

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-73,351]

Sandy Alexander, Clifton, NJ; Notice of Negative Determination on Reconsideration

On January 21, 2011, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Sandy Alexander, Clifton, New Jersey (subject firm). The Department's Notice was published in the **Federal Register** on February 2, 2011 (76 FR 5832). The workers are engaged in activities related to the production of printed materials.

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 mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that the petitioning worker group did not meet the eligibility criteria set forth in the Trade Act of 1974, as amended.

In request for reconsideration, the petitioner supplied new information regarding an alleged shift in production to China.

A careful review of the administrative record and additional information obtained by the Department during the reconsideration investigation confirmed that the subject firm did not shift to, nor acquire from, a foreign country articles that are like or directly competitive with articles produced by the subject firm.

Further, during the reconsideration investigation, the Department reviewed previously-submitted information and determined that there was no mistake in fact and no misinterpretation of the facts or the law.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Sandy Alexander, Clifton, New Jersey.

Signed in Washington, DC, on this 11th day of August, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-74,554]

International Business Machines (IBM), Software Group Business Unit, Quality Assurance Group, San Jose, California; Notice of Negative Determination on Reconsideration

On January 21, 2011, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of International Business Machines (IBM), Software Group Business Unit, Optim Data Studio Tools QA, San Jose, California (subject firm). The Department's Notice was published in the **Federal Register** on February 2, 2011 (76 FR 5832). The subject worker group supplies acceptance testing services, design consulting services, and call center services.

The negative determination of the Trade Adjustment Assistance petition filed by a State of California workforce agent on behalf of workers at the subject firm was based on the Department's finding that Criterion (1) has not been met because the Department did not find that a significant number or proportion of the workers at IBM, Software Group Business Unit, Optim Data Studio Tools QA, San Jose, California was totally or partially separated, or threatened with separation.

29 CFR 90 defines "significant number or proportion of the workers" to mean "(a) In most cases, the total or partial separations, or both, in a firm or appropriate subdivision thereof, are the equivalent to a total of unemployment of five percent (5 percent) of the workers or 50 workers, whichever is less; or (b) At least three workers in a firm (or appropriate subdivision thereof) with a workforce of fewer than 50 workers."

In his request for reconsideration, a worker stated that "I was an employee of Information Management Group where * * * over 100+ employees have been let go from this particular group * * * In my specific HPU group (High Performance Unload tooling group) I was the only full time employee

working in the U.S.A. validating the quality of this produce running Acceptance testing." The request for reconsideration included a diagram that shows that "HPU tooling" is a group within "Information Management," which is a unit within the "Software Division" of IBM.

New information obtained from the subject firm during the reconsideration investigation shows that the Optim Data Studio Tools QA unit is a subset of the Quality Assurance Group, which is part of the Software Group Business Unit of IBM, and that the HPU Tooling Group is a project handled by members of the Quality Assurance Group rather than a distinct subgroup of IBM. As such, the Department determines that the subject worker group consists of workers of IBM, Software Group Business Unit, Quality Assurance Group, San Jose, California.

During the reconsideration investigation, the Department received information that there was only one worker separation within the subject worker group and that no workers of the subject worker group was threatened with separation (partial or total), as defined by 29 CFR 90. Rather, the new information obtained during the reconsideration investigation revealed that employment within the Quality Assurance Group (San Jose, California facility) increased in 2010 from 2009 levels.

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.

After careful review of the administrative record and new information collected during the reconsideration investigation, the Department determines that, in light of the new information, the determination complained of is not erroneous; that the determination complained of is not based on a mistake in the determination of facts not previously considered; and that there has not been a misinterpretation of facts or of the law.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for