

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ROSA A. MEJIA AND LA NUEVA COCINA
RESTAURANT, INC. (T/A LA COCINA
RESTAURANT),

Petitioners,

To Review Under Section 101 of the Labor Law:

An Order to Comply with Article 19 of the Labor
Law, an Order to Comply with Article 6 of the Labor
Law, and an Order under Articles 5, 6, and 19 of the
Labor Law, all dated October 31, 2014,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PR 14-347

RESOLUTION OF DECISION

APPEARANCES

Rosa A. Mejia, petitioner pro se, and for La Nueva Cocina Restaurant, Inc.

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


WHEREAS:

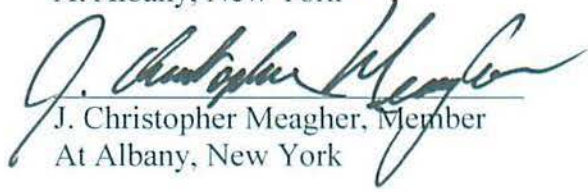
1. The above proceeding was commenced on December 29, 2014, when petitioners filed a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (12 NYCRR Part 66) of the orders issued by the respondent Commissioner of Labor against them on October 31, 2014; and
2. Respondent moved on February 23, 2014, for an order granting permission to issue amended orders. Petitioner sought relief because the orders issued under Article 19 and Article 6 assessed wages, interest, and civil penalties for a time period exceeding six years prior to the date of when respondent received claimant's complaint dated January 27, 2009; and
3. Respondent sought to issue amended orders that would remove calculations for the period of between October 7, 2002, and January 27, 2003, for both orders. Respondent also sought to modify the civil penalties, interest, and liquidated damages in accordance with the newly assessed wages due and owing; and

4. Petitioners did not oppose the motion; and
5. The Board, by an Interim Resolution of Decision dated April 29, 2015, approved the issuance of the amended orders as requested by the respondent, effective the date of the decision, but suspended any interest that had accrued between February 23, 2015, and the date the respondent files an answer with the Board and ordered service of the amended orders on petitioners in accordance with Labor Law § 33 within 30 days of the service of the decision; and
6. The Interim Resolution of Decision was served on respondent on May 8, 2015; and
7. By letter dated September 8, 2015, the Board advised respondent that to date, proof of service of the amended orders had not been filed, and further advised that if the orders were not served and proof thereof filed with the Board within 30 days of the date of the letter, the Board would issue a resolution of decision granting the petition (*see Matter of Donigan et al.*, PR 14-192 [July 22, 2015]); and
8. On October 19, 2015, the Board received proof that respondent served petitioners with amended orders dated October 15, 2015. Respondent offered no justification for the lateness and was on notice that proof of service filed later than June 8, 2015, would be untimely; and
9. We grant the petition, because without cause respondent failed to provide the Board with timely proof of service of the amended orders as ordered.

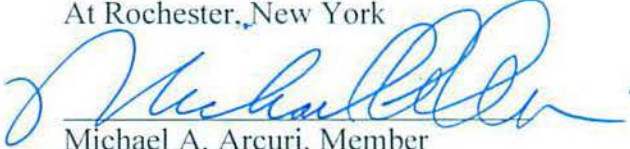
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition for review be, and the same hereby is, granted in accordance with the Board's Rules.


Vilda Vera Mayuga, Chairperson
At Albany, New York


J. Christopher Meagher, Member
At Albany, New York

Absent
LaMarr J. Jackson, Member
At Rochester, New York


Michael A. Arcuri, Member
At Albany, New York

Dated and signed by the Members
of the Industrial Board of Appeals
on October 28, 2015.