



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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Office of
Executive Secretary

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July 12, 2013

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Re: Secretary of Labor v. Cooper Tire & Rubber Co. and USW, Local #207L
OSHRC Docket No. 11-0079

Dear Counsel:

The Petition for Interlocutory Review filed by the Authorized Employee Representatives was received on June 12, 2013. The Commission currently does not have a quorum and therefore no action may be taken on the Petition. Accordingly, the Petition will be denied at the close of business today. Commission Rule 73(b), 29 C.F.R. § 2200.73(b).

Chairman Rogers' separate statement concerning the Petition is attached.

Yours very truly,

/s/

Ray H. Darling, Jr.
Executive Secretary

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SECRETARY OF LABOR,

Complainant,

v.

COOPER TIRE & RUBBER CO.,

Respondent,

UNITED STEEL WORKERS and LOCAL
#207L

Authorized Employee
Representatives.

OSHRC Docket No. 11-0079

OPINION OF CHAIRMAN ROGERS

By: ROGERS, Chairman.

On June 12, 2013, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union (the “International”), and Local Union #207L, (collectively referred to as the “Union”), jointly filed a petition for interlocutory review. In its petition, the Union seeks interlocutory review of former Administrative Law Judge Stephen J. Simko’s order regarding the Secretary’s discovery request for a plant visit of Respondent’s facility in Findlay, Ohio. Cooper Tire & Rubber Company (“Cooper Tire”) filed a response in opposition to the petition for interlocutory review on June 20, 2013.

The judge’s order granted the Secretary’s discovery request and limited the total number of representatives who could participate in the visit for the Secretary, Cooper Tire, and the Union. In addition, the judge ruled that only Union representatives who were employees of Cooper Tire could participate for the Union. As a result, one of the Union’s selected representatives, a safety and health specialist employed by the International who appeared on

behalf of the Union and participated in case-related matters, was not permitted by the judge to join in the visit—the Order specifically restricted his presence during the visit to the plant office or conference room area.

On review of the record, the judge appears to have erred in precluding the Union representative from joining in the plant visit. *See* Commission Rule 22(a), 29 C.F.R. § 2200.22(a) (“Any party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney.”) Although the judge provided a reasonable explanation for limiting the total number of representatives for the visit, he did not identify a legally cognizable basis for selecting which of the Union’s representatives could participate.

As the Executive Secretary explains in the attached letter to the parties dated July 12, 2013, the Commission does not have a quorum to act on the Union’s petition for interlocutory review. I therefore leave for another day the question of whether such an error would be appropriate for interlocutory review. *See* Commission Rule 73(a)(1), 29 C.F.R. § 2200.73(a)(1).

Dated: July 12, 2013

/s/ _____
Thomasina V. Rogers
Chairman