

Signed in Washington, DC, this 25th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-51,007]

Cedar Creek Fibers, LLC, Formerly Wellman, Inc., Fayetteville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2003, in response to a worker petition filed on behalf of workers at Cedar Creek Fibers, LLC, formerly Wellman, Inc., Fayetteville, North Carolina.

The petitioning group of workers is covered by an active certification issued on September 19, 2002 (TA-W-41,409). Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-50,184]

Corning Cable Systems, LLC, Business Operation Services—OpitiCon Network Manager, Hickory, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked January 2, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Corning Cable Systems, LLC, Business Operation Services—OpitiCon Network Manager, Hickory, North Carolina was signed on December 20, 2002, and published in the **Federal Register** on January 9, 2003 (67 FR 1199).

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 TAA petition was filed on behalf of workers at Corning Cable Systems, LLC, Business Operation Services—OpitiCon Network Manager, Hickory, North Carolina engaged in activities related to data entry. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Trade Act.

The petitioner alleges that the reason subject firm workers were listed in the **Federal Register** as having been denied was on the basis "that criterion (2) has not been met * * * the workers firm (or subdivision) is not a supplier or downstream producer for trade affected companies."

In fact, the petitioner mistakenly quotes the paragraph below the listing of TA-W-50,184, when the correct paragraph citing the reason for the negative determination was above the listing. The relevant paragraph reads as follows: "the workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974."

The petitioner alleges that "several other groups from the same company and same town got coverage" and that, on that basis, the petitioning worker group should also be considered eligible. The petitioner also appears to allege that, because the company marketed various products and services together as a "Total Solutions" package, all worker groups should be equally eligible.

In fact, only one other worker group has been TAA and NAFTA-TAA certified for Corning Cable Systems in Hickory, North Carolina. This worker group produced cable assembly hardware, which, unlike the data entry performed by the petitioning worker group, constitutes a product within the meaning of section 222 of the Trade Act. Further, the subject firm's marketing strategy in selling products and services in a package does not create the affiliation required for service in support of production. Service workers must perform a function that directly supports the production of the certified

worker group in order to be eligible for trade adjustment assistance. In this case, the petitioning worker group performs data entry for the purpose of creating independent databases, and do not contribute to the production of cable assembly hardware of the worker group certified at the same facility.

The petitioner also asserts that the subject firm did not correctly address the petitioning worker group's function in describing their job duties as "data entry", implying that there were much more complex functions involved, and that the description does not properly take into account the "technological knowledge and skills" of the petitioning workers.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222(3) of the Trade Act of 1974.

The petitioner appears to allege that, because petitioning workers "built virtual networks for fiber management," their work should be considered production.

Virtual networks are not considered production of an article within the meaning of section 222(3) of the Trade Act.

The petitioner appears to allege that, on the basis that that petitioning workers produced an article within the meaning of a dictionary definition provided in the request for reconsideration, the worker group should be eligible for trade adjustment assistance.

Petitioning workers do not produce an "article" within the meaning of the Trade Act of 1974. Databases are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all articles imported to or exported from the United States. Furthermore, when a Nomenclature Analyst of the USITC was contacted in regards to whether virtual networks and databases provided by subject firm workers fit into any existing HTS basket categories, the Department was informed that no such categories exist.

In addition, the Trade Adjustment Assistance (TAA) program was established to help workers who produce articles and who lose their jobs as a result of trade agreements. Throughout the Trade Act an article is often referenced as something that can