

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

JOHN J. ZELENKA,

Petitioners,

To Review Under Section 101 of the Labor Law:
A Notice of Violation and Order to Comply dated
April 4, 2022,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NO. PES 22-004

RESOLUTION OF DECISION

APPEARANCES

John J. Zelenka, petitioner pro se.

Jill Archambault, General Counsel, NYS Department of Labor, Albany (Peter M. Parry, of counsel), for respondent.

WHEREAS:

The above proceeding was commenced on May 12, 2022, when petitioner John J. Zelenka filed a petition for review pursuant to Labor Law § 101 and the Industrial Board of Appeals (hereinafter “Board”) Rules of Procedure and Practice (hereinafter “Board Rules”) (12 NYCRR) Part 65 challenging an order to comply with Labor Law § 61-5.8 and 12 NYCRR § 50.8, (hereinafter “order”) issued against the petitioner by the respondent, Commissioner of Labor. The petition alleges that petitioner did not violate Labor Law § 61-5.8 or 12 NYCRR § 50; that the Department of Labor employee who issued the order was not present at the subject event to know what petitioner did at that event; that Labor Law § 61-5.8 and 12 NYCRR § 50.8 are not in fact relevant to laser show safety and are outdated; and, petitioner filed any necessary paperwork required under Labor Law § 61-5.8 and 12 NYCRR § 50.8 that respondent neglected to process. Respondent filed an answer to the petition on June 30, 2022.

On March 30, 2023, the Board received a motion from respondent seeking leave to withdraw the order. Respondent did not state why she seeks to withdraw the order in her motion. Petitioner opposed the motion because, in sum, the subject rule is outdated and inapplicable to the current technology, thereby serving no real safety purpose but is only used as a punitive measure. Petitioner also seeks reimbursements for expenses incurred as a result of respondent’s action. Respondent responded to petitioner’s opposition stating that petitioner will get the relief he initially

requested in his petition with the order being withdrawn and that the Board has no jurisdiction to do any more than affirm, modify, or revoke the order.

After review of the petition and correspondence, and after full consideration of the Board Rules, the Board grants respondent's motion requesting permission to withdraw the notice of violation and order to comply issued against petitioner.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

1. Effective as of the date of this Resolution of Decision, the Board grants respondent's motion to withdraw the notice of violation and order to comply; and
2. The petition is granted.

Dated and signed by the Members
of the Industrial Board of Appeals
on May 17, 2023.



Michael A. Arcuri, Member



Patricia Kakalec, Member



Molly Doherty, Chairperson



Najah Farley, Member



Sandra Abeles, Member