

indicator that IBM, and not BP, controlled the workers in question. While the petitioners themselves may have worked only for BP, this is not the case for the entire worker group.

IBM has stated [Business Confidential] SAR at 761. See also SAR at 723, 790.

6. BP was not responsible for establishing wage rates or paying salaries to individual IBM workers.

This issue does not appear to be a matter of contention. The petitioners have indicated that PwC/IBM, not BP, set their wage rates and paid their salaries, once they were outsourced. SAR at 913. Therefore, the evidence generated for evaluation of this criterion indicates that BP did not exercise operational control over the former IBM employees.

7. BP did not provide skills training to the workers of IBM.

This finding, which has been corroborated by both IBM and BP officials, is another strong indicator that IBM controlled the workers in question. [Business Confidential]

Moreover, there is evidence that PwC/IBM provided training to the outsourced Tulsa employees, both to ensure both that they maintained the ability to perform the duties they had previously handled for BP and to help them acquire new skills for career development within their new firm. The "Pricewaterhouse Coopers Questions and Answers for Outsourcing" (SAR at 69) states:

[Business Confidential] (*Id.*) (emphasis in original).

Further, as instructed by the Court, DOL did consider the fact that the former IBM employees had been employed by BP, performing the same tasks as they subsequently performed for PwC/IBM after being outsourced. Opinion at 43, n. 38. While the situation presented is superficially similar to that presented in *Former Employees of Pittsburgh Logistics Systems, Inc. v. USDOL*, 27 ITRD 2125, 2003 WL 716272 *10 (February 28, 2003) (See SAR at 945), the IBM petitioners were not part of a subdivision that was "integrated into the [BP] corporate structure" (*Id.*) and did not report "directly to [BP] employees on all operational matters." (*Id.*) Further, BP personnel did not manage "all job tasks, direct[] which employees could work at specific locations and specifically relocate[] the [IBM] subdivision along with certain [BP] facilities * * * to [BP's] facilities, evaluate[] [IBM] employee job performance, and advise[] which [IBM]

employees should receive merit salary increases." *Id.*⁷

Further, the situation of the petitioners in *Former Employees of Wackenhut Corp. v. USDOL*, Ct. No. 02-00758, is not precedent as it was decided under the former leased worker policy, which looked only at whether there was a contract and whether the workers were on-site.

Conclusion

After careful consideration of the record evidence, particularly that developed through the remand investigation, and the applicable Department policy, I affirm the original notice of negative determination of eligibility for trade adjustment assistance on the part of workers and former workers of International Business Machines Corporation, Tulsa, Oklahoma. Signed at Washington, DC this 6th day of February, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,838]

Isabel Bloom LLC, Davenport, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2006 in response to a petition filed by a company official on behalf of workers at Isabel Bloom LLC, Davenport, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 16th day of February, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

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⁷ The Department has considered the issue of whether to characterize employee leasing firms as appropriate subdivisions of the producing firm. The Department believes that this mode of analysis does violence to the separate nature of independent corporations. This case is an excellent example. No one can reasonably suggest that IBM and BP are legally related. The Department believes its new leased worker policy, using an operational control analysis, arrives at the same result without doing violence to corporate legal formalities.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-58,045]

Lexel Company Including On-Site Leased Workers of Westaff, Inc., Hutsonville, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and 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 December 6, 2005, applicable to workers of Lexel Company, including on-site leased workers of Westaff, Inc., Hutsonville, Illinois. The notice was published in the **Federal Register** on December 21, 2005 (70 FR 75845).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of small electric motors (fractional H.P. electrical motors).

A previous certification, TA-W-52,202, was issued on August 7, 2003, for workers of Lexel Company, Hutsonville, Illinois which did not include on-site leased workers of Westaff, Inc. That certification expired August 7, 2005. This certification is being amended to change the impact date for workers of Westaff, Inc., from August 8, 2005 to September 28, 2004 (one year prior to the September 28, 2005 petition date). The impact date for workers of Lexel Company remains August 8, 2005.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to clarify the period of eligibility to apply for all workers of Lexel Company, including on-site leased workers of Westaff, Inc., Hutsonville, Illinois, who were adversely affected by increased customer imports.

The amended notice applicable to TA-W-58,045 is hereby issued as follows:

All workers of Lexel Company, Hutsonville, Illinois who became totally or partially separated from employment on or after August 8, 2005 through December 6, 2007, and including on-site leased workers of Westaff, Inc. at the Hutsonville site who