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**NEW YORK STATE  
INDUSTRIAL BOARD OF APPEALS**

**ANNUAL REPORT  
2008**



**David E. Paterson  
Governor**

**Anne P. Stevason  
Chairman**

Susan Sullivan-Bisceglia  
Member

J. Christopher Meagher  
Member

Mark G. Pearce  
Member

Jean Grumet  
Member

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***MEMBERS OF THE BOARD***

**PAST & PRESENT MEMBERS OF THE BOARD**

**CHAIRPERSONS**

Benjamin Greenfield	1975 - 1984
Herbert Carr	1984 - 1992
William D. O'Dell	1993 - 1996
Evelyn C. Heady	1996 - 2007
Anne P. Stevason	2007 - Present

**MEMBERS**

B. Franklin Spencer	1975 - 1976
Richard H. Bolton	1975 - 1978
Harry R. Mason	1975 - 1977
Dominic Revellese	1978 - 1982
William Friedberg	1978 - 1986
Stanley M. Makowski	1978 - 1983
Kurt J. Hain	1979 - 1994
William D. O'Dell	1984 - 1992
Anthony C. Barone	1984 - 1988
Manuel Gonzalez	1985 - 1992
Marie Johnson Wittek	1988 - 1998
Robert L. Marinelli	1992 - 2000
Clifford M. Barber	1995 - 2000
John M. Hekker	1997 - 2000
Mark S. Perla	1997 - 2008
James K. Walsh	2000 - 2000
Theodore R. Kupferman	2000 - 2002
Gregory A. Monteleone	2001 - 2008
Walter J. Sakowski, Jr.	2001 - 2007
Kristin A. MacKay	2001 - 2002
Susan Sullivan-Bisceglia	2005 - Present
J. Christopher Meagher	2007 - Present
Mark G. Pearce	2008 - Present
Jean Grumet	2008 - Present

*DECEMBER 31, 2008*

MEMBERS

ANNE P. STEVASON, ESQ.  
CHAIRPERSON  
Kings County  
Brooklyn, New York  
Term expires 12/31/12

SUSAN SULLIVAN-BISCEGLIA, ESQ.  
MEMBER  
Dutchess County  
LaGrangeville, New York  
Term expires 12/31/08

J. CHRISTOPHER MEAGHER, ESQ.  
MEMBER  
New York County  
New York, New York  
Term expires 12/31/12

MARK G. PEARCE, ESQ.  
MEMBER  
Erie County  
Buffalo, New York  
Term expires 12/31/13

JEAN GRUMET, ESQ.  
MEMBER  
Westchester County  
Larchmont, New York  
Term expires 12/31/13

STAFF

SANDRA M. NATHAN, ESQ.  
DEPUTY COUNSEL  
Albany, New York

DEVIN A RICE, ESQ.  
ASSOCIATE COUNSEL  
New York, New York

DANA E. DE PASS  
SECRETARY  
Albany, New York

JANE M. IPANAQUE  
SECRETARY  
New York, New York

## INTRODUCTION TO BOARD MEMBERS AND COUNSEL

**Anne Stevason, Esq.**

**Anne Stevason** was appointed Chairperson of the New York State Industrial Board of Appeals in 2007. From 1993 to 2007, Ms. Stevason was employed by the California Division of Labor Standards Enforcement where for approximately four years she held the position of Chief Counsel to the State Labor Commissioner. In that role, Ms. Stevason litigated hundreds of unpaid wage cases, argued numerous appeals and submitted amicus curiae briefs to the California Supreme Court on behalf of the Division.

Ms. Stevason is a native of Brooklyn, New York and received her undergraduate degree from the State University at Albany. Ms. Stevason received her Juris Doctor from the University of California, Berkeley (Boalt Hall) where she was Managing Editor of the Industrial Relations Law Journal. She is a Member of both the New York and California Bars.

**J. Christopher Meagher, Esq.**

**J. Christopher Meagher** was appointed as a Member to the Industrial Board of Appeals (IBA) in 2007. Mr. Meagher has practiced law for thirty-five years, representing employees and unions before state and federal courts and administrative agencies in all areas of labor and employment law. Mr. Meagher spent seven years as a Legal Services lawyer in NYC in the federal Legal Services program and over twenty-five years as counsel to a public sector union. In his varied practice before agencies like the IBA, Mr Meagher developed expertise in all phases of administrative practice in the employment field, from initial complaint to final determination.

