

Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 28, 2008, applicable to workers of JDS Uniphase, including on-site leased workers of Job Store Staffing Solutions, Louisville, Colorado. The notice was published in the **Federal Register** on November 13, 2008 (73 FR 67209).

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 optical transceivers.

New information shows that workers leased from Spherion were employed on-site at the Louisville, Colorado location of JDS Uniphase. The Department has determined that these workers were sufficiently under the control of JDS Uniphase to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Spherion working on-site at the Louisville, Colorado location of the subject firm.

The intent of the Department's certification is to include all workers employed at JDS Uniphase, Louisville, Colorado who were adversely affected by increased imports and a shift in production of optical transceivers to China.

The amended notice applicable to TA-W-64,132 is hereby issued as follows:

"All workers of JDS Uniphase, including on-leased workers of Job Store Staffing Solutions and Spherion, Louisville, Colorado, who became totally or partially separated from employment on or after September 26, 2007, through October 28, 2010, 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 18th day of November 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-63,854]

Cassens Transport, Inc., Fenton, MO; Notice of Negative Determination Regarding Application for Reconsideration

By application received on October 29, 2008, the petitioners 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 September 16, 2008 and published in the **Federal Register** on October 3, 2008 (73 FR 57682).

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 negative TAA determination issued by the Department for workers of Cassens Transport, Inc., Fenton, Missouri was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioners contend that the Department erred in its interpretation of work performed at the subject facility and convey that even though the subject firm provided services to the customer, this customer relies on the subject firm for "shipping/relocating newly assembled vehicles" and "maintaining correct shipping destinations."

The petitioners alleged that because the subject firm provided services to a customer who produces automobiles and which might be import impacted; workers of the subject firm should be eligible for Trade Adjustment Assistance.

The nature of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but whether they produced an article within the meaning of section 222 of the Trade Act of 1974. The fact that workers of the subject firm performed services for customers, which

produces articles, does not imply production of an article within the meaning of Section 222.

The investigation revealed that the workers of Cassens Transport, Inc., Fenton, Missouri performed motor vehicle transportation for an unaffiliated firm and did not support production at any affiliated facility. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioners also reference case TA-W-61,059 and state that because workers in that case were certified eligible for TAA, workers of the subject firm should be certified eligible for TAA. The review of the above mentioned case revealed that workers of CPC Local Cartage were employed on-site of the certified production facility. In this case, however, workers of Cassens Transport, Inc., Fenton, Missouri are not employed on-site of a certified production facility.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 19th day of November 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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