

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Application of: :
  
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UNION PAYROLL AGENCY, :
  
:
  
: DOCKET NO. CI 08-010
  
:
  
For Approval of a Proposed Application for : RESOLUTION OF DECISION
  
Authority Pursuant to New York State Business:
  
Corporation Law Sections 1304 and 301 (a) (6) :
  
and New York State Labor Law Section 104. :
  
:
  
:
  
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WHEREAS:

Business Corporation Law (BCL) § 1301 (a) states that “[a] foreign corporation shall not do business in this state until it has been authorized to do so as provided in this article.” BCL § 1304 (a) provides that “[a] foreign corporation may apply for authority to do business in this state. An ‘Application for authority of . . . (name of corporation) under section 1304 of the Business Corporation Law’, shall be signed and delivered to the department of state.”

BCL § 301 (a) (6) provides that

“the name of a . . . foreign corporation: “Shall not, unless approval of [the Industrial Board of Appeals] is attached to the . . . application for authority [to do business in the state] . . . contain any of the following words or phrases, or abbreviation or derivative thereof: union, labor,

council, industrial organization, in a context which indicates or implies that . . . the foreign corporation [is] authorized as an organization of working men or women or wage earners or for the performance, rendition or sale of services as labor or management consultant, adviser or specialist, or as negotiator or arbitrator in labor-management disputes.”

By letter dated April 17, 2008, Capitol Services requested approval of the Industrial Board of Appeals (Board) to the filing of a proposed application for authority of Union Payroll Agency under Business Corporation Law § 1304 with the Department of State.

Union Payroll Agency is a foreign corporation within the meaning of Business Corporation Law §§ 301 (a) (6) and therefore must obtain the Board’s approval to use the name “Union Payroll Agency” to do business in the state.

Labor Law § 104 governs the Board’s review of corporate instruments that are submitted to it for approval in accordance with the requirements of others statutes, including BCL § 301 (a) (6). Section 104 states that the Board

“shall make such inquiry as it may deem advisable . . . to determine . . . whether the corporate name is in all respects consistent with its purposes and activities or tends to be misleading.”

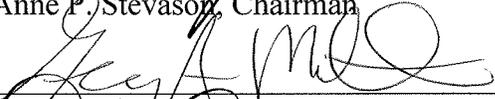
Pursuant to Labor Law § 104, the Board has made inquiry into the objectives and purposes of the corporation as it has deemed necessary and advisable. The Board finds that use of the name “Union Payroll Agency” cannot be approved because in the context of the widespread existence of labor union sponsored benefit plans and negotiated collective bargaining agreements, the public may be misled to believe that “Union Payroll Agency” acts on behalf of, or is an agent of, a labor union (*see Matter of Tool Owners Union v Roberts*, 190 Misc 577 [Sup Ct New York County 1947] [misleading and confusing name is one of the grounds upon which Board may deny approval of an application before it]). Accordingly, the application for approval for use of the name “Union Payroll Agency” in the proposed Application of Authority to conduct business in the state pursuant to BCL § 1304 is denied.

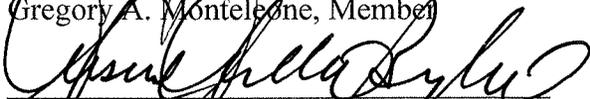
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

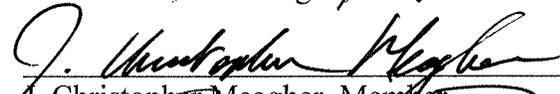
1. The application for approval to use the name Union Payroll Agency in the proposed Application for Authority Under Section 1304 of the Business Corporation Law is denied; and
2. A certified copy of this Resolution shall be annexed to the proposed Application for Authority of Union Payroll Agency Under Section 1304 of the Business Corporation Law

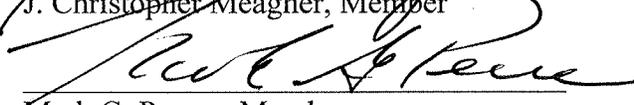
WITNESS, the signatures of the Members of the Industrial Board of Appeals and the Seal of the Industrial Board of Appeals of the State of New York, at New York, New York, on the 28<sup>th</sup> day of May, 2008.

  
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Anne P. Stevason, Chairman

  
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Gregory A. Monteleone, Member

  
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Susan Sullivan-Bisceglia, Member

  
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J. Christopher Meagher, Member

  
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Mark G. Pearce, Member

Dated and signed in the Office of the Industrial Board of Appeals, at New York, New York, on May 28, 2008.

Filed in the Office of the Industrial Board of Appeals, at Albany, New York, on May 30, 2008.

SMN