Mr. Meagher is a native of Rochester, New York and received his undergraduate degree from Georgetown University and his Juris Doctor from Fordham University Law School.

**Susan Sullivan-Bisceglia, Esq.**

**Susan Sullivan-Bisceglia** was appointed to the Board in 2005. Ms. Sullivan-Bisceglia's legal career includes experience with both large law firms and fortune 500 companies in the areas of aviation, corporate, finance, personal injury, products liability, intellectual property, real estate, mergers and acquisitions, class action and antitrust litigation, and other domestic and international corporate legal issues. She also has extensive experience in employment matters, including employment agreements, hiring and discharge practices, compensation issues and discrimination actions. She is most recently engaged in the private practice of law as a principal in the Sullivan Bisceglia Law Firm, which is based at the Dutchess County Airport, Wappingers Falls, New York.

Ms. Sullivan-Bisceglia received her Juris Doctor from New York Law School and is a member of the New York and Connecticut Bars. A longtime resident of Dutchess County, she is a licensed commercial pilot with both multi-engine and instrument ratings, is published in the area of aviation safety, and has served as a safety counselor for the Federal Aviation Administration.

## **BOARD MEMBERS APPOINTED IN 2008**

**Mark Gaston Pearce, Esq.**

**Mark Gaston Pearce** is a partner in the law firm of Creighton, Pearce, Johnsen & Giroux, with a practice concentrated in labor and employment law. He has served as a Board Member of the New York State Industrial Board of Appeals since January, 2008. Mr. Pearce is a graduate of Cornell University and University of Buffalo Law School. His experience includes work for the National Labor Relations Board as a District Trial Specialist. Mr. Pearce serves

as the appointee of the NYS Governor on the Commission to Increase Diversity in State Government and the Amistad Commission. He is a Fellow of the College of Labor and Employment Lawyers, and is an active committee member of both the New York State and American Bar Associations. He is a Board Member of the Erie County Bar Foundation and is a former president of the Volunteer Lawyers Project of Erie County. Mr. Pearce previously served on the Board of Directors of the AFL-CIO Lawyers Coordinating Committee. He is adjunct faculty for Cornell University School of Industrial Labor Relations and has lectured and given Continuing Legal Education presentations for the American Bar Association, the New York State Bar Association, the AFL-CIO, Cornell University and the National Labor Relations Board. Mr. Pearce has received recognition and awards from the Minority Bar Association; Buffalo Chapter of the Coalition of Black Trade Unionists; the Coalition for Economic Justice; the Communications Workers of America; 1199 SEIU; Uncrowned Queens Inc.; 1490 Enterprises Black Achievers; Superlawyer (Western New York Edition) and Alpha Kappa Alpha Sorority, Inc.

**Jean Grumet, Esq.**

Jean Grumet was appointed as a Member of the Industrial Board of Appeals in 2008. She was admitted to the New York State Bar in 1982, and is also a member of and has tried cases in the U.S. Courts of Appeal for the Second and Fourth Circuits and District Courts for the Southern and Eastern Districts of New York. She served for many years as assistant general counsel of both the Amalgamated Clothing & Textile Workers Union and the International Ladies' Garment Workers Union, litigating cases in federal, state and bankruptcy courts and before administrative agencies and arbitrators as well as representing the

unions in collective bargaining negotiations and on bankruptcy court creditors' committees.

Ms. Grumet, is a long time resident of Westchester County, and a former Commissioner of the Mamaroneck-Larchmont Human Rights Commission. She was raised in the Bronx, graduated magna cum laude from City College of New York, and received her Juris Doctor from Northeastern University School of Law.

