

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

2004
ANNUAL REPORT



GEORGE E. PATAKI
GOVERNOR

EVELYN C. HEADY
CHAIRWOMAN

ALBANY

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**NEW YORK STATE
INDUSTRIAL BOARD OF APPEALS**

CHAIRWOMAN



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

MEMBERS

**Mark S. Perla, Esq.
Erie County
Clarence, New York
Term Expires: 12/31/2007**

**Gregory A. Monteleone, Esq.
Westchester County
Goldens Bridge, New York
Term Expires: 12/31/2007**

**Walter J. Sakowski, Jr., Esq.
Orange County
Chester, New York
Term Expires: 12/31/2006**

NEW YORK STATE INDUSTRIAL BOARD OF APPEALS

The New York State Industrial Board of Appeals was created by the Legislature in 1975 as an independent review and appeals agency. 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, powers and duties 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 main statutory duty of the Board is to provide an impartial administrative review of the validity or reasonableness of any rule, regulation or order issued or made by the Commissioner of Labor. In creating this independent quasi-judicial review agency, the Legislature provided 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. Thus, there has been established for the Department of Labor a reasonable separation of powers and functions, similar to that found in federal and state government.

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:

- Notices of Violation and Compliance orders issued under safety and health standards for public employees;
- Grants or denials of applications for variances from safety and health standards;
- Notices of Violation of safety rules and regulations regarding amusement rides;
- Compliance, penalty and interest 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, and industrial homework;
- Registration and cancellation proceedings for union labels; and
- Notices of violation and compliance orders for violations of Article 10-A of the Labor Law.

(Note: The sunset provisions built into Article 10-A resulted in expiration of this statute at the end of calendar year 2004, after an unsuccessful attempt by the legislature to achieve renewal of its provisions, and therefore, at present it would appear that this new area of the Board's jurisdiction is a non-issue.)

In addition, pursuant to the Business Corporation Law and the Not-for-Profit Corporation Law, the Board's review activities include:

- Review and approval, or disapproval, of proposed certificates of incorporation, certificates of amendment, dissolution documents, and other corporate instruments where the powers and 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. 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.

Board hearings and other functions are conducted on a statewide basis and at the Board's two 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 Board members and the Board's two counsels are designated hearing officers for the Board. 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.

BOARD OPERATIONS

The Board maintains offices in Albany, at the Empire State Plaza, and in New York City, at 345 Hudson Street. Dedicated and knowledgeable personnel, who make every effort to provide excellence in public service, staff each location. Formal administrative hearing rooms are on site at each of the Board's office locations, and are used regularly to conduct the administrative hearings necessary to fulfillment of the Board's mandated purpose.

The Board's Albany site operates as the primary office for administrative matters, and is the usual location of the regular monthly Board meetings held to review cases, make decisions, and generally conduct Board business. In addition, the Albany office contains the complete files for all matters filed with the Board, and all decisions rendered by the Board, and acts as the source for all public information requests that may be filed.

YEAR 2004 IN REVIEW

The year 2004 brought many challenges and also some changes to the Industrial Board of Appeals. As with prior years, a significant area of focus during 2004 continued to be the prompt and expeditious handling of all matters filed with the Board, to prevent any buildup of case backlog. Additionally, staff received topical training in the proper and effective use of technology as a case management tool, and for maintaining a current case status in all areas of proceedings filed with the Board. Efforts continued with the compilation and review of the IBA case subject index, and development and analysis of IBA case history information.

New areas of concentration included the continued development and modification of the first website presence of the IBA on the Internet, and promotional efforts to make the public aware of the services offered and available on the web, which allows the public immediate access to information about the Industrial Board of Appeals, and how to initiate and conduct business before the Board.

In addition, the Board has engaged in a dedicated effort to fully review, with an eye towards revision of the Board's Rules of Procedure and Practice. These rules have remained virtually unchanged for the past twenty-five years, since originally drafted at the inception of the Industrial Board of Appeals as an entity separate and apart from the prior Board of Standards and Appeals. This many faceted process of review and revision, is expected to continue during 2005.

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.

BOARD MEMBERSHIP

Board membership remained unchanged during the past calendar year, with the continued service of our veteran Board members, Mark Perla, Greg Monteleone and Walter Sakowski, who have provided the Board with their dedicated and knowledgeable service, and invaluable assistance in allowing the Board to address some of the more complex issues that have arisen during the past year.

