

conduct further investigation to determine whether the subject worker group meets the eligibility requirements of the Trade Act of 1974.

#### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of July, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-55,104]

#### **Geschmay Corporation, a Division of Albany International, Greenville, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 12, 2004, applicable to workers of Geschmay Corporation, a division of Albany International, Greenville, South Carolina. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of press fabrics which are used in the production of paper and are separately identifiable by product line.

New findings show that there was a previous certification, TA-W-40,951, issued on July 23, 2002, for workers of Albany International Corporation, Geschmay Plant, Greenville, South Carolina who were engaged in employment related to the production of press fabrics. That certification expired July 23, 2004. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from June 8, 2003 to July 24, 2004, for workers of the subject firm.

The amended notice applicable to TA-W-55,104 is hereby issued as follows:

All workers of Geschmay Corporation, a division of Albany International, Greenville, South Carolina, engaged in employment related to the production of press fabrics, who became totally or partially separated from employment on or after July 24, 2004, through July 12, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade act of 1974.

Signed at Washington, DC, this 30th day of July 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-53,648]

#### **International Business Machines Corporation, Tulsa, Oklahoma; Notice of Negative Determination on Reconsideration on Remand**

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of International Business Machines Corporation v. Elaine Chao, U.S. Secretary of Labor*, No. 04-00079.

The Department's initial negative determination regarding International Business Machines Corporation (hereafter "IBM") was issued on December 2, 2003 and published in the **Federal Register** on January 16, 2004 (69 FR 2622). The determination was based on the finding that the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974. The workers provided accounting and application services.

By letter of February 6, 2004, the petitioner requested administrative reconsideration for Trade Adjustment Assistance (TAA). The negative reconsideration determination was issued on March 31, 2004. The notice of determination was published in the **Federal Register** on April 16, 2003 (67 FR 20644). The determination was based on the findings that the workers did not produce an article within the meaning of Section 222 of the Trade Act and that the workers did not provide services in direct support of a TAA certified firm.

In their submissions to the Department, Plaintiffs made the following assertions: (1) Workers of

IBM, Tulsa, Oklahoma are under the control of British Petroleum (BP) and should be treated as BP employees; (2) Workers of IBM, Tulsa, Oklahoma are engaged in production of a trade impacted article (crude oil and natural gas), based on a previous certification issued in February 1999 by the Department for workers of AMOCO Exploration and Production in the State of Oklahoma; and (3) IBM workers in Tulsa, Oklahoma are BP-controlled workers engaged in production and because BP could be certified for TAA, the workers of IBM, Tulsa, Oklahoma should be eligible for TAA benefits.

On remand, the Department conducted a careful investigation in response to the plaintiff's allegations and will address each assertion in turn.

#### **Workers of IBM, Tulsa, Oklahoma Are Under the Control of BP**

In order to determine the scope of control by BP over the workers of IBM, Tulsa, Oklahoma, the Department requested additional information from IBM regarding the business relationship of IBM and BP, the functions of the subject worker group and the operations of IBM.

The information obtained during the remand investigation revealed that the relationship between IBM and BP is based on a contractual agreement documenting the commercial terms of service between two independent companies and that BP had no legal control over IBM employees. According to an IBM official, IBM is an independent company with its headquarters in Armonk, New York and there is no affiliation between IBM and BP. The IBM employees in Tulsa, Oklahoma provide finance, accounting and information technology services to multiple clients, including BP. These employees were subject to IBM's terms and conditions of employment, reported to IBM managers and were located at an IBM facility in Tulsa, Oklahoma. IBM provides services to numerous BP facilities located in the United States. These functions include general accounting, capital asset accounting, oil and gas revenue accounting, and accounts payable and receivable. Further, according to the IBM official, workers of IBM were not employed at any BP facility during the relevant time period. Therefore, the Department determines that IBM workers were not under the control of BP during the relevant time period.

#### **Workers of IBM, Tulsa, Oklahoma Are Engaged in Production**

Plaintiffs allege that members of the subject worker group are engaged in

production (crude oil and natural gas). To address this allegation, the Department contacted the subject company and requested that IBM verify this information. On further investigation, it was revealed that no oil or gas is being produced within the IBM Corporation and workers of the subject firm are not in support of the production for any IBM affiliated facilities.