## **COUNSEL TO THE INDUSTRIAL BOARD OF APPEALS**

**Sandra M. Nathan, Esq.**

**Sandra Nathan**, Deputy Counsel to the Board since May 2007, served as both an Administrative Law Judge and litigator during her almost 22 years at the NYS Public Employment Relations Board. Before her career with the State, she had her own practice of law, was a Managing Attorney for a federally funded legal services program, and worked as in-house counsel for the former International Ladies' Garment Workers' Union, AFL-CIO. Her litigation experience includes arguments before the NYS Court of Appeals and federal court trials involving civil rights. Her pro bono experience includes successful litigation before the former Immigration and Naturalization Service to achieve an immigrant's lawful status in the United States.

Ms. Nathan has Bachelor of Arts and Masters Degrees from the University of Chicago and a Juris Doctor from De Paul University. She was a member of the first Peace Corps group in the Republic of Korea from 1966 - 1968.

**Devin A. Rice, Esq.**

**Devin A. Rice** was appointed to the position of Associate Counsel to the New York State Industrial Board of Appeals in November 2007. Mr. Rice's prior legal experience includes working as an Assistant Attorney General in the Labor Bureau of the New York State Office of Attorney General from August 2001 to November 2007 where he gained experience in all areas of the New York Labor Law; serving as a Regional Attorney for the Office for Civil Rights of the United States Department of Education; and working as an Americorps Attorney at Pine Tree Legal Assistance's Safer Families of Eastern Maine Project.

Mr. Rice earned a Bachelor of Arts in Political Science and International Relations from Macalester College in 1993, and Juris Doctor from the Benjamin N. Cardozo School of Law in 1999.

## ***ABOUT THE INDUSTRIAL BOARD OF APPEALS***

### **INTRODUCTION**

The New York State Industrial Board of Appeals was created by the Legislature in 1975 as an independent review and appeals board, within the Department of Labor, replacing the Board of Standards and Appeals. The Board consists of five members, each appointed by the Governor and confirmed by the New York State Senate, at least one of whom must be an attorney. The Governor designates one member of the Board to serve as chairman.

The Board's principal responsibilities and powers are derived from various provisions of the Labor Law, the Business Corporation Law, and the Not-for-Profit Corporation Law. In addition to the broad review powers of the Board, many of the functions, powers and duties of the former Board of Standards and Appeals were transferred to the Industrial Board of Appeals.

### **JURISDICTION OF THE BOARD**

The Board's main statutory duty is to provide impartial administrative review of the validity and reasonableness of any rule, regulation or order issued by the Commissioner of Labor. In creating this independent, quasi-judicial review board, the Legislature ensured that the many individuals, businesses and unions in this State who are affected by the Labor Law have due process.

The Board's major adjudicative processes involve the following areas:

- Compliance, penalty and interest orders enforcing various protective provisions of the Labor Law concerning labor standards including, for example, the payment of wages and wage

supplements, minimum wage payments, employment of minors, and record keeping requirements;

- Notices of Violation and Compliance orders issued under safety and health standards for public employees;
- Applications for variances from safety and health standards;
- Notices of Violation of safety rules and regulations regarding amusement rides;
- Apparel industry registration, and industrial homework, among others; and
- Registration and cancellation proceedings for union labels.

In addition, pursuant to the Business Corporation Law, the Not-for-Profit Corporation Law, and the Limited Liability Company Law, the Board reviews and approves, or disapproves, proposed certificates of incorporation, certificates of amendment, certificates of dissolution, and other corporate instruments where the powers and/or purposes of the corporation include labor related activities or where the proposed corporate name may indicate such a purpose.

## **CONDUCT OF HEARINGS AND BOARD ACTIVITIES**

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. Once its jurisdiction is invoked, the Board's goals are to afford parties the opportunity to present evidence and be heard at an impartial administrative hearing, and to render a well-reasoned determination in a consistent manner.

Board hearings and other functions are conducted statewide at various locations and at the Board's Albany and New York City offices. For the

convenience of the parties and witnesses, Board hearings are generally held near the site of the employment situation involved.

Each of the five Board members and the Board's two attorneys presides at quasi-judicial hearings. Once a matter is heard, the designated hearing officer submits a complete record of the proceeding to the Board at its regular monthly meeting with a recommended decision. The Board issues a resolution of decision upon a majority vote of the Board members containing findings of fact and law. The Board has statutory authority to affirm, modify or revoke the rule, regulation, or order of the Commissioner of Labor, or any part thereof, under review.

