

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

ROSSANA BORTONE AND EMILIO LAMANNA
AND ALMAR SUPPLIES, INC.,

Petitioners,

DOCKET NO. PR 11-337

To Review Under Section 101 of the Labor Law:
Two Orders to Comply with Article 19 of the Labor
Law and an Order Under Article 19 of the Labor Law,
both dated August 29, 2011,

INTERIM
RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Sullivan Gardner, P.C. (Brian Gardener of counsel), for petitioners.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Jeffrey G. Shapiro of counsel), for respondent.

WHEREAS:

The above proceeding was commenced on October 26, 2011, 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 two orders issued by the respondent Commissioner of Labor against them on August 29, 2011.

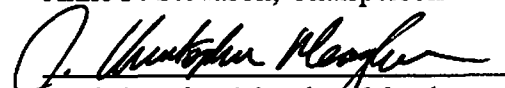
The respondent moved on July 23, 2012 for an order granting permission to withdraw and reissue the orders. The respondent seeks this relief because he agrees with the petitioners' allegation that the federal Motor Vehicle Carrier Exemption, 29 USC § 213 (b), should have been applied when calculating the wages due and owing. The respondent now wishes to withdraw the orders issued on August 29, 2011, and reissue amended orders that are calculated with the Motor Vehicle Carrier Exemption applied. We note that the petitioners object to the relief requested, but that such objections have no merit.

The Board approves the amendment and reissuance of the orders as requested by the respondent, effective the date of this decision, but suspends any interest that has accrued between July 23, 2012, and the date the respondent files an answer with the Board.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

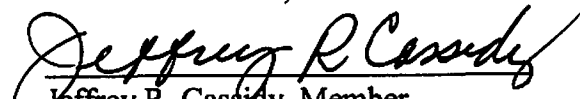
1. Effective the date of this Interim Resolution of Decision, the Board approves respondent's withdrawal of the orders, and upon amendment of the orders consistent with paragraph 4 of the respondent's motion of July 23, 2012, their reissuance; and
2. The respondent shall serve the amended orders on the petitioners in accordance with Labor Law § 33 within 30 days of service of this decision, with proof of service filed with the Board; and
3. No later than sixty days from respondent's service on petitioners of the amended orders, the petitioners shall file with the Board either an amended petition or a writing advising the Board that it will rely on the petition that was filed in October 2011, with proof of service of the petition or the writing, as appropriate, on respondent; and
4. Upon receipt of petitioners' amended petition or writing advising of its reliance on the earlier filed petition, respondent shall file an answer in accordance with Rule 66.5; and
5. The accrual of interest in the amended orders is suspended from July 23, 2012, until the date that respondent files an answer with the Board, with proof of service on the petitioners.


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
February 6, 2013.

The Board approves the amendment and reissuance of the orders as requested by the respondent, effective the date of this decision, but suspends any interest that has accrued between July 23, 2012, and the date the respondent files an answer with the Board.

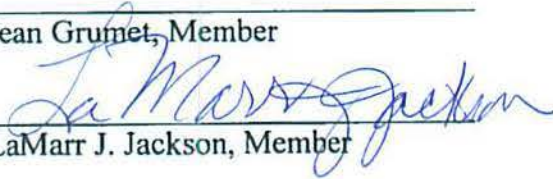
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1. Effective the date of this Interim Resolution of Decision, the Board approves respondent's withdrawal of the orders, and upon amendment of the orders consistent with paragraph 4 of the respondent's motion of July 23, 2012, their reissuance; and
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Anne P. Stevason, Chairperson

J. Christopher Meagher, Member

Jean Grumet, Member



LaMarr J. Jackson, Member

Jeffrey R. Cassidy, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Rochester, New York, on
February 6, 2013.