

STATE OF NEW YORK

INDUSTRIAL BOARD OF APPEALS



**EVELYN C. HEADY
CHAIRMAN**

2000 ANNUAL REPORT

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INDUSTRIAL BOARD OF APPEALS

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INDUSTRIAL BOARD OF APPEALS

STAFF MEMBERS

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**Helen S. Avery
Andrea M. Smith**

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INDUSTRIAL BOARD OF APPEALS

The New York State Industrial Board of Appeals is an independent review and appeals board. The Board consists of five (5) members, each appointed by the Governor and confirmed by the New York State Senate, at least one (1) of whom must be an attorney. The Governor designates one (1) member of the Board to serve as Chairman.

The Board's principal responsibilities, powers and duties are derived from various provisions of the Labor Law, the Business Corporation Law, and the Not-for-Profit Corporation Law.

Within the mandate of the Labor Law, the Board is charged with providing an impartial administrative review of the validity or reasonableness of rules, regulations or orders issued by the Commissioner of Labor. The broad review powers of the Board provide the many individuals, businesses and unions in this State who are affected by the Labor Law, with continued exercise of sound and established principles of due process in administrative proceedings.

The Board's major review activities include hearing and adjudicating contested rules, regulations or orders promulgated or issued by the Commissioner of Labor in the following areas:

- Compliance orders issued under safety and health standards for public employees;**
- Grants or denials of applications for variances from safety and health standards;**
- Compliance orders enforcing various provisions of the Labor Law including, for example, failure to pay wages or wage supplements, minimum wage underpayments, employment of minors, record keeping requirement violations, garment industry registration, industrial homework and union label registration or cancellation.**

In addition, pursuant to the Business Corporation Law and the Not-for-Profit Corporation Law, the Board is empowered to review and approve, or disapprove, certificates of incorporation and other corporate documents where the powers and purposes of the corporation include labor related activities or where the proposed corporate name may indicate such a purpose.

Board hearings and other functions are conducted on a statewide basis and the Board maintains offices in Albany and New York City. For the convenience of the parties and witnesses, Board hearings are generally held at or near the site of the employment situation involved. Each of the five (5) Board members and the Board's two (2) counsels are designated hearing officers for the Board.

The Board's review and appeal activity is invoked by the filing of a petition or application for review under Labor Law Article 3. No part of the Board's program is initiated by the Board. The Board's program goal therefore, is to afford the parties an opportunity to present evidence and be heard in an impartial administrative proceeding, and to render a well reasoned determination in a reasonably consistent and prompt manner.

Once a matter is heard, the designated hearing officer submits a record of the proceeding, including the pleadings, transcript of hearing session(s), briefs and other post-hearing submissions, to the Board with a recommended decision. The Board's decision is based upon a majority vote of the Board members and a resolution containing findings of fact and law is issued from the Board to the parties. The subject rule, regulation or order, or any part thereof, may be affirmed, modified or revoked by the Board.

The decisions by the Board are subject to judicial review in accordance with the Labor Law and Article 78 of the Civil Practice Laws and Rules.

Narrative:

The year 2000 brought an overall increase in matters filed with, and considered by, the Industrial Board of Appeals. As indicated in the following activity analysis, the Board experienced an increase of petitions filed in all areas, and noted especially the 25% increase in Section 101 cases, involving primarily issues of unpaid wages and wage supplements due from private employers to employees, and the 40% increase in Section 104 cases, concerning corporate instrument approval requests.

Several noteworthy cases were decided during the year, particularly in the area of public employee safety and health. In one instance, involving the department of aviation for a city airport, the Board grappled with issues of first impression regarding the applicability of federal OSHA regulations to airport firefighters. Recognizing the severity of the situation under review, and appreciating the need for an expedient decision, the Board undertook deliberate and particular review of this case. Through full Board participation at the site inspection and hearing, and by holding special meetings called exclusively for review of this file, the Board was able to reach a consensus decision, albeit with the first noted dissenting opinion rendered by a member of the Board. This case is presently under review by the Appellate Division pursuant to Article 78 of the Civil Practice Law and Rules, and given that the issue has not previously been decided by the courts of this State, it is anticipated that the outcome of this appellate review will be clarification and guidance to airport management as to the impact of federal OSHA regulations on airport operations throughout New York State.

During the past year the Board also made strides in addressing a grouping of cases of a similar legal nature concerning city transit authority workers. After considerable analysis, and with a concentrated effort to seek resolutions, the Board was able to develop guidelines for review of pending and future cases of a similar nature, regarding specifically the applicability of the OSHA construction regulations to such workers, and was able to bring to a conclusion several longstanding matters in this area.