## **BOARD OPERATIONS**

The Board maintains its principal office in Albany, New York, at the Empire State Plaza. This is the sole office where appeals may be filed, proceedings commenced and FOIL requests filed. The Albany office also contains the complete files for all matters before the Board, and all decisions rendered by the Board. Present in Albany are the Board's Deputy Counsel Sandra Nathan and secretary Dana DePass.

The Board also maintains an office in New York City at 75 Varick Street, 7<sup>th</sup> Floor, New York, New York. Present in New York City are the Associate Counsel Devin Rice and secretary Jane Ipanaque. The Chairperson divides her time between New York and Albany with her main office in New York City.

The Board conducts most of its regular monthly meetings in its New York City office. It is during these monthly meetings that the Board reviews cases, makes decisions and conducts Board business.

## **BOARD PROCEDURES**

A Board case is usually initiated by the filing of a petition for review. If the petition is insufficient in that it fails to attach the Commissioner of Labor's Order or fails to assert the specific reason the Petitioner alleges that the Order is invalid and/or unreasonable, a letter is sent to the Petitioner requesting that it provide additional information by a specified date. If the Petition is sufficient, the Petitioner is sent a letter with a copy of the Board's Rules of Procedure and Practice and a description of the steps in case processing.

Once the Petition is approved for processing, a copy is served on the Department of Labor, which must respond with an answer or a motion. Once an answer is filed, the case is assigned to a hearing officer and a pre-hearing telephone conference is set.

The pre-hearing conferences are conducted by the Board's legal staff who help the parties limit the issues in dispute, answer questions, explore settlement, and reach a hearing date that is mutually agreeable to the parties and the assigned hearing officer. The hearing then usually takes place as scheduled.

After the hearing, the hearing officer reviews the transcript of the hearing, the evidence and legal argument and composes a proposed decision which is based exclusively on the record evidence. The recommended decision, the transcript, and the evidence are then reviewed by the legal staff and the Chairperson. The record and recommended decision are then presented to the full Board at a regular monthly meeting. After deliberation, the Board votes on whether to adopt the decision. If adopted, each member signs, and the decision is sent to the parties.

When a Motion to Dismiss the Petition is filed, or the parties have agreed that there are no issues of fact and no hearing need be held, however, the Board may order further briefing and/or oral argument before it decides the case.

## ***2008 YEAR IN REVIEW***

### ***1. Increased Caseload***

The Board saw a significant increase in the number of Petitions filed in 2008. The number of new proceedings rose from 147 in 2007 to 231 in 2008. By far, the most significant increase was in Petitions to review Orders of the Commissioner relating to the underpayment of wages. There were 108 such Petitions in 2007 and 184 in 2008. The increased caseload resulted in the issuance of 174 Board decisions in 2008 compared with 100 in 2007.

The procedure for processing cases insured that each case was on track and moved from pre-hearing conference to hearing in an orderly fashion so that no case failed to proceed through the system. The pre-hearing conference continues to be a successful addition to the case processing system and encourages settlement between the parties with 51 cases settling in 2008 compared with 21 in 2007.

The trend toward an increased caseload continues in 2009 with the projected number of new cases now at over 300.

### ***2. The Board Website – [www.labor.state.ny.us/iba/index.asp](http://www.labor.state.ny.us/iba/index.asp)***

In 2007, the only way to obtain a copy of a Board decision was to request one, either informally or through the Freedom of Information Law, from the Board's Albany office. The decisions were in hard copy format only and maintained in binders according to the year in which the Petition was filed. In November 2007 the Board began posting its Decisions and Case Docket. Each

Board decision is summarized and the full decision is accessible through the click of a link. The website contains decisions dating back to August 2007. New Decisions are posted and summarized within one week of each monthly Board meeting. In addition, the case summaries and the text of the cases are subject to a search function so that now, for example, a search of the word "commission" will reveal all decisions involving commissions.

The case docket contains all pre-hearing conference dates and hearing dates and locations. The docket is updated every week.

