

1937

819

Year

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State of New York
In Senate

APR 26

.....1937

Ordered, That the Clerk deliver the bill entitled:

IN SENATE

No. 2300

Int. 1905

An act to amend the labor law, in relation to defining the powers and duties of the industrial board, and providing for a board of standards and appeals, defining its powers and duties and making appropriations therefor

to the Assembly and request its concurrence in the same.

By order

James J. Reilly,

Clerk.

IN ASSEMBLY

MAY 5

1937

Passed without amendments

By order of Assembly

Ansley B. Borah

81905

SUPPORTING MEMORANDUM

In relation to amending the Labor Law in relation to defining the powers and duties of the Industrial Board, and providing for a Board of Standards and Appeals, defining its powers and duties and making appropriations therefor.

A proposal to relieve the Industrial Board of the State Labor Department of part of the present excessive burden by separating Labor Law functions from Workmen's Compensation Law functions.

It is not to be construed as a criticism of the personnel of the present Industrial Board but rather the provisions of the Labor Law, which thrust such great responsibilities on such diverse subjects on one Board.

The dissimilarity of these subjects and their importance involving expeditious disposition of all matters pertaining to building construction, the study and preparation of codes on various technical and engineering subjects, the immediate physical and financial relief of injured claimants, presents a problem which can only be solved by the creation of a separate and distinct semi-technical Board competent to perform all the powers and duties under the Labor Law now assigned to the Industrial Board.

The proposed legislative act presented herewith is an amendment to the Labor Law and Workmen's Compensation Law and its purpose is:-

- 1st: To separate the quasi-judicial and quasi-legislative functions of the Industrial Board, so as to divorce the "Technical Engineering, Medical research and Legal" duties under the Labor Law from the "Medical and Legal duties on questions of fact and law" under the Workmen's Compensation Law.
- 2nd: To materially reduce the time element in adjudicating Workmen's Compensation claims by confining the board's duties exclusively to the Workmen's Compensation Law.

- 3rd: (a) To expedite the revision of several obsolete industrial codes adopted back as far as 1914.
(b) To expedite the formal adoption of six (6) industrial codes now before the Board on one of which public hearings were held in 1929.
(c) To expedite the adoption of numerous code rules on silica and other injurious dusts, and the handling and storage of flammable liquids started in 1931.
- 4th: To provide a semi-technical Board and personnel whose sole duties will be devoted to the prevention of industrial accidents and diseases; this Board to be separate and distinct from the administrative activities of the Department.
- 5th: To provide appellants from orders of the Labor Department, and for variations on the construction and alteration of buildings, an opportunity to personally appear before the Board without undue expense in travel and loss of time.
- 6th: To make the Industrial Board and its personnel self-sustaining.

The "first" purpose above enumerated is accomplished by making the duties and powers of the present Industrial Board solely and exclusively the administration of the Workmen's Compensation Law and continuing their terms of office until the expiration of their present terms and until their successors are appointed and have qualified.

The "second" would be accomplished by relieving the present Industrial Board of its powers and duties under the Labor Law.

The "third" and "fourth" are brought about by:-

- (a) Creating a new board of standards and appeals of three members, at least one of which shall be a professional engineer licensed to practice engineering in the State of New York and having at least ten years of practical experience in engineering.
- (b) By relieving the present Industrial Board of all its powers and duties under the Labor Law and transferring the same to the board of standards and appeals; these powers and duties being quasi-legislative and quasi-judicial consisting of the following:-

1-Legislative

Constitutes a Board of Standards by making, amending and appealing rules known as the Industrial Code which have the force and effect of law. There are at present approximately forty industrial codes embodying about two-thousand rules.

2-Judicial

Constitutes a Board of Appeals on orders issued by the

Industrial Commissioner where appellants raise the question of the validity and reasonableness of such orders.

From 1928 to 1934, the average number of appeals per year from Industrial Code rules is approximately 2,000 and from the provisions of the Labor Law is about 700.

Constitutes a Board of Review on petitions for variations from the structural provisions of law and code on the construction of new buildings and alterations of existing buildings where practical difficulties and hardships are encountered.

From 1925 to 1934, the average number of items involved in petitions for variations per year is about 700.

The precedent for technical representation on the Board can be found in Section #718, sub-division 1 of the Greater New York Charter relating to the Members of the Board of Standards and Appeals wherein at least three members are required to be engineers or architects.

The "Fifth" purpose will be brought about by establishing the offices of the new board of standards and appeals at Albany, New York, and further, providing that the Board shall hold hearings in the principal cities of the State.

The present Industrial Board has had its headquarters in the New York Office due in a great measure to the fact that possibly seventy-five per cent of the Workmen's Compensation cases coming before it are from the metropolitan area. This is not true, however, with respect to its functions insofar as the provisions of the Labor Law are concerned.

In 1916 the Charter of the City of New York was amended to provide for the creation of a Board of Standards and Appeals, which Board has conveyed to it under the law all the judicial and legislative powers of the Industrial Board under the provisions of the Labor Law insofar as the Greater City of New York was concerned.

