

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-62,947]

Norcal Pottery Products, Macramé Department, Richmond Distribution Center, Richmond, CA; Notice of Negative Determination on Reconsideration

On April 30, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 7, 2008 (73 FR 25772).

The TAA petition, which was filed on behalf of workers at Norcal Pottery Products, Macramé Department, Richmond Distribution Center, Richmond, California engaged in the production of macramé plant hangers was denied based on the findings that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner stated that the subject firm contracted five independent contractors to produce macramé plant hangers. The petitioner also stated that the contracts between the subject firm and the contractors were terminated in 2007. The petitioner seems to allege that because the workers were contracted to perform production for the subject firm, they should be considered as employees of the subject firm and, therefore, eligible for Trade Adjustment Assistance. To support the allegations, the petitioner attached copies of the "Independent Contractor Agreement".

To determine whether five contracting workers were employees of the subject firm, on-site leased workers, or workers under the control of the subject firm and whether there was a significant proportion of workers separated or threatened with separations at the subject company during the relevant time period, the Department contacted the subject firm's company official and requested employment figures for the relevant employment data (for one year prior to the date of the petition and any imminent layoffs).

The company official stated that five independent contractors were not employees of Norcal Pottery Products, Macramé Department, Richmond Distribution Center, Richmond, California, and they were not leased workers employed on-site of the subject

facility. It was revealed that the independent contractors produced macramé plant hangers at their homes. The company official also stated that the nature of the business between the subject firm and the independent contractors was determined by the contractual agreement, which underlines no operational control by Norcal Pottery Products over these independent contractors.

The Department carefully reviewed the Independent Contract Agreement provided by the petitioner to determine whether there was operational control by the subject firm over the contracted workers. According to the document, the relationship between the parties is described as two independent entities "engaged in a separate business enterprise". It states that the "contractor is free to contract similar services to be provided for other customers". The Agreement also states that "Company is concerned only with the act of completion of the work," and that "the conduct and control of the work to be provided by Contractor will lie solely with the Contractor, who alone shall be in control" of the work. Furthermore, the agreement allows the contractor to employ or utilize other persons to carry out the terms of the Agreement under contractor's control.

The investigation on reconsideration determined that five contractors claiming to be employees of Norcal Pottery Products, Macramé Department, Richmond Distribution Center, Richmond, California were not employees of the subject firm or leased workers employed on-site of the subject facility. The investigation also revealed that the independent contractors were not under operational control of the subject facility, and thus cannot be considered to be a part of the worker group employed by the subject firm.

After careful review of the information provided on reconsideration, it was revealed that Norcal Pottery Products, Macramé Department, Richmond Distribution Center, Richmond, California is a distribution facility and no production of macramé plant hangers took place at the subject location. Moreover, a review of the records provided by the company official established that only two workers were separated from the subject facility during the relevant time period.

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 Norcal Pottery Products, Macramé Department,

Richmond Distribution Center, Richmond, California.

Signed at Washington, DC, this 1st day of July, 2008.

Elliott S. Kushner,*Certifying Officer, Division of Trade Adjustment Assistance.*

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DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-63,418]

Gramercy Jewelry Manufacturing Corporation, New York, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 19, 2008, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of Gramercy Jewelry Manufacturing Corporation, New York, New York, to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The negative determination was issued on June 10, 2008. The Department's notice of determination was published in the **Federal Register** on June 27, 2008 (73 FR 36576).

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 TAA petition, which was filed on behalf of workers at Gramercy Jewelry Manufacturing Corporation, New York, New York engaged in the production of jewelry, was denied based on the findings that sales and production at the subject firm did not decrease from 2006 to 2007 or from January through April 2008, when compared with the same period in 2007. The investigation also revealed no shift in production to a foreign country in the relevant time period.

In the request for reconsideration, the company official stated that he disagrees with the investigation and that the