The website also contains a downloadable copy of the Board's Rules of Procedure and Practice and a Forms page which includes a sample Petition and subpoenas with instructions on how to complete each form. It is noted that since the posting of the sample Petition, fewer petitions have been found insufficient for lack of information.

### ***3. Public Information***

In addition to the information posted on the website, the Board has participated in two Bar Association education programs - one with the New York County Bar Association Labor and Employment Committee and one with the New York State Bar Association Labor and Employment Committee. In both instances instruction was given on the history of the Board, its role in adjudicating disputes between the Department of Labor and employers and how to practice before Board.

### ***INTERESTING CASES OF 2008***

In 2008, the Board issued 174 decisions. Several of these decisions were significant because they dealt with novel legal issues or decided important issues.

Individual liability for unpaid wages under Article 6 of the Labor Law was considered by the Board in the cases of *Matter of Franbilt Inc. et al.*, PR 07-019 (July 30, 2008) and *Matter of Frank R. Kline et al.*, PR 06-068 (December 17, 2008). In *Franbilt*, a fabrication plant closed down due to lack of funds and defaulted on two weeks of payroll. The Commissioner of Labor issued an order finding the corporation and two individuals liable under Article 6 for the unpaid wages. The Corporation defaulted, but the two individuals appealed the Commissioner's order. The Board followed the "economic reality test" set forth in *Herman v. RSR Sec. Servs. Ltd.*, 172 F3d 132 (2d Cir. 1999). Under the test, the factors to be considered in determining individual liability are whether the individual has the power to hire and fire employees; supervises and controls employee work schedules or conditions of employment; determines the rate and method of payment; and maintains employment records. The Board found one of the individuals liable for the unpaid wages because he was the owner and sole shareholder, had ultimate authority with respect to hiring, firing and pay rates, and controlled the conditions of employment. The other individual, however, was not liable because during the relevant time period he did not have the authority to hire and fire employees, control employee work schedules or conditions of employment, determine the rate or method of wage payments, and did not have any ownership interest in the corporation.

The issue of individual liability for unpaid wages when a corporation defaults on its payroll was also considered in *Matter of Kline*. In *Kline*, a medical laboratory went out of business and failed to pay wages for its last payroll period. The Commissioner issued an order against the corporation and several individuals who were alleged to be top ten shareholders of the corporation. The individuals appealed arguing that they were not liable for the wages under Article 6 of the Labor Law because they were not “employers” under the statute. The Commissioner argued that the individuals were employers because they were liable for the wages as top ten shareholders under the Business Corporation Law. The Board dismissed the Commissioner’s theory of liability without deciding whether the individuals were top ten shareholders because the individual petitioners were not employers under the Labor Law since they did not have the power to hire and fire workers, to supervise and control work schedules or conditions of employment, to determine the rate and method of payment, and did not maintain employment records.

In another significant case, *Matter of 238 Food Corp.*, PR 05-068 (April 23, 2008), the Board considered whether a restaurant employee was an executive and therefore exempt from overtime. The Board found that the employee in question, although he was given the title of chef, was not exempt from overtime because his primary duty was to cook, and there was no credible evidence that he supervised two or more other employees, had authority to hire or fire, or exercised discretion in carrying out his job duties. The Board further held in this case that it was reasonable for the Commissioner to collect unpaid wages for

a six year period commencing at the time a complaint is filed with the Department of Labor.

In many cases, the Board must explain the petitioner's burden of proof. In *Matter of Michael E. Fischer*, PR 06-099 (April 23, 2008), the Commissioner issued an order against a home improvement contractor for overtime wages due to an employee for work performed at several construction sites. The petitioner did not maintain adequate employment records, and had the burden to prove that the disputed wages were paid. At the hearing, the petitioner's witnesses provided general testimony about the hours of work at a specific project. However, the employee's work journal showed that he also worked at other sites, and the petitioner, while admitting that petitioner worked at other sites, did not address the hours worked at those sites. Additionally, the petitioner's foreman claimed to have worked 90% of the time with the employee, but the petitioner's records indicated that the foreman was not on site for several weeks of the claim period. Finally, the employee claimed overtime for time worked on weekends, which was consistent with the testimony of the petitioner's witnesses. In weighing the evidence, the Board held that the petitioner's evidence was too incomplete, general and conclusory to shift the burden of going forward to the Commissioner.