In other areas, during the past year the Board continued diligent efforts to eliminate the backlog of older cases, while at the same time significantly reducing the amount of time between the filing of new petitions and the issuance of the Board's decisions. Our networked database of pending

cases has proved invaluable in this regard. Although the daily review and manual update of the case status tracking system has historically been effective in assisting the Board with ongoing case monitoring, technical support was requested, data submitted and an appropriate software program has been activated, which now allows the Board to more effectively monitor and track cases electronically.

The introduction of computer technology as a means to more effectively allow the Board to conduct business continues to remain a focus, and has taken new directions in the past year. Significant strides were made in the Board's efforts to compile data and historical case information with a goal toward producing a comprehensive index of case decisions, and to make such an index available through computer technology.

As a start to this project, during calendar year 2000 the Board gathered and compiled copies of all Board Resolutions of Decision encompassing the period for which such records exist in Board annals, that being 1985 to the present, in a consolidated format available for review by any interested persons in the Board's Albany headquarters. Having such a comprehensive collection of the Board's decisions has accomplished the first step towards making this historical information readily available to the public and to attorneys who may be in need of such information relative to cases being considered today. The Board has already fulfilled several requests from law firms to review these decisions.

Another phase of this project was also undertaken, involving preparation of a comprehensive listing of all cases since 1985, along with identification of the area(s) of law considered. A database was created this year and with ongoing and diligent efforts by the office staff, a computerized compilation of all of this case information will soon be available for review. Looking ahead, the office has taken measures to incorporate this component into the routine office procedures in order that the resulting Index of Resolutions Adopted will be complete and consistently updated and available, for use by the Board and the general public.

This project continues with further analysis of prior cases decided; the aim being to produce a comprehensive subject matter index that will allow all interested parties to quickly locate specific prior case decisions which may be of value or interest, based upon the subject matter considered. While some progress toward creating this index was made during year 2000, the

project continues, with an anticipated completion date during calendar year 2001.

Recognizing the need to review such matters on a continuing basis, and the need to update information contained in the rules regarding where and how to contact the Board, the Board also began a comprehensive review and analysis of the Industrial Board of Appeals Rules of Procedure and Practice. It is hoped that suggested changes and revisions will be available for review and comment during the coming year.

The final component of these information gathering and review projects, recognizing the call to action by the administration in the Governor's E-Commerce Initiative issued in June of 2000, will be pursuit of the creation and implementation of an Internet and Intranet website for this agency, easily accessible by the public and the Department, which will provide open and easy access to information about the Board, its operations, its Rules and Regulations, and other information which will allow this agency to provide the utmost in public service. The Board looks forward to the successful completion of this project, and to being a part of the creation of New York State's "Government Without Walls".

The past year also saw some significant changes in the makeup of the Board. Just prior to the start of the year 2000 the Board was notified of the intentions of one of its most experienced members, Clifford Barber, to retire. This was followed by the retirement of Robert Marinelli, the longest tenured member of the Board, and Counsel before that, who retired after completing in excess of twenty-five (25) years of service to the Industrial Board of Appeals. The loss of these two experienced members, and additional resignations and new appointments during the year have presented our Board with significant challenges this year in our efforts to fulfill our mandate and to provide excellence in quality and quantity of service. We look forward with hopeful anticipation to further additions to the Board in the coming year.

As we continue our progress into this new millenium, our goal will be to continue the focus to meet or exceed the accomplishments of the previous year.

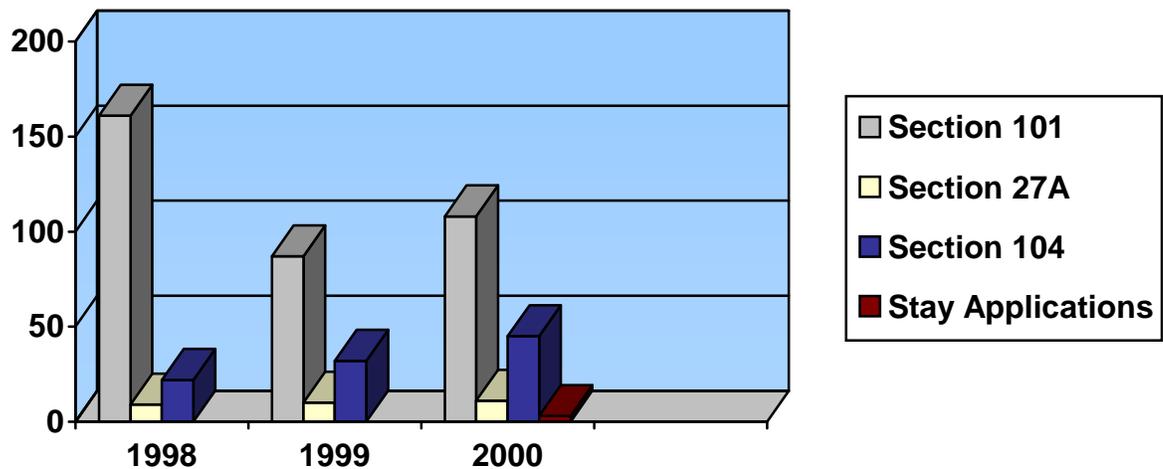
Many of the accomplishments realized could never have occurred without the enthusiastic interest, continued cooperation and focus of our energetic Board members. This, coupled with the continuing cooperation received from the Department of Labor's Counsel and staff has effectively contributed to all the progress that was achieved.

