

2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to foiarequest@dol.gov. These determinations also are available on the Department's Web site at <http://www.doleta.gov/tradeact> under the searchable listing of determinations.

Dated: September 26, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011-25711 Filed 10-4-11; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of September 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

18 TAA PETITIONS INSTITUTED BETWEEN 9/12/11 AND 9/16/11

| TA-W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|-------|-----------------------------------------------------|----------------------------|---------------------|------------------|
| 80427 | Coastal Lumber Company (Workers) | Hopwood, PA | 09/12/11 | 09/09/11 |
| 80428 | Toho Tenax America, Inc. (Company) ... | Rockwood, TN | 09/12/11 | 09/09/11 |
| 80429 | Kennametal Inc. (Company) | Latrobe, PA | 09/12/11 | 09/09/11 |
| 80430 | Product Dynamics LTD (Workers) | Levittown, PA | 09/12/11 | 09/09/11 |
| 80431 | Covidien (Company) | Argyle, NY | 09/12/11 | 09/11/11 |
| 80432 | Infuscience (Workers) | North Charleston, SC | 09/13/11 | 09/12/11 |
| 80433 | Werner Company (State/One-Stop) | Merced, CA | 09/13/11 | 09/12/11 |
| 80434 | IBM Corporation (Workers) | Armonk, NY | 09/13/11 | 09/09/11 |
| 80435 | New United Motor Mfg. Inc (NUMMI) (Company) | Fremont, CA | 09/13/11 | 09/09/11 |
| 80436 | Ornamental Mouldings, LLC (Company) | Archdale, NC | 09/14/11 | 09/06/11 |
| 80437 | Klaussner Furniture Industry (State/One-Stop) | Milford, IA | 09/14/11 | 09/13/11 |
| 80438 | LabWest Inc. (Workers) | Santa Ana, CA | 09/14/11 | 09/13/11 |
| 80439 | Yahoo Inc. (Workers) | Hillsboro, OR | 09/15/11 | 09/15/11 |
| 80440 | Bank Of America (Company) | Scranton, PA | 09/15/11 | 09/14/11 |
| 80441 | Online Buddies (State/One-Stop) | Cambridge, MA | 09/15/11 | 09/14/11 |
| 80442 | Bon Worth (State/One-Stop) | Hendersonville, NC | 09/15/11 | 09/13/11 |
| 80443 | Olympic Panel Products LLC. (Union) ... | Shelton, WA | 09/16/11 | 09/14/11 |
| 80444 | Spang/Magnetics (Workers) | East Butler, PA | 09/16/11 | 09/15/11 |

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-74,733]

Xpedite Systems, LLC Deerfield Beach, Florida; Notice of Negative Determination on Reconsideration

On March 4, 2011, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and

former workers of Xpedite Systems, LLC, a subsidiary of Easylink Services International Corporation, formerly a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida (Xpedite). The Department's Notice was published in the **Federal Register** on March 17, 2011 (76 FR 14698). Workers of the subject firm are engaged in activities related to the supply of communication, applications, and support services.

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 Trade Adjustment Assistance (TAA) petition is dated October 8, 2010 and was filed by three workers who supplied "application development & support" services and were separated on October 30, 2009. The petition states that worker separations occurred because "services outsourced to India—Development & Testing, Russia—Development."

The initial investigation was based on the Department's findings that imports of services like or directly competitive with those supplied by the workers of Xpedite did not increase during the relevant period; there has not been a shift to a foreign country by the workers' firm in the supply of (like or directly competitive) services; and Xpedite did not supply a service that was used by a firm that employed a worker group eligible to apply for TAA and used the services supplied by the subject firm in the production of an article or supply of a service that was the basis for the aforementioned TAA certification.

