

STATE OF NEW YORK

INDUSTRIAL BOARD OF APPEALS



**EVELYN C. HEADY
CHAIRMAN**

2001 ANNUAL REPORT

Empire State Plaza
Agency Building 2, 20th Floor
Albany, New York 12223

345 Hudson Street
Suite 8305
New York, New York 10014-6615

INDUSTRIAL BOARD OF APPEALS

CHAIRMAN

Evelyn C. Heady, Chairman
Dutchess County
Poughquag, New York
Term Expires: 12/31/2006

MEMBERS

Mark S. Perla, Esq.
Erie County
Clarence, New York
Term Expires: 12/31/2001

Gregory A. Monteleone, Esq.
Westchester County
Mount Kisco, New York
Term Expires: 12/31/2001

Walter J. Sakowski, Jr., Esq.
Rockland County
New City, New York
Term Expires: 12/31/2006

Kristin A. MacKay
Suffolk County
Rocky Point, New York
Term Expires: 12/31/2002

INDUSTRIAL BOARD OF APPEALS

STAFF MEMBERS

COUNSEL'S OFFICE

John G. Binseel, Esq.
Deputy Counsel

Linda Dwyer Cleary, Esq.
Associate Counsel

OFFICE STAFF

Albany Office

Helen S. Avery
Secretary to the Chairman

Andrea M. Smith
Secretary

New York City Office

Shelley Jackson
Secretary

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 of whom must be an attorney. The Governor designates one 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 Law and Rules (CPLR).

YEAR 2001 IN REVIEW

The year 2001 brought many challenges and also some changes to the Industrial Board of Appeals. Significant areas of focus continued to be reducing case backlog, expediting handling of cases in all areas, and development and analysis of IBA case history information. New areas of concentration included the development and activation of the first website presence of the IBA on the worldwide web, and induction and training of several new members of the Board. As a result, the year provided challenges in a great diversity of arenas, making this our most exciting and productive to date. A description of our accomplishments and ongoing efforts in these areas follows.

CHAIRMAN REAPPOINTED FOR NEW TERM

As Board Chairman, I am pleased and honored to acknowledge my reappointment to the position, which comes as a direct result of the Governor's expressed confidence in my efforts as Chairman of the IBA for the past several years, and his gracious advancement of my request to continue in service as Board Chairman for a new term.

I am grateful to be afforded the opportunity to continue to serve the Board and the State of New York, and am confident that with our present full complement of members, the Board is well and truly equipped to respond to the challenges that lie ahead.

BOARD MEMBERSHIP

Board membership changed significantly during the past calendar year. In the early part of 2001 we acknowledged with sincere regret the resignation of Theodore R. Kupferman, Esq., from the New York City area. The former Congressman, and Appellate Division justice, proved in his brief time with the Board to be a gentleman of keen wit, and ready understanding of the matters brought before him as a hearing officer, and as a part of the collective Board, and he is sorely missed.

As the year progressed the Board was pleased to welcome three (3) new members: Gregory A. Monteleone, Esq., from Westchester County, Walter J. Sakowski, Jr., Esq., of Rockland County, and Kristin A. MacKay, from Suffolk County, thus fulfilling the statutory mandate for full Board membership, and providing for an expanded Board presence throughout the state.

Our Board continues to be representative of the many and various regions of the state, from the far reaches of western New York, to Long Island, the mid-Hudson Valley, and suburban New York City, which will provide a definite asset as we proceed forward in the year 2002.

The new Board members, who bring with them a wealth of experience and diverse backgrounds, have approached their appointments with energy and enthusiasm, and have made all efforts to become familiar with Board practices and procedures, and with the aspects of the Labor Law and other relevant statutes and regulations addressed in the cases presented to the Board.

In addition, the Board continues to be the grateful beneficiary of the dedicated efforts and experience of Mark S. Perla, Esq., of Erie County, who this year notes his 5th year of service to the Board.

As we proceed through the year 2002 with our full complement of Board members I have no doubt that the Board will experience a productive and successful year, and look forward with great expectations for progress in all areas accordingly.

TECHNOLOGY ADVANCEMENT

Recognizing the call to action by the administration in the Governor's E-Commerce Initiative issued in June of 2000, the Board has been actively pursuing the creation and implementation of an Internet and Intranet website for the Industrial Board of Appeals, intended to be easily accessible by the public and the Department, to provide open and easy access to information about the Board, its operations, its Rules and Regulations, and other information, all of which will ultimately allow this agency to provide the utmost in public service. The Board is pleased to announce the successful completion of this project, and looks forward to being a part of New York State's "Government Without Walls".

