

STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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STATE OF NEW YORK  
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

COR ROUTE 31 COMPANY, LLC. :  
(BED, BATH & BEYOND), :  
Petitioner, :

DOCKET NO. PR-03-039

To review under Section 101 of the New York State :  
Labor Law: A Notice of Violation and Order to :  
Comply with Article 10-A of the Labor Law, :  
dated February 6, 2003 :

-against- :

THE COMMISSIONER OF LABOR, :  
Respondent. :

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INTERIM RESOLUTION OF DECISION

WHEREAS:

1. The above proceeding was duly commenced by the filing of a Petition for Review pursuant to Labor Law Section 101 and Part 66 of the Board's Rules of Procedure and Practice (12 N.Y.C.R.R. Part 66) on April 7, 2003. Thereafter, an Answer was duly served and filed on April 23, 2003; and
2. Thereafter, on April 20, 2004, Respondent served and filed a consolidated Notice of Motion and supporting Affirmation, requesting that the Board consolidate five specific proceedings, pursuant to Board Rule 65.44, or in the alternative, directing that these five proceedings be heard together, without consolidation, pursuant to Board Rule 65.48; and

for a Bill of Particulars, dated April 15, 2003; and

4. By cover letter dated May 19, 2003, Respondent served and filed an Affirmation in Opposition to Petitioner's motion; and
5. The Notice of Violation and Order to Comply under review herein, dated February 6, 2003, was issued by Respondent to Petitioner, and alleges violations of Section 246 of Article 10-A of the Labor Law (plumbing materials and installation methods used do not conform to the standards required in Article 10-A of the NYS Labor Law), and directs the Petitioner to immediately come into compliance with such standards; and
6. The Board having given due consideration to the motion to vacate the Demand for a Bill of Particulars, the Affirmation in Opposition, the documents, and the arguments presented, makes the following interim findings of fact and law, pursuant to the provisions of Board Rule 65.39 (12 N.Y.C.R.R. Section 65.39):
  - a) The Petitioner is a private employer doing business in the state of New York, as defined by Article 1 of the Labor Law, and is subject to the jurisdiction of the Commissioner of Labor.
  - b) The Notice of Violation and Order to Comply, under review herein, was issued by the Commissioner pursuant to the provisions of the Labor Law.
  - c) The Petitioner argues that the Demand for a Bill of Particulars is improper, as it is solely a demand for documentary evidence, which under the CPLR definition of a bill of particulars is not allowed, and therefore the demand must be vacated.
  - d) Respondent argues that the Board has previously defined a "bill of particulars", in other proceedings, as including a demand for documentary evidence. In particular, Respondent cites the Board's Interim Resolution of Decision in Matter of the Petition of VAW of America, Inc., dated November 13, 2001, under Board Docket Number PR-01-052, as the authority for this argument.
  - e) The Board finds that Petitioner has not correctly interpreted the Board's Rules concerning bills of particulars. It is the Board's determination that the Respondent's Demand for a Bill of Particulars does comply with Board Rule 65.17. The demands relate to a claim or contention set forth in a pleading by the Petitioner, and under

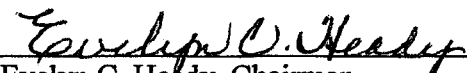
the Board's Rules, it is an appropriate use of a bill of particulars to demand that the Petitioner particularize a pleading, to include requesting the production of documents.

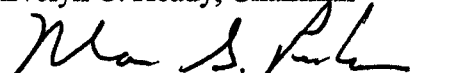
- f) The Petitioner's Motion to vacate Respondent's Demand for a Bill of Particulars should be denied.

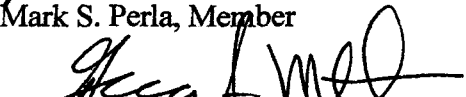
NOW, THEREFORE, IT IS HEREBY

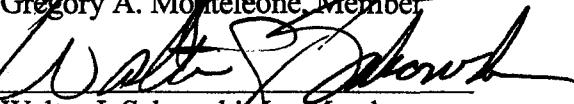
RESOLVED:

1. That the Petitioner's Motion to Vacate the Respondent's Demand for a Bill of Particulars, be and the same hereby is, denied.
2. That the Petitioner is directed to serve and file a Bill of Particulars in accordance with the provisions of Board Rule 65.17.

  
Evelyn C. Heady, Chairman

  
Mark S. Perla, Member

  
Gregory A. Monteleone, Member

  
Walter J. Sakowski, Jr., Member

Dated and Filed in the Office  
of the Industrial Board of  
Appeals, at Albany, New York,  
on April 28, 2004.

JB