In the request for reconsideration, the workers provide a summary of their allegations: "* * * there was a contract between Xpedite and AppLabs, an Indian company to do customer development work. Xpedite's Sales staff are promoting custom development work on Xpedite's platform to gain customers that need custom data transfers. Xpedite was also using AppLabs for migration work. AppLabs employees located in India are writing/testing custom software applications on Xpedite's platform. In the long run employees in India replaced" workers at the Deerfield Beach, Florida facility.

The workers attached a document titled "Contract Highlights" which included a process map with the following sequence of events: "AppLabs completes SOW (SOW template) reviewed by SE before going to customer" "SOW delivered to customer, documented in Workflow tool" "Customer signs off on SOW" "App Labs builds and does initial testing on request" "Depending on Project Management Ownership, customer is contacted for test/confirmation of work." The request also included a document titled "Ancillary Processes

and Service Level Agreements (SLA)" that provides narrative support to the process map and a spreadsheet that identifies AppLabs projects, including "migration projects to remove Xpedite's existing customers from old outdated platforms to Xpedite's current platform."

In a subsequent communication with the Department, a petitioning worker stated that "PWI Technologies was another company that did custom software development work for Xpedite" and asserted that it is possible that "Xpedite stopped using PWI Technologies for software development * * * when they went into the contract with AppLabs."

During the course of the reconsideration investigation, Xpedite addressed multiple worker allegations and provided additional materials, including a copy of a Strategic Agreement with AppLabs Technologies Private Limited (AppLabs). In making its determination on reconsideration, the Department carefully reviewed all responses and material submitted during the reconsideration investigation and the administrative record.

A careful review of information previously-submitted by Xpedite revealed that prior to October 21, 2010, Xpedite was a wholly-owned subsidiary of Premier Global Services, Inc. Effective October 21, 2010, Xpedite was acquired by EasyLink Services International Corporation in a stock purchase.

The definition of a firm includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. Further, a firm, together with a predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same people, may be considered a single firm. 29 CFR 90.2

The careful review of previously-submitted information also revealed that Xpedite Systems, LLC had an affiliated facility in Tinton Falls, New Jersey that supplied some of the same services, and that operations were consolidated to the New Jersey facility in October 2009. Workers whose functions were not eliminated due to the domestic consolidation remained at the Florida facility until the acquisition of the subject firm by EasyLink Services International Corporation in October 2010.

Because the petition and filing dates precede the change in ownership, and because of the regulatory definition of a

firm, the Department determines that, for purposes of this TAA investigation only, the subject firm is Xpedite Systems, LLC, a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida (Xpedite Systems, LLC), and the subject worker group consists only of former workers of Xpedite Systems, LLC, a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida. There were no leased or temporary workers at the subject firm from October 1, 2009 through October 21, 2010.

During the reconsideration investigation, the Department obtained a copy of a Strategic Agreement entered into by Xpedite Systems, LLC and AppLabs on October 13, 2009. Based on a careful review of the agreement, the Department determines that Xpedite Systems, LLC and AppLabs are two separate entities and do not constitute a single firm.

Section 222(a)(2) of the Trade Act of 1974, as amended, 19 U.S.C. 22272(a)(2), states that the shift in supply of services criterion may be met if there was a shift by the workers' firm to a foreign country in the supply of services like or directly competitive with the services supplied by the workers' firm.

Because Xpedite Systems, LLC and AppLabs are separate firms, a shift to/acquisition from a foreign country of services by AppLabs is not a shift to/acquisition from a foreign country of services by Xpedite Systems, LLC. Consequently, the shift in the supply of services by AppLabs to India cannot be a basis for certification of workers of Xpedite Systems, LLC. Further, the reconsideration investigation revealed that Xpedite Systems, LLC did not contract with AppLabs, PWI Technologies, or any other entity to perform like or directly competitive services in a foreign country.

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 Xpedite Systems, LLC, a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida.

Signed in Washington, DC, on this 28th day of September 2011.

Del Min Amy Chen

Certifying Officer, Office of Trade Adjustment Assistance.

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