STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of:	:	
JAMES C. NENNI, SR. AND JAMES C. NENNI, JR. AND NENNI CONSTRUCTION CO.,	:	
Petitioners,	:	DOCKET NO. PR 17-179
To Review Under Section 101 of the Labor Law: Order to Comply # 17-00420,	:	INTERIM RESOLUTION OF DECISION GRANTING RECONSIDERATION
- against -	:	
THE COMMISSIONER OF LABOR,	:	
Respondent.	:	

APPEARANCES

Catania, Mahon, Milligram & Rider PLLC, Newburgh (*Robert E. DiNardo* of counsel), for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Michael Paglialonga* of counsel), for respondent.

WHEREAS:

On December 20, 2017, petitioners filed a petition for review of orders issued by respondent Commissioner of Labor; however, copies of the orders were not attached. By letter dated January 10, 2018, pursuant to the Board's Rules of Practice and Procedure (Rules) (12 NYCRR) § 66.3, the Board directed petitioners to file an amended petition and a copy of the orders sought to be reviewed in accordance with the Rules. The letter directed petitioners to file an amended petition on or before February 9, 2018, or the petition would be dismissed without further notice. Having not received an amended petition as directed by the Board and required by the Rules, by Resolution of Decision dated June 6, 2018, the Board dismissed the matter.

In a letter to the Board, dated June 14, 2018, petitioners stated (1) the subject orders were attached to the petition filed on December 20, 2017, and (2) that petitioners had not received the Board's letter of January 10, 2018. Petitioners requested a conference to discuss the matter. On July 13, 2018, petitioners were advised by the Board that, should they wish, they may apply for a motion for reconsideration pursuant to Board Rule (12 NYCRR) § 65.41.

On July 27, 2018, petitioners filed an application for reconsideration pursuant to Board Rule (12 NYCRR) § 65.41. In their application, petitioners argue that they did not receive the Board's January 10, 2018 correspondence, which served as the basis for the Board's dismissal of their petition, and that their file copies of the petition contain both the petition and subject orders. They allege compliance with the relevant rules and request that the dismissal be reversed.

On August 7, 2018, the Board advised respondent that any written response to petitioners' motion was to be filed on or before September 4, 2018. The Board received no such response. As such, petitioners' motion for reconsideration is unopposed. We grant the motion for reconsideration.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Petitioners' application for reconsideration is granted; and

2. The Board's Resolution of Decision in this matter issued June 6, 2018, is revoked; and

3. Pursuant to Board Rule (12 NYCRR) § 66.3, petitioners are directed to file an amended petition in the form of an original and three copies of the petition with a complete copy of the order or orders at issue attached to each within 30 days of the service of this Interim Resolution of Decision; and

4. The Board will serve the amended petition on the Commissioner in accordance with the Board Rules; and

5. The Commissioner of Labor's response to the petition shall be filed with the Board in accordance with Board Rule (12 NYCRR) § 66.5.

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.