



4. On December 4, 2008, the Board received an unsworn written explanation with respect to the date that the Petition was filed; and
5. On December 16, 2008, the Board wrote Petitioners requesting an affidavit in support of their contention that their Petition was not untimely and “information on when and how the petition . . . was initially sent to [DOL].” The Board’s letter continued: “You should also enclose any documentary evidence that you may have that shows when the petition was sent to DOL.”
6. By affidavit dated January 7, 2009, received by the Board on January 9, 2009, Petitioners assert that the Petition was initially sent to DOL by UPS on October 7, 2009, and that before initially filing the Petition they telephoned the Board’s offices to obtain a copy of the Rules and “waited and waited and waited and did not receive” the Rules. The affidavit continues that when they called again and finally received the Rules, there was insufficient time to file the Petition within the sixty-day limitations period. The affidavit does not state the dates upon which the telephone calls were made to the Board in order to obtain a copy of the Rules.
7. We find that the Petition was not timely filed with the Board, that Petitioners’ initial filing with DOL was untimely, and that Petitioners’ complaint that the Rules were received without sufficient time to file a timely petition does not excuse the failure to file a petition within the sixty days that Labor Law § 101 and Rules 66.2 prescribe.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

This proceeding be, and the same hereby is, dismissed in accordance with the Rules.

  
Anne P. Stevenson, Chairman

  
Susan Sullivan-Bisceglia, Member

  
J. Christopher Meagher, Member

  
Mark G. Pearce, Member

  
Jean Grumet, Member

Dated and signed in the Office  
of the Industrial Board of Appeals  
at New York, New York, on  
March 25, 2009.