*Matter of Valley Equipment, Inc.*, PR 07-033 (February 27, 2008) was a significant decision concerning unlawful deductions from wages under Labor Law § 193. In *Valley Equipment*, the Board affirmed an order finding the Petitioner had violated Labor Law § 193 by deducting \$30.00 per week from the wages of employees who chose to take a company vehicle home for personal use.

The Board held that although the deductions were voluntary, authorized by the employees, and provided a benefit to the employees, they were unlawful because they were made for a purchase the employee made from the employer that was not otherwise authorized by the statute.

Three interim Board decisions issued in 2008 decided significant issues. In *Matter of Mohammad Aldeen and Island Farm Meat Corp.*, PR 07-093 (March 26, 2008 Interim), the Board issued an interim decision on a motion brought by the Commissioner to strike certain paragraphs from the petition related to the alleged unlawful presence in the United States of the claimants. The Board granted the motion holding that “[t]he alleged unlawful presence in the United States of the petitioners’ employees does not bar the Commissioner from recovering wages on their behalf.” The Board further held that the issue of whether an undocumented immigrant may recover liquidated damages was not before it, because civil penalties, not liquidated damages, were being sought by the Commissioner.

In the cases of *Matter of Foster Properties, LLC*, PR 08-026 (September 24, 2008 Interim) and *Matter of Borough Park Food Mart, LLC*, PR 08-022 (September 24, 2008 Interim), the Board considered the issue of when a petition is considered timely filed. In both cases, the Commissioner moved to dismiss the petitions alleging they were not filed within 60 days of the issuance of the orders being appealed as required by Labor Law § 101. In each case, the petitioner mailed the petition to the Board within 60 days of the issuance of the order; however, the Board determined that the petitions were incomplete and requested that the petitioners file amended petitions by a date set by the Board.

The Commissioner argued that no petition was filed within 60 days of the issuance of the orders, because the amended petitions were filed more than 60 days after the orders were issued. The Board, however, in denying the Commissioner's motions, held that the petitions were timely and that New York law allows for subsequent amendment, correction or clarification of a pleading that was otherwise timely filed.

Two significant safety and health cases decided by the Board during the 2008 term were *Matter of July 4 Ever et al.*, PES 07-009 (February 27, 2008) and *Matter of NYC Dept. of Transportation*, PES 06-004 (December 17, 2008). In *July 4 Ever*, the Board reversed a decision of the Commissioner revoking the petitioners' license to deal and store explosives. The issue before the Board was whether "Class C fireworks" as defined by federal regulations constitute "explosives" under Labor Law § 451 (1). The Board found that the Commissioner's orders of revocation were unreasonable because there was no evidence before the Board that the seized fireworks were "explosives" under the Labor Law since they did not provide effects by "detonation, explosion or deflagration."

In *NYC Dept. of Transportation*, a citation issued by the Commissioner for failure to comply with Part VI of the Manual on Uniform Traffic Control Devices (MUTCD) during a road repair project was revoked because the Commissioner failed to specify with particularity the standards that were allegedly violated.

## ***ARTICLE 78 PROCEEDINGS IN 2008***

Three proceedings seeking judicial review of Board Resolutions of Decision were brought in 2008. Two of the proceedings were withdrawn and the third was dismissed.

In *Matter of Sager Spuck Statewide Supply Co., Inc. v State of New York Industrial Board of Appeals* (Supreme Court Albany County June 27, 2008), the petitioner sought review of the Board's decision in *Sager Spuck Statewide Supply Co., Inc* (PR 06-058, November 28, 2007), affirming in part a June 16, 2006 order of the Commissioner of Labor. The Board agreed with the Commissioner that Sager Spuck made unlawful deductions from an employee's wages in violation of Labor Law § 193 because the payroll deduction for health insurance premiums was not expressly authorized by the employee.