There is no doubt, that all of the initiatives, accomplishments, and success achieved could not have been realized without the assistance, cooperation, and encouragement received from the Commissioner's office, Acting Commissioner Dillon and their dedicated staffs.

**Evelyn C. Heady
Chairman**

ACTIVITY ANALYSIS:

The following three-year activity analysis of new proceedings brought before the Industrial Board of Appeals provides a useful perspective on the volume and types of cases considered annually by the Board.

NEW PROCEEDINGS COMMENCED

As indicated, Section 101 cases continue to be the area of most activity, comprising, during calendar year 2000, two-thirds of all cases brought before the Board. These cases involve issues of unpaid wages and wage supplements due from private employers to employees. Calendar year 2000 saw an increase of 25% in the number of Section 101 cases filed, which indicates a resurgence of activity in an area that had experienced a significant decline between the two previous years.

In addition, the number of Section 27A cases, involving issues of public employee safety and health, continues to increase at a slow, but nonetheless steady rate.

Of additional special significance is the number of Section 104 cases brought before the Board in the past year. Year 2000 saw an increase of 40% in the total number of corporate instrument approval requests over calendar year 1999, which year saw a commensurately large increase over calendar year 1998.

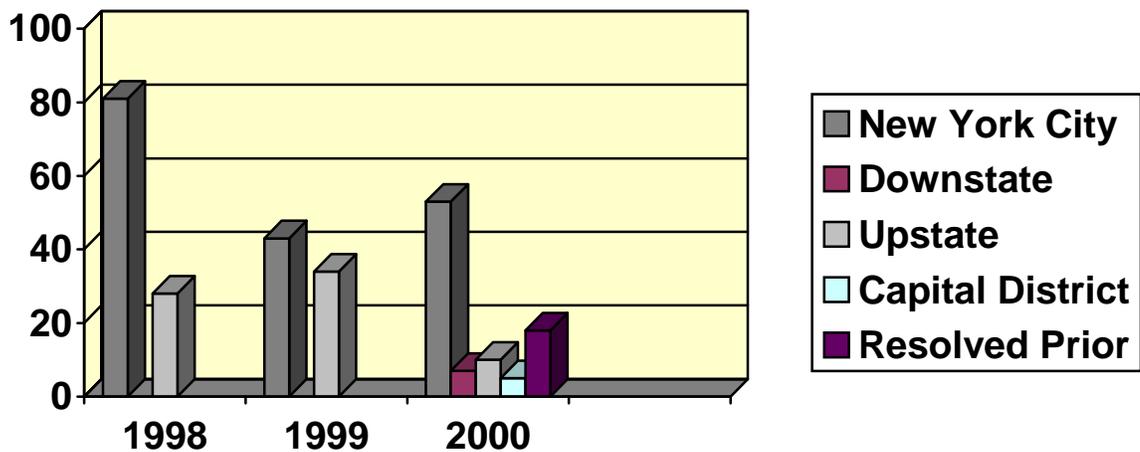
The Board has additionally begun tracking the number of Stay Applications filed pursuant to Section 66.9 of the Board's Rules of Procedure and Practice. These applications result in a number of interim decisions being issued by the Board, in addition to the final resolution issued at the conclusion of each case.

In addition to taking in over 160 new cases during calendar year 2000, the staff responded to 39 requests for copies of the Rules of Procedure and Practice of the Board, and to 7 requests for copies of Board records made pursuant to the Freedom of Information Law.

SCHEDULED HEARINGS:

Hearings are scheduled and held throughout the state at various locations, generally established for the convenience of the parties, the Department, and the Board. The chart below depicts the level of hearings held by region throughout the State during calendar year 2000.