Our Board membership continues to be representative of the many and various regions of the state, from the far reaches of western New York, to the mid-Hudson Valley, and suburban New York City. Thus the Board enjoys a statewide presence, and provides timely and localized service to the Department of Labor and the public. Our Board members bring with them a wealth of experience and diverse backgrounds, and have approached their appointments with energy and enthusiasm. The members 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.

As we proceed through the year 2005 I have every confidence that the Board will experience a productive and successful year, and look forward with great expectations for progress in all areas accordingly.

EXPEDIENT CASE RESOLUTION AND BACKLOG REDUCTION

A primary goal for my tenure with the Board has been, and continues to be, 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 2004 the backlog elimination achieved previously has been maintained, and improved upon. Our Board Members, counsels and staff have worked diligently in this past year 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. The Board has completed the compilation of the database containing information regarding all cases filed with the Board 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.

During the past year the Board continued the compilation of data regarding cases filed, to include areas of law affected and to classify cases according to final disposition. In the coming year we will seek to further fine-tune our database as a part of our continuing goal to provide excellence in public service. 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 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, as well as the Board's final determination, all of which information can be easily accessed as needed to respond to requests from the public. 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 requests received by the Board 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 from law firms throughout the state, and in some instances, representatives of the Office of Counsel for the Department of Labor.

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, including the ongoing contributions of our law student interns, and has proven to be quite challenging and time consuming, and enlightening to all concerned. All have worked diligently towards the completion of the subject matter index, as well as the aforementioned historical case index database. The Board continues the comprehensive work required for the development of the subject matter index, and is presently in the final review phase. We are hopeful that the review can be completed within the calendar year, and that the IBA will be in a position to publish this index during the coming year.

BOARD RULES OF PROCEDURE AND PRACTICE

The original compilation of the Industrial Board of Appeals Rules of Procedure and Practice was completed during the early years of the Board. As no significant review or update of the rules had occurred since that time, and recognizing the need to review such matters on a continuing basis, the Board began a comprehensive review and analysis of the Board's rules of procedure and practice.

The regulatory review process applicable to New York state agencies was implemented. During the past two years the Board has systematically proceeded with review of each section of the rules individually, and input has been continually sought from the Office of Counsel for the Commissioner of Labor. Formal resolutions adopting certain proposed changes to the rules have been approved by the Board, and the process for finalization of same has been completed. There remain only a couple of rules that may ultimately be revised, although the overall review and approval process is now substantially concluded. A supplemental pamphlet incorporating all of the adopted rules changes is presently available upon request, and copies are provided to all new Petitioners at the time new cases are received by the Board.

The Board expects to conclude the review and approval process with the publication of a fully complete revised compilation of the Board's rules, which will then be distributed to agencies with whom the Board interacts on a regular basis, as well as to the public. In addition, the Board's rules are available for viewing on the IBA's website, which will also be updated to reflect any final adopted changes.

LOOKING AHEAD

As we continue our progress into this new millennium, our goal will be to continue the focus to meet or exceed the accomplishments of the previous year. Many of these accomplishments could never have occurred without the enthusiastic interest, continued cooperation and focus of our energetic Board members. There is no doubt that all of the initiatives, accomplishments, and successes achieved could not have been realized without the assistance, cooperation, and encouragement received from the Governor's office, and dedicated staff, and from the various offices within the Department of Labor with which we have dealt on a regular basis.