On appeal of the Board's decision, the court observed that Labor Law § 102 (1) requires that judicial review be commenced within sixty days after a Board's decision issues. Here, the Board's determination was served on Sager Spuck's attorney on November 30, 2008, but the Article 78 proceeding was not filed until April 3, 2008 and service on the Board was not effectuated until the end of April, more than sixty days from issuance of the determination. Accordingly, the court dismissed Sager Spuck's Article 78 petition as barred by the statute of limitations.

The second Article 78 proceeding brought against the Board in 2008 was *Matter of Smith v July 4 Ever, Inc.* On review in that matter was the Board's decision in *July 4 Ever, Inc., and Vincent Esposito* (PES 07-009, February 19, 2008), finding that the Commissioner of Labor's order revoking July 4 Ever's explosive dealer license and storage certificates was unreasonable because the Commissioner failed to prove that the fireworks in question in the case were explosives. The proceeding was withdrawn with prejudice.

The final Article 78 of 2008 was *Matter of RAM Hotels, Inc. v Smith*, seeking review of the Board's decision in *RAM Hotels, Inc.* (PR 08-078, September 24, 2008), dismissing RAM Hotel's petition for review of Commissioner of Labor orders because it failed to file an amended petition as the Board had directed. Upon a motion for reconsideration to the Board, supported by an affidavit asserting failure to receive the Board's written direction to file an amended petition and past conduct indicating that Petitioner would not have ignored the Board's request if it had received it, the Board reinstated the Petitioner's petition and accepted Petitioner's proposed amended petition as filed. *RAM Hotels, Inc.* (PR 08-078, December, 2008). The Article 78 proceeding was subsequently withdrawn on January 22, 2009.

## *LOOKING AHEAD*

The Board's goals remain processing cases in a fair and expeditious manner; keeping the public informed through website updates so that all decisions are posted and summarized and by continuing to participate in Continuing Legal Education and other public education programs; and the issuance of decisions which are reasonable and a fair and accurate representation of the facts and law. As indicated already, the Board is looking toward an ever increasing caseload with the number of staff remaining the same. While all cases will continue to follow a track toward resolution, it is anticipated that there will be an increased delay between the filing of a petition and disposition of a case.

The Board will be reviewing its Rules of Procedure and Practice in 2009 with an eye toward reorganizing them so that they are user friendly and filling some gaps so that there are clear guidelines to be followed. The Board will be reaching out to the public for comment and suggestions prior to proposing any new regulations.

***2008 ACTIVITY REPORT OF THE IBA***

2008	
Board Meetings Held:	11
New Proceedings Commenced:	231
Section 101 Review Petitions:	184
Section 27-a Public Employee Safety:	14
Section 104 Corporate Documents:	25
Stay Applications:	8
Hearing Sessions Held:	48
New York City:	18
Downstate:	6
Upstate:	17
Capital District:	7
Hearing Sessions Scheduled/Not Held:	94
Hearings Settled/Resolved:	46
Hearings Postponed:	49
Board Resolutions:	174*
Section 101 Review Petitions:	129
Section 27-a Public Employee Safety:	6
Section 104 Corporate Documents:	29
Other:	10

\*includes: cases closed/interim/other

***FIVE-YEAR STATISTICAL ACTIVITY ANALYSIS***

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>Board Meetings Held:</b>	18	13	13	12	12
<b>New Proceedings Commenced:</b>	111	115	136	147	231
Section 101 Review Petitions:	66	82	98	108	184
Section 27-a Public Employee Safety:	12	4	5	14	14
Section 104 Corporate Documents:	32	27	31	21	25
Stay Applications:	1	2	2	4	8
<b>Hearing Sessions Held:</b>	35	35	47	37	48
New York City:	16	16	25	15	18
Downstate:	9	6	6	5	6
Upstate:	7	9	8	9	17
Capital District:	3	4	8	8	7
<b>Hearing Sessions Scheduled/Not Held:</b>	88	43	47	37	94
Hearings Settled/Resolved:	41	17	13	21	45
Hearings Postponed:	47	26	34	16	49
<b>Board Resolutions:</b>	191	111	132	100	174
Section 101 Review Petitions:	94	70	80	71	129
Section 27-a Public Employee Safety:	11	5	2	5	6
Section 104 Corporate Documents:	32	28	31	14	29
Other/Cases Closed/Interim:	54	8	19	10	10