The Industrial Codes then existing still applied to the City of New York until repealed or modified by the Board of Standards and Appeals.

Since 1916, the provisions of the Industrial Code are not applicable to the City of New York and, except for the Industries located on Long Island outside the City of New York, the greater number of appeals on orders issued and petitions for variations come from the upstate area.

The Board's offices being located in the City of New York - appellants and petitioners from the upstate area were not afforded the opportunity to appear personally before the Board generally and therefore the Board did not have the advantage of observing the difficulties and hardships incurred in complying with its own rules and regulations as well as the structural provisions of the law, directly from those affected.

It is therefore obvious that with the main office located in the City of Albany and the Board individually and collectively holding hearings in the various cities of the State, they will get in direct contact with the problems of industry and be more conversant with such problems and can more intelligently promulgate practical and minimum standard rules and regulations on the prevention of industrial accidents and diseases.

This is a Department of Labor bill and I am in favor of it.



ELMER F. ANDREWS
Industrial Commissioner

The Merchants' Association of New York

233 BROADWAY, WOOLWORTH BUILDING
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May 13, 1937

8 1905

Hon. Herbert H. Lehman
Executive Chamber
Albany, N. Y.

My dear Governor:

The Merchants' Association of New York wishes to submit for your consideration some comments concerning the Howard bill (Senate Introductory 1905; Print 2300) providing for the establishment of a Board of Standards and Appeals in the State Labor Department. The bill does not state specifically that this proposed Board would have jurisdiction over building construction matters within the City of New York, but certain clauses in the bill indicate that such may be the interpretation placed upon it.

In the early years of the Labor Department the Industrial Board exercised jurisdiction over these matters in New York City. The result was a serious conflict between the requirements of the Industrial Board and those of the Municipal Building Departments with resulting confusion, hardship and expense to the building industry and to property owners. Recognizing these conditions, the Lockwood-Ellenbogen bill (Chapter 503, Laws of 1916) transferred jurisdiction over such matters within the City of New York to the Municipal Board of Standards and Appeals. That body is now exercising its jurisdiction in a satisfactory and efficient manner. It will be a serious mistake to reestablish concurrent jurisdiction and bring back the earlier condition of confusion, hardship and unnecessary expense.

It may well be that conditions warrant the establishment of a Board of Standards and Appeals in the Department of Labor to handle matters concerning the building industry for the rest of the State, and if such is the case this Association has no objection to the creation of a Board for that purpose.

We, therefore, suggest that you have the matter carefully investigated to ascertain whether the proposed Board of Standards and Appeals would have jurisdiction in New York City. If you are advised that it would have such jurisdiction, we respectfully urge you to veto the bill for the reasons previously stated.

Respectfully yours,

THE MERCHANTS' ASSOCIATION OF NEW YORK,

By

S. C. Mead,
Secretary.

81905

May 30, 1937

Mr. George A. Boehm
2 West 45th Street
New York, New York

Dear Mr. Boehm:

Confirming my talk with you on the telephone yesterday relative to Senator Howard's Bill Introductory No. 1905, Print No. 2300, which has passed both Houses of the Legislature and is now before the Governor for official action, and your inquiry as to conflict between the provisions of this proposed legislation and that of the Board of Standards and Appeals of the City of New York as evidenced to you by the proposed Section 27-a, Page 7 of the Bill, I would first call your attention to the following:-

The subject matter contained in lines 20 to 25 inclusive, beginning with "The board" and ending with "such provision", is taken verbatim from the first sentence of the present Section 27 of the Labor Law. The only change therein being the substitution of the term 'Board of Standards and Appeals' for that of the present 'Industrial Board'.

Beginning with line 26 page 7, and ending with line 11 page 8, insofar as the proposed Section 27-a is concerned, it is merely writing in the statute the powers now exercised by the Industrial Board under the provisions of Section 28 of the Law.

I wish to call your attention specifically to lines 11 and 12 on page 8, starting with "For the purpose of exercising such powers, etc." It will be noted that the proposed statute specifically provides that the proposed Board of Standards and Appeals is to be a continuation of the Industrial Board now existent in the Department of Labor, and that on line 19 page 8, starting with "All of the powers and duties" and ending on line 23 with "standards and appeals", there is conveyed to the Board of Standards and Appeals of the State of New York all of the powers and duties of the present Industrial Board.

Chapter 503 of the Laws of 1916 of the State of New York amending the Greater New York Charter, and including therein Chapter 14-a, Sections 718 and 719 inclusive, created within the City of New York a Board of Standards and Appeals and prescribed its jurisdiction.

Section 718-a, Subdivision 3, empowers the Board of Standards and Appeals of the City of New York to make, amend, and repeal rules and regulations regarding the enforcement of those provisions of the Labor Law relating to the construction, alteration and structural changes, etc. in all buildings, except tenement houses, within the City of New York, and further specifically provides that all rules and regulations made by said Board pursuant to the Section shall supersede the Industrial Code and any rules and regulations of the Labor Department relating to the same subject matter.