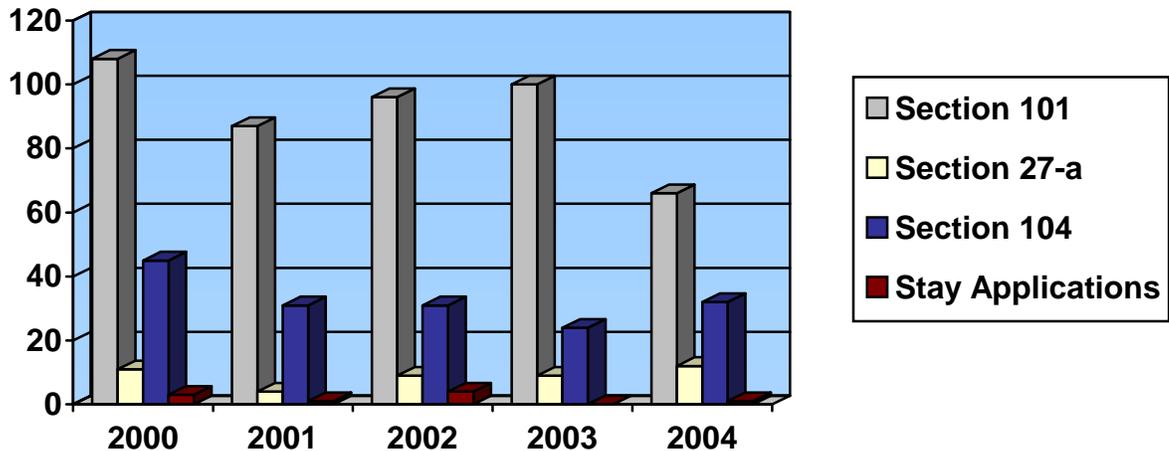
It is therefore with great pride and enthusiasm that I present the Annual Report for the Year 2004 for the New York State Industrial Board of Appeals.

Evelyn C. Heady
Chairwoman

FIVE-YEAR ACTIVITY ANALYSIS

The following five-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



Section 101: As indicated, Section 101 cases continue to comprise the greater majority of all matters brought before the Board. These cases primarily involve issues of unpaid wages and wage supplements due from private employers to employees. They also include cases that are filed for review of safety violations that involve private, and not public employers. Calendar year 2004 saw a significant decrease in the number of Section 101 cases filed, to the lowest level in the five year period considered. No reason for this decrease in new filings has become apparent.

Section 27-a: The level of Section 27-a cases, on the other hand, saw a significant increase over the prior year, and in fact, total cases reached the highest level in the period considered. These cases involve review of notices of safety and health violations issued to public employers in New York State.

Section 104: Filings in the area of Section 104 corporate instrument approval requests have been steady, and in fact, new filings in calendar year 2004 reached the second highest total in the period considered. Based upon the Board's interaction with business and law offices making such applications, it appears that there is a much greater level of public awareness of the need for seeking the Board's approval 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.

General: The Board continues to monitor the instances of new case filings, with particular regard to type of case, and location of the underlying complaint.

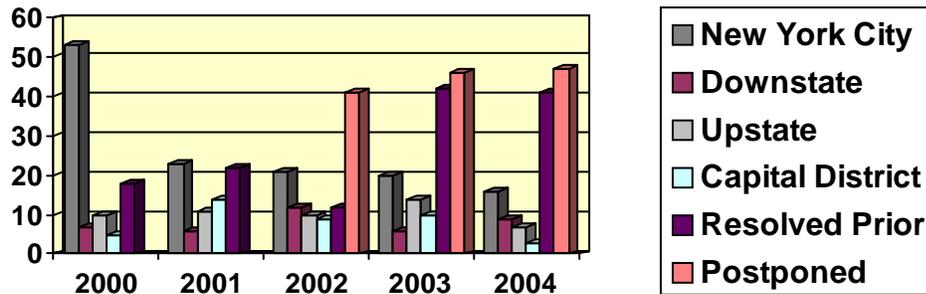
During the year 2002 the Board began tracking the number of Stay Applications filed pursuant to Section 66.9 of the Board's Rules of Procedure and Practice. These applications generally result in a number of interim decisions being issued by the Board, in addition to the final resolution issued at the conclusion of each case. Curiously, during calendar year 2003, no formal Stay Applications were filed, and in calendar year 2004, only one formal Stay Application was filed.

Our office staff additionally provided written responses to ten (10) requests for copies of the Rules of Procedure and Practice of the Board, and to eight (8) formal requests for copies of Board records made pursuant to the Freedom of Information Law (FOIL), and made innumerable referrals to the Board's newly activated website. In addition, our records were reviewed in person, pursuant to FOIL, on several occasions during the calendar year.

SCHEDULED HEARINGS

Hearings are scheduled and held throughout the state at various locations, generally established for the convenience of the parties, the Department of Labor, and the Board. The chart below depicts the level of hearings held by region throughout the State during calendar year 2004 and four years prior. The chart also reflects the number of hearing sessions that were scheduled but not held due to prior resolution of outstanding issues, or due to postponement or adjournment of the hearings.