The plaintiffs base their assertion on a previous TAA certification (TA-W-35,309N) for another worker group (AMOCO Exploration and Production). For the reasons described below, Department has determined that the plaintiffs' reliance on this certification is without basis.

Case TA-W-35,309N refers to workers at AMOCO Exploration and Production, and AMOCO Shared Services, operating in the state of Oklahoma, including accountants then working for AMOCO at the Tulsa facility, who were certified eligible to apply for adjustment assistance on February 19, 1999. That certification was amended on March 14, 1999 to reflect new ownership and a name change to BP/AMOCO, AMOCO Exploration and Production, AMOCO Shared Services, A/K/A AMOCO Production Company, Inc., operating in the state of Oklahoma. Workers certified in that instance were determined to be "engaged in activities related to exploration and production of crude oil and natural gas." That certification expired February 19, 2001, well beyond the relevant time period. The relevant period for this investigation stretches back one year from the date of the petition, or February 10, 2003. The Department considers facts related to the relevant period of the current investigation; therefore the previous certification has no bearing on the determination of eligibility at this time.

In order for workers to be considered eligible for TAA, the worker group seeking certification must work for a "firm" or subdivision that produces an article domestically, and production must have occurred within the relevant period of the investigation. As stated in the reconsideration determination, the workers in the immediate case can be distinguished from the workers covered by TA-W-35,309N in that, unlike the workers in the immediate case, the workers covered by TA-W-35,309N were employed by the subject company and were in direct support of an affiliated facility that was, at the time, currently certified for TAA. Because the workers of IBM, Tulsa, Oklahoma are neither employed by BP nor in direct support of an IBM facility whose

workers are currently TAA-certified or could be certified for TAA, the members of the subject worker group are not workers engaged in the production of an article, in this case, oil and gas.

#### **IBM workers in Tulsa, Oklahoma Should Be Eligible for TAA**

Plaintiffs allege that because IBM workers in Tulsa, Oklahoma are BP-controlled workers, the IBM workers are engaged in production, and BP could be certified for TAA, the workers of IBM, Tulsa, Oklahoma should be eligible for TAA benefits.

As previously discussed, the subject worker group is not controlled by BP and cannot, therefore, be treated as BP workers and is not engaged in production of crude oil and natural gas.

Even assuming that the IBM workers were considered leased workers of BP, the IBM workers would not be eligible for TAA. Historically, the Department included only leased production workers in TAA certifications. However, on January 23, 2004 a new policy was instituted which allowed a certification of all leased workers, including service workers who are working at the same location as workers who have been previously certified eligible for TAA. According to this policy, in order to be eligible, leased workers must perform their duties onsite at the affected location on an established contractual basis. As discussed above, the IBM contract with BP does not subject the IBM workers to the kind of control by BP that makes them leased workers. Further, it was determined that workers of IBM, Tulsa, Oklahoma are not co-located with BP workers at a BP facility that produces an article.

Section 222 of the Trade Act establishes that the Department shall not certify a group unless increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production. Under this requirement, the Department cannot issue a certification of eligibility to a worker group unless the workers' firm or an appropriate subdivision of the workers' firm produces an import-impacted article. The Tulsa, Oklahoma facility is an IBM-owned facility and BP did not have any operation at that location during the relevant time period.

#### **Conclusion**

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and

former workers of International Business Machines Corporation, Tulsa, Oklahoma.

Signed at Washington, DC, this 2nd day of August 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance*

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## **DEPARTMENT OF LABOR**

### **Employment and Training Administration**

[TA-W-54,403]

#### **Missota Paper Company, LLC, Brainerd, MN; Notice of Negative Determination Regarding Application for Reconsideration**

By application of June 23, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 7, 2004, and published in the **Federal Register** on May 24, 2004 (69 FR 29575).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Missota Paper Company LLC, Brainerd, Minnesota was denied because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no increase of imports of uncoated free sheet paper during the relevant period. The subject firm did not import uncoated free sheet paper in the relevant period nor did it shift production to a foreign country.

The petitioner refers to the subject firm's competitor, SA-API-Cloquet, which also filed a petition for TAA and was certified on February 25, 2004. The petitioner states that SA-API-Cloquet recently shifted production from coated