unless otherwise stated, all dates are 2002.