STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

In the Matter of the Petition of: RICARDO R. GOURSAHAB, Petitioner, To Review Under Section 101 of the Labor Law: An Order to Comply with Article 6 of the Labor Law and an Order Under Article 19 of the Labor Law, both dated October 15, 2010, - against - THE COMMISSIONER OF LABOR, Respondent.	DOCKET NO. PR 11-091 RESOLUTION OF DECISION

APPEARANCES

Beverly Scotman, Esq., for Petitioner.

Maria L. Colavito, Counsel, NYS Department of Labor, Jeffrey G. Shapiro of Counsel, for Respondent.

WHEREAS:

This proceeding was commenced when the petitioner filed a petition with the Industrial Board of Appeals (Board) on March 25, 2011. The petition seeks review of two orders issued by the respondent Commissioner of Labor (Commissioner) on October 15, 2010, and also seeks review of a letter dated January 25, 2011 from the Department of Labor (DOL) to the petitioner's attorney replying to prior correspondence from the petitioner to DOL regarding alleged partial payment of amounts set forth in the orders. The petition was served on the respondent Commissioner of Labor (Commissioner) on April 14, 2011. The Commissioner moved on April 25, 2011 to dismiss the petition on the grounds that (1) it was untimely because it was filed more than 60 days after the orders were issued, and (2) the Board does not have jurisdiction to review the letter from DOL to the petitioner. The petitioners did not oppose the motion.

Labor Law § 101 (1) states 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 sought to be reviewed were issued on October 15, 2010, and therefore, any petition for review filed with the Board after December 14, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). As the petition in this proceeding was not received by the Board until March 25, 2011, it was untimely. Additionally, the Board has no jurisdiction to review the January 25 letter sent by DOL to the petitioner's attorney. That letter was a reply by DOL to a January 13 letter from the petitioner's attorney concerning alleged payments made by the petitioner to the claimants named in the orders. The Board has jurisdiction to review rules, regulations or orders made by the Commissioner (Labor Law § 101). DOL's January 25 letter is not a rule, regulation, or order of the Commissioner, and accordingly the Board does not have jurisdiction to review it (*Cf. Matter of Toohey*, PR 09-223 [January 27, 2010]; *Matter of Ode*, PR 10-191 [April 27, 2011]). Accordingly, the petition must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor's motion to dismiss the petition for review is granted in its entirety, and the petition for review be, and the same hereby is, dismissed.

Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
July 26, 2011.

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Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Rochester, New York, on
July 26, 2011.

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J. Christopher Meagher, Member

Jean Grumet, Member

LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at Albany, New York, on
July 26, 2011.