

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ANDREW KIRTZMAN,

Petitioner,

To Review Under Section 101 of the Labor Law:

An Order to Comply with Article 19 of the Labor Law,
dated July 7, 2015,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 18-025

RESOLUTION OF DECISION

APPEARANCES

Andrew Kirtzman, New York, New York, petitioner pro se.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Steven J. Pepe* of counsel),
for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on June 13, 2018 in an envelope post-marked June 12, 2018. The Board served the petition on respondent Commissioner of Labor on July 2, 2018. Respondent moved on July 25, 2018 to dismiss the petition as untimely. Petitioner did not respond 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.”

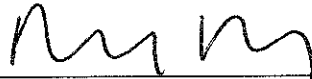
The orders to be reviewed were issued on July 7, 2015, and therefore, any petition for review filed with the Board with a post-mark after September 8, 2015¹ is untimely (*id.*; Board

¹Sixty days after the date on the issuance of the order to comply is September 5, 2015, which was a Saturday. Monday, September 7, 2015 was a legal holiday. Thus, under Board Rules of Procedure and Practice § 65.3(a), the 60-day period runs through September 8, 2015.

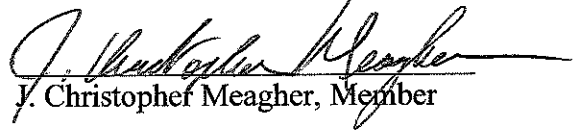
Rules of Procedure and Practice 65.5 [d] and 65.3 [a] [12 NYCRR 65.5 (d) and 65.3 (a)]). As the petition in this proceeding was post-marked after September 8, 2015, the petition was untimely and must be dismissed.

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.

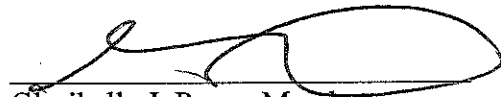


Molly Doherty, Chairperson



J. Christopher Meagher, Member

Michael A. Arcuri, Member



Gloribelle J. Perez, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York, on
October 24, 2018.

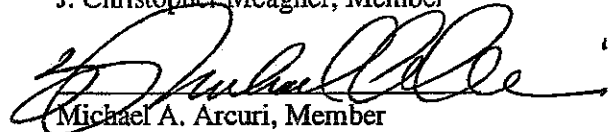
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Molly Doherty, Chairperson

J. Christopher Meagher, Member


Michael A. Arcuri, Member

Gloribelle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Syracuse, New York, on
October 24, 2018.