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



The Downstate region includes counties outside of the immediate New York City area, and for purposes of this analysis includes hearings held in Hempstead and Garden City, on Long Island and in 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 2004 in Binghamton, Kingston, Utica, 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.

HEARINGS HELD

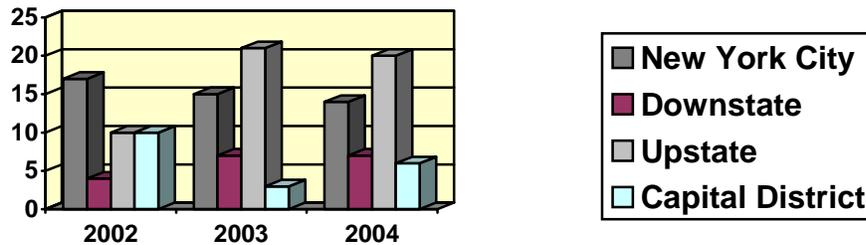
A total of thirty-five (35) hearing sessions were held during calendar year 2004, with the greatest number being held in the New York City metropolitan area. During this past calendar year the Board conducted a significant number of hearing sessions in upstate and western New York, and was able to include Utica and Kingston among the locations for hearing, sites that had not traditionally been utilized by the Board for this purpose. Additionally, there continue to be a steady number of cases filed for hearing in the Capital District region, and in the outlying areas beyond New York City.

HEARINGS NOT HELD DUE TO SETTLEMENT OR POSTPONEMENT

Along with denoting the specific areas where hearing sessions are held, this five year analysis incorporates an analysis of the numbers of hearing sessions that were scheduled, and which were not held, either due to the parties reaching a prior settlement, or due to postponement requests for various reasons.

During calendar year 2004 many more hearing sessions were adjourned/postponed (47) or cancelled (41) due to settlement or withdrawal of the Petition for Review or Notice of Violation or Order to Comply, than were actually held through formal hearing sessions (35). As can be seen from the chart above, the incidence of such situations developing over the course of the past year in particular represents a significant portion of the Board's work and is a noteworthy element of the Board's annual efforts.

**HEARING SESSIONS POSTPONED
PRIOR TO HEARING**



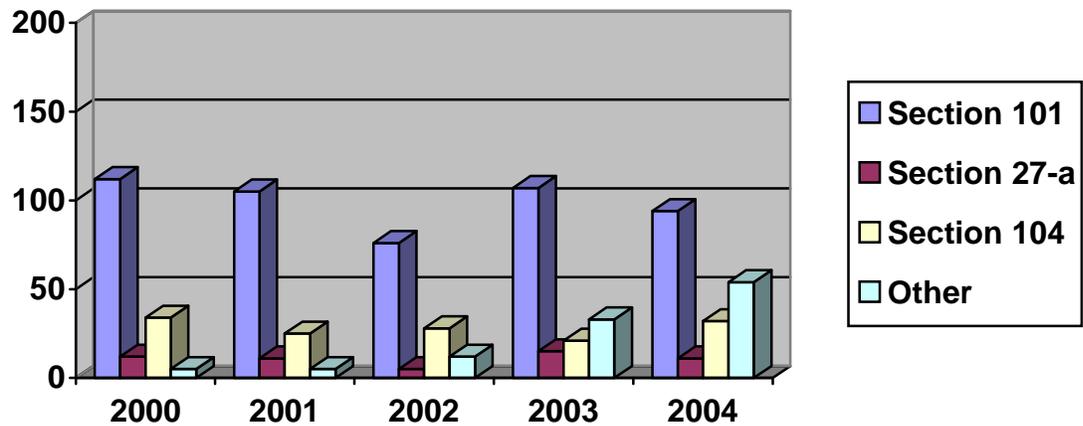
The chart above contains a comparison breakdown of the locations throughout the state affected by requests for postponement during the years 2002, 2003 and 2004. This past year, as in 2003, the greatest number of postponement/adjournment requests concerned cases scheduled for hearing in the "upstate" region of the state.

