

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

NEW YORK CITY HOUSING AUTHORITY,

Petitioner,

To Review Under Section 101 of the Labor Law:
Notices of Violations and Orders to Comply Issued
November 2, 2011,

DOCKET NOS. PES 12-001

- against -

RESOLUTION OF DECISION

THE COMMISSIONER OF LABOR,

Respondent,

DISTRICT COUNCIL 37, AFSCME, AFL-CIO, AND
CITY EMPLOYEE UNION LOCAL 237, IBT,

Intervenors.
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APPEARANCES

Law Department, New York City Housing Authority (Nicole Van Gendt of counsel), for petitioner.

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

DC 37 Legal Department (Aaron S. Amaral of counsel), for intervenor AFSCME, AFL-CIO, District Council 37.

Todd M. Rubinstein, Counsel, City Employee Union Local 237, IBT, for intervenor City Employee Union Local 237, IBT.

WHEREAS:

Petitioner New York City Housing Authority (NYCHA) filed a petition with the Industrial Board of Appeals (Board) on January 3, 2012, seeking review of Notices of Violation and Orders to Comply (orders) issued by respondent Commissioner of Labor on November 2, 2011, finding petitioner had violated various provisions of the Workplace Violence Prevention Act (WVPA), Labor Law § 27-b, and its implementing regulation, 12 NYCRR 800.6.

The petition alleges that the orders are invalid or unreasonable because (1) they were improperly issued under the Public Employee Safety and Health Act (PESHA), Labor Law § 27-a; (2) the WVPA does not require development of a workplace violence prevention policy; and (3) the WVPA does not require development of a workplace violence prevention program with the participation of the authorized representatives of the affected employees, because such a requirement conflicts with statutory requirements for collective bargaining.

The Commissioner filed a motion to strike the substantive allegations made in the petition, and if granted to dismiss the petition for failing to set forth any grounds for a finding that the orders under review are invalid or unreasonable. For the reasons set forth below, the motion is granted and the petition is dismissed.

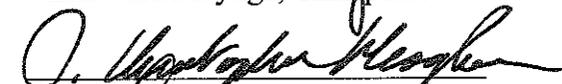
In *Matter of the Petitions of City of New York Department of Administrative Services et al.*, Docket Nos. PES 10-003, 10-004, 10-005, 10-016, and 11-007 (June 7, 2011), *affirmed sub nom Matter of The City of New York v Commissioner of Labor*, 44 Misc 3d 612 (Sup Ct, New York County 2014), we rejected the same claims raised by the petitioner in this proceeding. We found that the regulations implementing the WVPA are standards enforceable under PESHA, Labor Law § 27-a, as they were adopted in accordance with the provisions of Labor Law § 27-a (4) (b), and upheld the regulatory requirements that public employers develop a written workplace violence prevention policy and that the employees' authorized representative participate in evaluating the workplace for evaluation of the workplace for the presence of factors that may place employees at risk of violence and to assist in the development of the workplace violence prevention program. Therefore, we grant the respondent's motion to strike and dismiss the petition.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

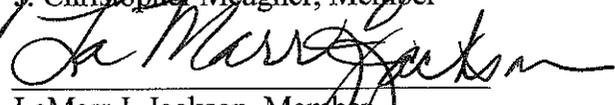
The petition be, and the same hereby is, denied.



 Vilda Vera Mayuga, Chairperson



 J. Christopher Meagher, Member



 LaMarr J. Jackson, Member



 Michael A. Arcuri, Member

 Frances P. Abriola, Member

Dated and signed in the Office
 of the Industrial Board of Appeals
 at New York, New York, on
 March 11, 2015.

The petition alleges that the orders are invalid or unreasonable because (1) they were improperly issued under the Public Employee Safety and Health Act (PESHA), Labor Law § 27-a; (2) the WVPA does not require development of a workplace violence prevention policy; and (3) the WVPA does not require development of a workplace violence prevention program with the participation of the authorized representatives of the affected employees, because such a requirement conflicts with statutory requirements for collective bargaining.

The Commissioner filed a motion to strike the substantive allegations made in the petition, and if granted to dismiss the petition for failing to set forth any grounds for a finding that the orders under review are invalid or unreasonable. For the reasons set forth below, the motion is granted and the petition is dismissed.

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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition be, and the same hereby is, denied.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Michael A. Arcuri, Member



Frances P. Abriola, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York, on
March 11, 2015.