DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-82,728

THE BOEING COMPANY
BOEING DEFENSE AND SPACE DIVISION
INCLUDING ON-SITE LEASED WORKERS FROM GEOLOGICS CORPORATION
WICHITA, KANSAS

Notice of Negative Determination
On Remand

On October 22, 2013, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in Former Employees of The Boeing Company, Boeing Defense and Space Division, Wichita, Kansas v. United States Secretary of Labor (Court No. 13-00281).

On May 14, 2013, former workers of The Boeing Company, Boeing Defense and Space Division, Wichita, Kansas (subject firm) filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers at the subject firm. AR 1-3. Workers at the subject firm (subject worker group) are engaged in employment related to the maintenance and modification of military aircraft.

The initial investigation revealed that the subject firm had not shifted abroad services like or directly competitive with those provided by the subject worker group, had not acquired such services from abroad, and there had not been an increase in imports of articles like or directly competitive with those produced or services supplied by the subject firm. AR 54-62.

Additionally, with respect to Section 222(c) of the Act, the initial investigation revealed that the subject firm could not be considered a Supplier or Downstream Producer to a firm that employed a worker group eligible to apply for TAA benefits. AR 54-62.

On June 12, 2013, the Department of Labor (Department) issued a negative Determination regarding eligibility to apply for TAA applicable to workers and former workers of the subject firm. The Department's Notice of negative determination was published in the Federal Register on July 2, 2013 (78 FR 39776).

The petitioning workers did not request administrative reconsideration of the Department's negative determination.

In the complaint filed with the USCIT on August 6, 2013, the Plaintiffs claimed that their separations were directly caused by the subject firm shifting services like or directly competitive with those supplied by the subject firm worker group to a certified Boeing facility within the U.S. The Plaintiffs claimed that the Wichita facility should fall under the certification umbrella covered under various other Boeing certified facilities. AR 80.

The intent of the Department is for a certification to cover all workers of a subject firm, or appropriate subdivision, who were adversely affected by increased imports of articles produced or services supplied by the firm or shifts in production or services, based on facts obtained during the investigation of the

TAA petition. On October 20, 2013, the Department requested voluntary remand to address the allegations made by the Plaintiffs, to determine whether the subject worker group is eligible to apply for TAA under the Trade Act of 1974, as amended (hereafter referred to as the Act), and to issue a new determination.

The group eligibility requirements for workers of a firm under Section 222(a) of the Act, 19 U.S.C. § 2272(a), can be satisfied if the following criteria are met:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm have decreased absolutely;

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) imports of articles like or directly competitive with articles—

(aa) into which one or more component parts produced by such firm are directly incorporated, or

(bb) which are produced directly using services supplied by such firm,

have increased; or

(III) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) there has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) such workers' firm has acquired from a foreign country articles or services that are like or directly

competitive with articles which are produced or services which are supplied by such firm; and

(ii) the shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

During the remand investigation, the Department confirmed all previously collected information, obtained additional information from the subject firm regarding domestic and foreign operations, and solicited input from the Plaintiffs. AR 71-452.

The information the Department received on remand contained additional detail regarding the operations of the subject firm domestically and abroad. In order to determine whether there was a shift abroad of the maintenance and modification services provided by the subject worker group, the Department had to first determine whether the services provided are covered under the International Traffic in Arms Regulations, 22 U.S.C. § 2778, 22 C.F.R. §§ 120.1-130.17 (ITAR).

The investigation revealed that the maintenance and modification services provided by the workers at the subject firm are covered as stipulated in ITAR and, therefore, cannot be completed outside of the United States. AR 456-465.

Although the Plaintiffs declare that the subject firm shifted maintenance and modification services like or directly competitive with those provided by the subject worker group to Boeing facilities which employ worker groups eligible to apply for TAA located in the United States (AR 160), based upon the

information collected during the remand investigation, the Department determines that the services supplied by the certified worker groups at those Boeing facilities are not like or directly competitive with those provided by the subject worker group.AR 456-465. Specifically, due to the nature of the services supplied by the subject worker group and the laws and regulations governing the services provided by the subject firm worker group, the work is not considered to be interchangeable with the work performed by other certified Boeing facilities. Consequently, the Department determines that the services supplied by the subject worker group are neither like nor directly competitive with those supplied by the above-mentioned former and current workers of Boeing who are eligible to apply for TAA benefits.

The remand investigation findings confirmed that the workers were not impacted by a shift in services or foreign acquisition of services by Boeing at other facilities. AR 456-465.

The remand investigation findings also confirmed that the subject firm worker group does not provide services like or directly competitive with the work which the Plaintiffs claimed was done by the subject firm worker group within the relevant time period under investigation. AR 456-465.

For Section 222(a)(A)(ii)(II)(bb) of the Act to be met, imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, must have increased. Because ITAR establishes that imports of

services like or directly competitive with those provided by the workers at the subject firm is illegal, the criterion has not been met.

Based on a careful review of previously submitted information and new information obtained during the remand investigation, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(a) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration of the administrative record, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance applicable to workers and former workers of The Boeing Company, Boeing Defense and Space Division, including on-site leased workers from Geologics Corporation, Wichita, Kansas.

Signed at Washington, D.C. this 20th day of December, 2013

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DEL MIN AMY CHEN
Certifying Officer, Office of
Trade Adjustment Assistance
4510-FN-P

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