The Board's Rules provide that adjournments/postponements are permitted under limited circumstances and within certain parameters. The Board continues to take a precautionary approach to the granting of adjournment and postponement requests, as the continued delay in the forward progression of cases has the potential of recreating a backlog of pending cases. Requests for adjournment are reviewed on a case-by-case basis, and will continue to be considered with a close eye toward balancing the equities of fairness to the parties involved, while remaining mindful of the need for prompt and expeditious handling of all case files.

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, a record number of Resolutions of Decision, adopting a total of one hundred ninety-one (191) Resolutions of Decision during calendar year 2004. These resolutions, representative of the comprehensive nature of the cases within the Board's jurisdiction, reflect and can be directly attributed to the Board's commitment to the timely and efficient handling of all cases.

BOARD RESOLUTIONS



During calendar year 2004, the Board reviewed and approved resolutions resulting in the discontinuance of ninety-four (94) Section 101 cases, primarily resolving issues of unpaid wages and wage supplements due to named alleged claimants, and cases brought pursuant to newly adopted Article 10-A, relating to improper installation of piping in certain circumstances.

In addition, eleven (11) public employee safety cases filed under Section 27-a were brought to a successful conclusion. The Board was able to complete final resolutions in thirty-two (32) Section 104 cases relating to approvals of corporate instruments.

The Board adopted fifty-four (54) Resolutions of Decision in other areas, including applications for reconsideration, motions to dismiss, and motions related to miscellaneous issues. This number also includes resolutions adopting proposed changes to the Board's Rules of Procedure and Practice, totaling thirty-five (35) resolutions, which is a direct reflection of the Board's dedicated pursuit during this past year of the completion of the review and update process of the Rules of Procedure and Practice of the Board.

**INDUSTRIAL BOARD OF APPEALS
2004 ACTIVITY REPORT**

Board Meetings Held: 18

New Proceedings Commenced: 111

Section 101 Review Petitions	66
Section 27-a Public Employee Safety	12
Section 104 Corporate Documents	32
Stay Applications	1

Hearing Sessions Held: 35	Hearing Sessions Scheduled/Not Held: 88
	Settled/Resolved 41 Postponed 47
New York City 16	New York City 14
Downstate 9	Downstate 7
Upstate 7	Upstate 20
Capital District 3	Capital District 6

Board Resolutions: 191*

Section 101 Review Petitions	94
Section 27-A Public Employee Safety	11
Section 104 Corporate Documents	32
Other	54

*Includes: Cases Closed/Interim/Other

**INDUSTRIAL BOARD OF APPEALS
FIVE-YEAR STATISTICAL ACTIVITY ANALYSIS**

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
<u>Board Meetings Held</u>	15	12	13	20	18
<u>New Proceedings Commenced</u>	167	123	140	133	111
Section 101	108	87	96	100	66
Section 27-a	11	4	9	9	12
Section 104	45	31	31	24	32
Stay Applications	3	1	4	0	1
<u>Hearings Held</u>	75	54	52	50	35
New York City	53	23	21	20	16
Downstate	7	6	12	6	9
Upstate	10	11	10	14	7
Capital District	5	14	9	10	3
<u>Hearings Scheduled/Not Held</u>	*	*	53	88	88
<u>Settled/Resolved</u>	*	*	12	42	41
<u>Postponed</u>	*	*	41	46	47
New York City			17	15	14
Downstate			4	7	7
Upstate			10	21	20
Capital District			10	3	6
* Data Not Maintained, Available or Tabulated for Said Time Period					
<u>Board Resolutions</u>	163	146	121	176	191
Section 101	112	105	76	107	94
Section 27-a	12	11	5	15	11
Section 104	34	25	28	21	32
Other	5	5	12	33	54*
*2004 Other: Stay Applications	1				
Interim Decisions	16				
IBA Rules	35				
Other	2				

WHO'S WHO AT THE BOARD

**BIOGRAPHICAL SKETCHES OF THE
IBA CHAIRWOMAN and BOARD MEMBERS**

EVELYN C. HEADY
Chairwoman



Governor George E. Pataki appointed Evelyn C. Heady to the Industrial Board of Appeals as a Member and the designated Chair on May 14, 1996. Upon completion of her initial term of service, Mrs. Heady was reappointed, to a six-year term, on March 2, 2001.

