

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ROY J. SCHUKRAFT, JR. AND RJS JANITORIAL,
LLC,

Petitioners,

DOCKET NO. PR 15-148

To Review Under Section 101 of the Labor Law:

An Order to Comply with Article 19, and an Order
under Articles 6 and 19 of the Labor Law, both dated
March 11, 2015,

RESOLUTION OF DECISION
DENYING RECONSIDERATION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Andreozzi Bluestein Weber Brown, LLP, Clarence (*Randall P. Andreozzi* and *Michael J. Tedesco* of counsel), for petitioners.

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

WHEREAS:

By Resolution of Decision dated October 24, 2018, we modified the minimum wage order issued against petitioners, thereby reducing the interest proportionally, revoked the liquidated damages and revoked the penalty order. Our decision was served on the parties on October 25, 2018. On December 24, 2018, petitioners filed an application for reconsideration pursuant to Board Rule (12 NYCRR) § 65.41. Respondent Commissioner of Labor opposes the application because petitioner failed to provide any basis in law or fact for us to reconsider our decision. We agree with respondent and, as discussed below, deny petitioners' application.

Board Rule (12 NYCRR) § 65.41 (a) provides that an:

“[a]pplication for reconsideration after a determination made by the Board shall be in writing, and shall state specifically the grounds upon which the application is based. When any determination, resolution, requirement or order of the Board is sought to be reversed, modified, changed, rescinded or terminated


on account of facts or circumstance arising subsequent to a hearing or on account of consequences resulting from compliance with such determination, resolution, requirement or order, which are claimed to justify a reconsideration of the proceeding, the matters relied upon by the applicant shall be set forth fully.”

Petitioner has provided no justification for reconsideration of our decision pursuant to Board Rule (12 NYCRR) § 65.41 (a) (*see e.g. Matter of Singh*, Docket No. PR 14-245, at p. 2 [March 7, 2018] *citing Matter of Beqiraj, et. al.*, Docket No. PR 11-393, at pp. 1-2 [April 13, 2016]). Instead, petitioners attempt to relitigate arguments made at the hearing and contest the Board’s determination of the weight of the evidence presented at the hearing.

Furthermore, pursuant to Board Rule (12 NYCRR) § 65.41 (a), petitioner failed to set forth any facts or circumstances arising after the hearing that warrant that the Board revoke its decision of October 24, 2018. Petitioners’ contention that compliance with the decision results in petitioners being liable for “payments already made once” does not justify a reconsideration of our decision.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

Petitioners’ application is denied.



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
January 30, 2019.

on account of facts or circumstance arising subsequent to a hearing or on account of consequences resulting from compliance with such determination, resolution, requirement or order, which are claimed to justify a reconsideration of the proceeding, the matters relied upon by the applicant shall be set forth fully."

Petitioner has provided no justification for reconsideration of our decision pursuant to Board Rule (12 NYCRR) § 65.41 (a) (*see e.g. Matter of Singh*, Docket No. PR 14-245, at p. 2 [March 7, 2018] *citing Matter of Begiraj, et. al.*, Docket No. PR 11-393, at pp. 1-2 [April 13, 2016]). Instead, petitioners attempt to relitigate arguments made at the hearing and contest the Board's determination of the weight of the evidence presented at the hearing.

Furthermore, pursuant to Board Rule (12 NYCRR) § 65.41 (a), petitioner failed to set forth any facts or circumstances arising after the hearing that warrant that the Board revoke its decision of October 24, 2018. Petitioners' contention that compliance with the decision results in petitioners being liable for "payments already made once" does not justify a reconsideration of our decision.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

Petitioners' application is denied.

Molly Doherty, Chairperson

J. Christopher Meagher, Member



Michael A. Arcuri, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York, on
January 30, 2019.

Gloribelle J. Perez, Member