After many months of diligent effort, the Board with great pride launched in November, 2001 the first ever Internet website for the Industrial Board of Appeals. Through a cooperative effort with the Department of Labor, and its office for Planning and Technology, spearheaded by IBA counsel, Linda Dwyer Cleary, as a part of her participation in the Governor's Office of Employee Relations Leadership Classroom program, the IBA is proud to become the latest entrant into the Governor's E-Commerce initiative to ensure that New York State remains at the top of the field for providing full and complete access to government for the citizens of this state, and all who have need for information regarding our services.

The IBA website provides basic background information regarding the function of the IBA, and the specific areas of review for which the IBA has been given a mandate and direction. By accessing our site, the public can locate our offices, learn how to file petitions and applications for consideration by the Board, determine the parties to whom they should be speaking, identify the specific Rules of Practice and Procedure which affect the business they propose to undertake with the IBA, and find answers to the most frequently asked questions regarding the workings of the IBA.

The website is presently accessed through, and linked to, the official website for the New York State Department of Labor, which is further linked to all other New York State government websites. The IBA site contains direct access links to the Department of Labor, the Department of State and the Unemployment Insurance Appeals Board.

The Board enthusiastically enters the new year with hopes that through education of the public as to the existence of our website, and the valuable information that can be obtained instantaneously therein, there will be a greater understanding and awareness of how those in need can most expediently conduct business before the Board.

EXPEDIENT CASE RESOLUTION AND BACKLOG REDUCTION

A primary goal for my tenure with the Board has been the reduction and elimination of case backlog. Each year we continue to make further progress, and I am pleased to report that with the close of calendar year 2001 the backlog elimination achieved previously has been maintained, and improved upon. Pending cases were limited to a few remaining year 2000 cases and the balance were cases filed in the year 2001. Our Board Members, Counsels and staff have worked diligently to promptly open files, handle correspondence, address case-specific motions and pleadings, schedule cases, hold hearings, and prepare Resolutions of Decision for Board consideration and adoption. The results are self-apparent, and all are to be congratulated for a job well done.

IBA CASE INDEX DATABASE

Significant strides continue 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 the initial phase of this process, during calendar year 2001, the Board completed the collection 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 and New York City office.

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 long-term value of this project can already be seen in the increase in visitors to the Board offices to access this information as part of preparation for filing Petitions for Review, or research regarding the merits of individual cases of interest to the reviewing parties, which have generally comprised representatives sent from law firms throughout the state.

As another phase of the Board's long term goal to complete and maintain a comprehensive database of all historical case information, the Board proceeded during the past year with the creation of a computerized compilation of all cases filed with the Board since 1985, including those filed in all areas within the Board's jurisdiction. This comprehensive index of cases filed with the Board can be accessed by case name or number, and the database for this index contains significant information as to the basis for each filing, and the Board's final determination, all of which information can be easily accessed as needed to respond to requests from the public.

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.

IBA SUBJECT MATTER CASE INDEX

The Board's review and further analysis of prior cases decided also continues with 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. This project has involved all of the Board's staff in varying degrees, and has proven to be quite challenging and time consuming, and enlightening to all concerned.

In an effort to expedite the review process, and to assist the office staff, the Board pursued and was approved for the hiring of additional support staff through the Department's summer intern program. We were fortunate to be able to utilize the services of two (2) student interns, one attending college and the other law school, both of whom worked diligently to assist the office staff over the summer of 2001, and enabled the office to make quite significant progress towards the completion of the subject matter index, as well as the aforementioned historical case index database.

The subject matter index is presently in the final review phase and the Board expects to be in a position to publish this index during the coming months.

BOARD RULES OF PROCEDURE AND PRACTICE

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 continued its comprehensive review and analysis of the Industrial Board of Appeals Rules of Procedure and Practice. Input has been sought from the Office of Counsel for the Commissioner, and along with input from the Board and counsels for the Board, it is hoped that suggested changes and revisions will be available for review and comment during the coming year.

LOOKING AHEAD

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, and dedicated staff.