Subdivision 4 of the same Section, further states that the Board of Standards and Appeals of the City of New York shall exercise exclusively with respect to buildings situated in the City of New York, the same powers as were conferred upon the then Industrial Commission, which Commission at that time had conveyed to it, in addition to all the powers of the prior Commissioner of Labor, the powers of promulgating rules and regulations constituting the Industrial Code.

About the year 1930, the Industrial Commission was abolished by legislation, the Department of Labor reorganized, and the present Industrial Board created, and all of the powers and duties of the Industrial Commission with respect to the promulgation of rules constituting codes was conveyed to the Industrial Board. The same holds true with respect to the legislation now under consideration, which divorces from the present Industrial Board of the State of New York those powers and duties under the provisions of the Labor Law and confining their activities exclusively to that of workmen's compensation, and conveys to the new Board of Standards and Appeals of the State of New York, all of the powers and duties of the present Industrial Board with reference to the provisions of the Labor Law.

The amendment to the Charter of the City of New York constituting Chapter 503 of the Laws of 1916 and supplemental amendments, were special statutes enacted by the Legislature of the State of New York applicable to the City of New York, and I wish to call to your attention that nowhere in the proposed legislation now before the Governor, above referred to, is there any statement to the effect, by implication or otherwise, that the proposed Board of Standards and Appeals will take over or exercise any of the defined powers of the Board of Standards and Appeals of the City of New York, nor was it intended to do so. If such intent was in mind, it would be obviously necessary to specifically state in the proposed statute in the common phraseology used "notwithstanding the provisions of any other General or special law."

To Mr. George A. Boehm

-3-

May 20, 1937

We are confident therefore that this proposed legislation has no effect whatsoever insofar as the jurisdiction, duties and powers of the Board of Standards and Appeals of the City of New York is concerned.

Very truly yours,

WILLIAM J. PICARD
Deputy Industrial Commissioner

WJP:Bs

National Lawyers Guild

New York City Chapter
285 MADISON AVENUE
NEW YORK CITY

May 20, 1937

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Honorable Herbert H. Lehman,
Office of the Governor,
Albany, N. Y.

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Re: S. Int. 1905, Pr. 2300 (Mr. Howard)
- A bill to create a board of
standards and appeals in the Depart-
ment of Labor and to transfer to it
jurisdiction of the Industrial Board
in matters other than workmen's com-
pensation.

Your Excellency:

I have the honor to advise you that at a
stated meeting of the New York City Chapter of
the National Lawyers Guild, held on Wednesday,
May 19, 1937, it was voted to recommend to your
Excellency that you sign the above described
thirty-day bill now pending before you.

Respectfully,

Isadore Polier

Chairman, Committee on Labor Law
and Social Legislation.

IP:CL

MEMORANDUM

May 24, 1937.

TO: Mr. Poletti

RE: Senate Bill - Int. 1905 - Print 2300
By Mr. Howard

81905

Executive disapproval of this measure is recommended.

This bill appropriates \$65,000 for the creation of a new board for the purpose of relieving the present Industrial Board of all duties relating to the administration of the labor law except the Workman's Compensation Law which would hereby become the sole remaining duty of the old Industrial Board. It is clear that the effect of this bill is the reorganization of the control and policy making functions of the department.

Since the present Industrial Board does not exercise these functions within the City of New York, and is limited in jurisdiction to the balance of Long Island and up-state, the need for a separate board seems to be open to serious question.

The reasons advanced, such as recodification of rules, location of main office, character of the members of the board, are not sufficient justification for a change in the fundamental organization of a large and important department.

A. S. Weber
DIRECTOR

Enc.

CITY OF NEW YORK
OFFICE OF THE MAYOR

81905

May 26, 1937.

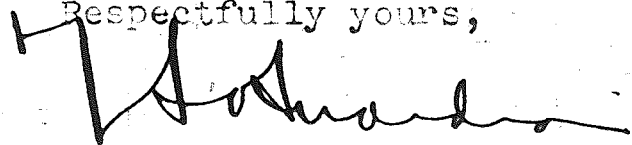
S-HOWARD.....Int:1905,Pr:2300.
AN ACT to amend the labor law, in relation to
defining the powers and duties of the
industrial board, and providing for a
board of standards and appeals, defining
its powers and duties and making
appropriations therefor.

Honorable Herbert H. Lehman,
Governor of the State of New York,
Albany, New York.

Dear Governor Lehman:

By reason of its enactment subsequent to Chapter 503 of the Laws of 1916, and in the absence of a specific exception for the City of New York, the above-entitled bill may lend itself to the construction that it does apply to this City. There is a danger that this measure may revive the serious conflicts between State and City agencies which prevailed prior to 1916 with its resultant confusion, hardship and expense to property owners and others. As a result of these impossible conditions Chapter 503, Laws 1916, was enacted and transferred jurisdiction over factory construction in this City to City agencies. If there is any doubt whatsoever that this bill excludes the City of New York from its operation it might be well to let it await consideration at another session of the Legislature when any shadow of doubt that it applies to the City of New York may be removed. In view of the present uncertainty I ask that this bill be disapproved.

Respectfully yours,



Mayor.