A native of New York City, Mrs. Heady has been a resident of Dutchess County for more than forty years. She was educated at Our Lady of Perpetual Help Business School and Dutchess Community College.

Prior to her appointment as Chairwoman of the IBA, Mrs. Heady was involved in public service in Dutchess County for over twenty-two years having first served as elected Clerk of the Town of Beekman for ten years, Councilwoman for four, Town Supervisor for four terms and the appointed Deputy Clerk of the Dutchess County Legislature for eleven years.

Long active in civic and charitable endeavors, she served as President of the Dutchess County Supervisors and Mayors Association, a Director of the Beekman Chamber of Commerce, and the Matteawan Credit Union Audit Committee. She has also served as a Cub Scout mother, Brownie Leader, Secretary to the Beekman Little League and Athletic Club, and taught religious education at her parish church. She currently serves on the Board of Directors of the Mizzentop Day School in Pawling.

Mrs. Heady and her husband Kenneth continue to reside in Beekman, Dutchess County, and are the proud parents of four children, and the grandparents of five wonderful grandchildren.

IBA BOARD MEMBERS

MARK S. PERLA, ESQ. Board Member



Mark S. Perla was admitted to the New York State bar in 1978, after his graduation from the State University of New York at Buffalo School of Law. He served as an Assistant District Attorney in Erie County for ten years, having been named Chief of the Buffalo City Court Bureau, and later, Executive Assistant District Attorney.

Mr. Perla later served as an Assistant United States Attorney in the Western District of New York, eventually being named Chief of the Civil Division. In 1995, Governor George Pataki appointed Mr. Perla to the Erie County Court bench. After his tenure on the county court, Mr. Perla commenced the private practice of law with Perla & Perla, LLP in Buffalo, New York, where he continues to practice law as one of the firm's principal attorneys.

Mr. Perla has been a member of the Industrial Board of Appeals since first being appointed in 1997. After completion of a first term of service, Mr. Perla was again nominated, and was reappointed with the Board for a second term on April 16, 2002.

A longtime resident of Erie County, Mr. Perla presently makes his home in the Town of Clarence, where he resides with his wife and two sons.

GREGORY A. MONTELEONE, ESQ.
Board Member



Gregory A. Monteleone, born in Bronx, New York, is a long time resident of Westchester County. He received a Bachelor of Arts degree at The Catholic University of America, followed by a Juris Doctor from St. John's University School of Law, and was thereupon admitted to the practice of law in New York and Connecticut.

Mr. Monteleone is also admitted in the United States District Court for the Southern and Eastern Districts of New York, and is an active member of the New York State Bar Association - Torts Insurance and Compensation Law Section and Trial Lawyers Section, and the Westchester County Bar Association.

Mr. Monteleone began his legal career in the Westchester County District Attorney's Office, and then moved on to practice as a trial attorney in the insurance defense field, and is most recently engaged in the private practice of law as a principal in the law firm of Monteleone & Monteleone, in Mt. Kisco, New York.

Following a brief appointment for completion of the term of a prior IBA board member, Mr. Monteleone received confirmation and reappointment on April 16, 2002, for a full second term as a member of the Board.

WALTER J. SAKOWSKI, JR., ESQ.
Board Member



Walter J. Sakowski was appointed and confirmed as a Member of the New York State Industrial Board of Appeals in June 2001.

He is a 1984 graduate of Seton Hall University, with a degree in Business Administration. After graduation, Mr. Sakowski commenced working for a firm engaged in the business of heavy construction, and continued in this area for the next ten years, working both in the office administration and field aspects of the business.

After a brief period as a small business owner in the early 1990s, Mr. Sakowski went on to complete a course of study at Pace University Law School, where he received the degree of Juris Doctor, and was thereupon admitted to the New Jersey Bar in 1994, and the New York Bar in 1995. He is also admitted to practice in the United States District Court in the Southern and Eastern Districts, as well as the United States District Court for the District of New Jersey.

Mr. Sakowski began the practice of law as an Assistant District Attorney for the County of Rockland, and later commenced, and now continues, the private practice of law in the Law Offices of Walter J. Sakowski, P.C., with offices in New York and New Jersey.

Mr. Sakowski makes his home with his wife and four children in Orange County.