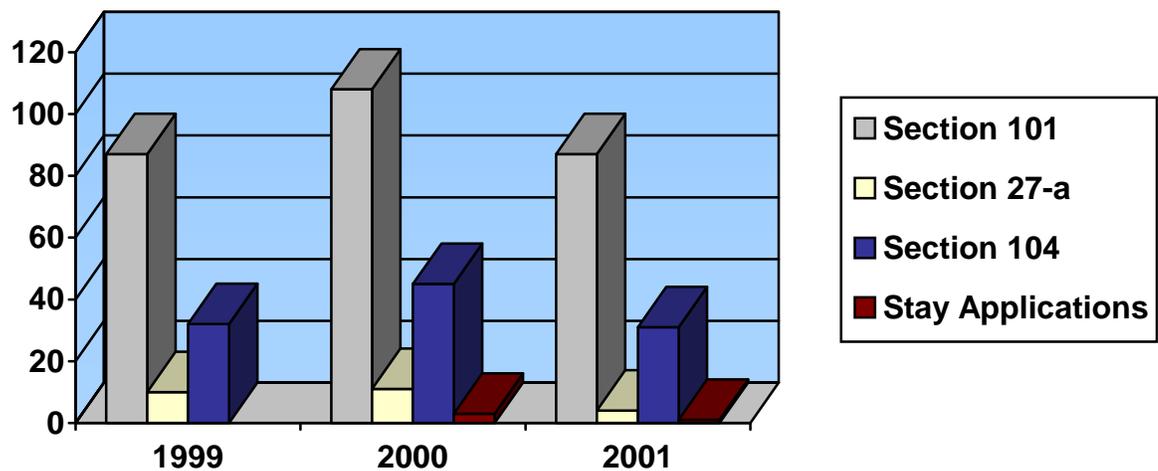
It is therefore with great pride and enthusiasm that I present the Annual Report for the Year 2001 for the New York State Industrial Board of Appeals.

**Evelyn C. Heady
Chairman**

March 1, 2002

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 comprise the greater majority of all matters brought before the Board, generally accounting for two-thirds of the Board's caseload. These cases primarily involve issues of unpaid wages and wage supplements due from private employers to employees. Calendar year 2001 saw a decline in the number of Section 101 cases filed, to a level commensurate with the volume experienced in the 1999 calendar year.

The level of Section 27-a cases filed with the Board, however, experienced a significant decline over the prior trend toward annually increasing numbers of cases. These cases involve issues of public employee safety and health.

With regard to anticipated volumes for Section 101 and Section 27-a cases for the coming year, and beyond, it remains as yet uncertain whether or not the impact of September 11, 2001 will have any effect. Given the large numbers of businesses affected by the World Trade Center terrorist attacks, and the levels of involvement of public employees in the aftermath, the Board may experience some increase in the number of cases filed, particularly in the greater New York City area.

As with the Section 101 cases, the volume of Section 104 cases brought before the Board in the past year experienced a decline to the level shown in years prior to the year 2000. Filings in this area have been steady, however, and based upon the Board's interaction with offices filing these corporate instrument approval applications, it appears that there is a much greater level of public awareness of the need for seeking prior approval of the Board for matters concerning labor related corporate filings. Information regarding this highly specialized function of the Board's mandate is now readily available through accessing the Board's website, which is linked to the Department of State to allow for greater ease of confirmation of name availability for new corporate name filings which has traditionally proven to be the primary area of deficiency in applications submitted to the Board.

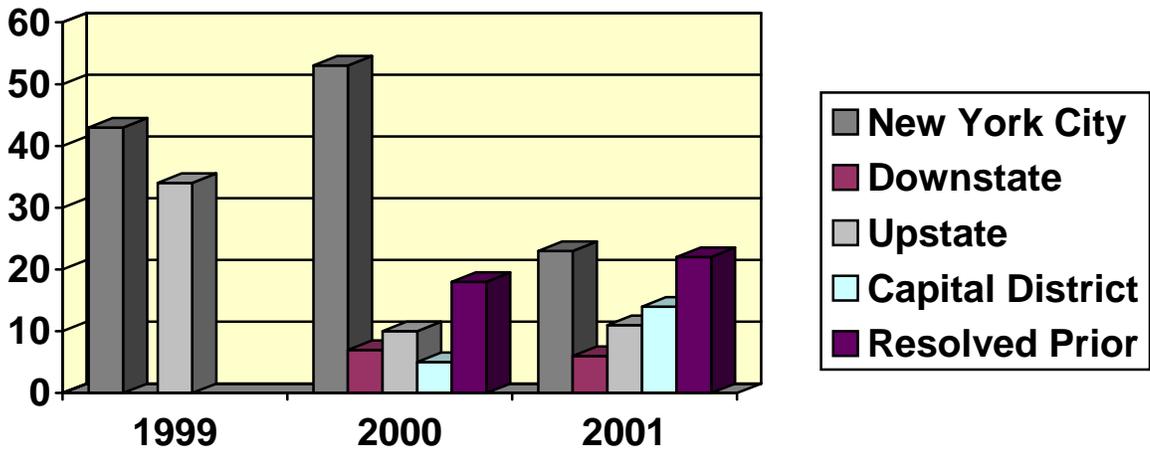
The Board has additionally begun tracking the number of Stay Applications filed pursuant to Section 66.9 of the Board's Rules of Procedure and Practice. These applications result in a number of interim decisions being issued by the Board, in addition to the final resolution issued at the conclusion of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

In addition to taking in over one hundred twenty (120) new cases during calendar year 2001, the staff provided written responses to twenty (20) requests for copies of the Rules of Procedure and Practice of the Board, and to ten (10) formal 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 2001 and two years prior.

