

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

GAVIN RALPH FARELLA AND JAMES RALPH
A/K/A JAMIE FARELLA AND BROTHERS
BARBECUE, INC. (T/A BROTHERS
BARBECUE),

Petitioners,

To Review Under Section 101 of the Labor Law:
An Order To Comply With Article 19 of the Labor
Law, and an Order Under 19 of the Labor Law, both
dated August 20, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 15-375

RESOLUTION OF DECISION

APPEARANCES

James Farella, petitioner pro se, and for Gavin Ralph Farella and Brothers Barbecue Inc. (T/A Brothers Barbecue).

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Kathleen Dix of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on November 19, 2015 in an envelope post-marked November 18, 2015. An amended petition was filed on January 7, 2016, and the Board served the amended petition on respondent Commissioner of Labor on January 14, 2016. Respondent moved on February 12, 2016, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners did not reply to the motion.

Labor Law § 101 (1) provides that:

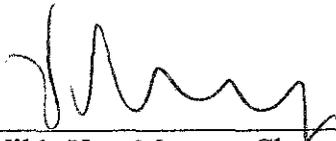
“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the

commissioner Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

The orders sought to be reviewed were issued on August 20, 2015, and therefore, any petition for review filed with the Board with a post-mark after October 19, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]). As the petition in this proceeding was post-marked after October 19, 2015, it was filed late and must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

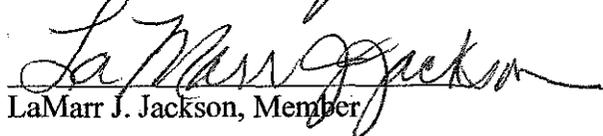
The Commissioner of Labor’s motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Dated and signed by the Members
of the Industrial Board of Appeals
at New York, New York
on May 25, 2016.

commissioner Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

The orders sought to be reviewed were issued on August 20, 2015, and therefore, any petition for review filed with the Board with a post-mark after October 19, 2015 is untimely (*id.*; Board Rules of Procedure and Practice 65.5 [d] [12 NYCRR 65.5 (d)]). As the petition in this proceeding was post-marked after October 19, 2015, it was filed late and must be dismissed.

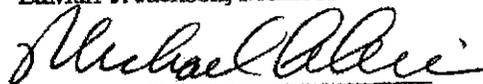
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor’s motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.

Vilda Vera Mayuga, Chairperson

J. Christopher Mcagher, Member

LaMarr J. Jackson, Member



Michael A. Arcuri, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York on
May 25, 2016.