**HEARING SESSIONS HELD /
RESOLVED PRIOR TO HEARING**

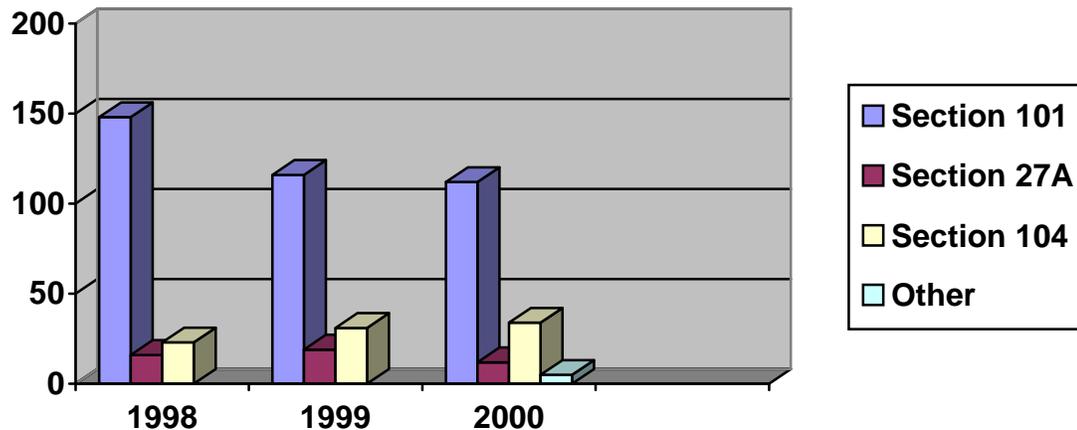


The Downstate region includes counties outside of the immediate New York City area, and in particular, depicts for calendar year 2000, hearings held in Hempstead and White Plains. The Upstate region includes all areas outside of the Capital District, and for purposes of this analysis, includes hearings held during calendar year 2000 in Syracuse, Rochester and Buffalo. The Capital District region includes Albany and the immediate environs surrounding the city, and references the number of hearing sessions held in the Board's Albany office. As can be seen, the greatest number of hearings held continues to be at the New York City office of the Board.

The chart additionally references the number of hearing sessions which were scheduled, and which were not held, due to notification by the parties that a settlement had been reached, or the withdrawal of the Petition by the Petitioner, or the Order(s) by the Department.

BOARD RESOLUTIONS:

As a result of the diligent efforts of the Board, counsel, and the staff, the Industrial Board of Appeals was able to prepare, present to the Board, and approve, in excess of 160 Resolutions of Decision during calendar year 2000.

BOARD RESOLUTIONS

The Board reviewed and approved 112 Section 101 cases, primarily resolving issues of unpaid wages and wage supplements due to named alleged claimants. In addition, 12 cases filed under Section 27A were brought to a successful conclusion, including the aforementioned public employee safety and health cases relating to interpretations of the OSHA regulations.

The Board was additionally able to complete final resolutions in 34 Section 104 cases relating to approvals of corporate instruments. A significant factor of note is that all cases submitted prior to scheduled Board meetings were reviewed for completeness and appropriateness and Resolutions of Approval or Disapproval were prepared in time for the next scheduled Board meeting, thereby evidencing the Board's concern to keep the cases moving in a timely and efficient manner.

INDUSTRIAL BOARD OF APPEALS

2000 ACTIVITY REPORT

Number of Board Meetings Held:	<u>15</u>
New Proceedings Commenced:	<u>167</u>
Section 101 – Review Petitions (PR-00-001 – PR-00-108)	<u>108</u>
Section 27A – Public Employee Safety (PES-00-001 – PES-00-011)	<u>11</u>
Section 104 – Corporate Documents (CI-00-001 – CI-00-45)	<u>45</u>
Stay Applications (SA-00-001 - SA-00-003)	<u>3</u>
Hearing Sessions Held:	<u>75</u>
New York City	<u>53</u>
Downstate	<u>7</u>
Upstate	<u>10</u>
Capital District	<u>5</u>
Board Resolutions: (Cases Closed/Interim/Other)	<u>163</u>
Section 101	<u>112</u>
Section 27A	<u>12</u>
Section 104	<u>34</u>
Other	<u>5</u>

THREE YEAR ACTIVITY ANALYSIS

	<u>1998</u>	<u>1999</u>	<u>2000</u>
Number of Meetings Held	12	15	15
New Proceedings Commenced	192	129	167
Section 101 – Review Petitions	161	87	108
Section 27A	9	10	11
Section 104	22	32	45
Stay Applications			3
Hearings Held	109	77	75
New York City	81	43	53
Downstate			7
Upstate	28	34	10
Capital District			5
Board Resolutions	187	166	163
Section 101	148	116	112
Section 27A	16	19	12
Section 104	23	31	34
Other			5