**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 2001, 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 2001 in Binghamton, Syracuse, Rochester and Buffalo.

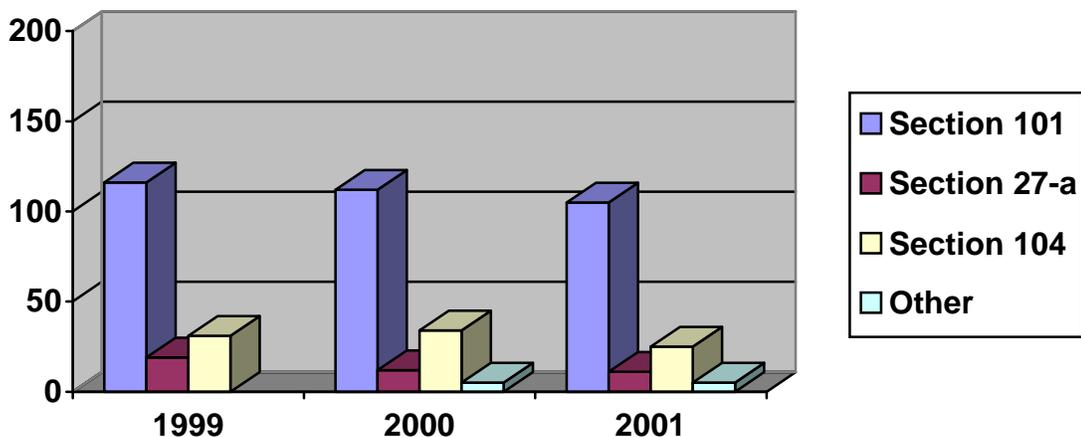
The Capital District region includes Albany and the immediate environs surrounding the city, and references the number of hearing sessions held in the Board's Albany office.

As can be seen, the greatest number of hearings held continues to be at the New York City office of the Board, with the Albany office running a close second. Of particular note, in the past year we have experienced a significant increase in the number of cases for which hearings are requested in the Hempstead, Long Island, and White Plains, Westchester County, areas of the state.

In addition to denoting the specific areas where hearing sessions are held, this three year analysis incorporates an additional category this year, reflecting the cases which were scheduled for hearing, and were adjourned, and 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. As can be seen from the chart above, these cases represent a significant portion of the Board's work and are a noteworthy element of the Board's annual efforts.

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, one hundred forty-six (146) Resolutions of Decision during calendar year 2001.

BOARD RESOLUTIONS

The Board reviewed and approved one hundred five (105) Section 101 cases, primarily resolving issues of unpaid wages and wage supplements due to named alleged claimants. In addition, eleven (11) public employee safety cases filed under Section 27-a were brought to a successful conclusion.

The Board was additionally able to complete final resolutions in twenty-five (25) Section 104 cases relating to approvals of corporate instruments. A significant factor of note with regard to these Section 104 cases is that for all such cases submitted prior to scheduled Board meetings, the files were reviewed for completeness and appropriateness such that in all appropriate instances, Resolutions of Approval or Disapproval were available for presentation to the Board at the next scheduled meeting, thereby evidencing the Board's concern to keep the cases moving in a timely and efficient manner.

INDUSTRIAL BOARD OF APPEALS

2001 ACTIVITY REPORT

Number of Board Meetings Held:	<u>12</u>
New Proceedings Commenced:	<u>123</u>
Section 101 – Review Petitions (PR-01-001 – PR-01-087)	<u>87</u>
Section 27-a – Public Employee Safety (PES-01-001 – PES-01-004)	<u>4</u>
Section 104 – Corporate Documents (CI-01-001 – CI-01-031)	<u>31</u>
Stay Applications (SA-01-001)	<u>1</u>
Hearing Sessions Held:	<u>54</u>
New York City	<u>23</u>
Downstate	<u>6</u>
Upstate	<u>11</u>
Capital District	<u>14</u>
Board Resolutions: (Cases Closed/Interim/Other)	<u>146</u>
Section 101	<u>105</u>
Section 27A	<u>11</u>
Section 104	<u>25</u>
Other	<u>5</u>

THREE YEAR ACTIVITY ANALYSIS

	<u>1999</u>	<u>2000</u>	<u>2001</u>
Number of Meetings Held	15	15	12
New Proceedings Commenced	129	167	123
Section 101 – Review Petitions	87	108	87
Section 27-a	10	11	4
Section 104	32	45	31
Stay Applications		3	1
Hearings Held	77	75	54
New York City	43	53	23
Downstate		7	6
Upstate	34	10	11
Capital District		5	14
Board Resolutions	166	163	146
Section 101	116	112	105
Section 27-a	19	12	11
Section 104	31	34	25
Other		5	5