

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 12, 2026

CV-24-2108

In the Matter of LINEAR
RESEARCH ASSOCIATES,
INC., et al.,
Petitioners,
v

MEMORANDUM AND JUDGMENT

ROBERTA REARDON, as
Commissioner of Labor, et al.,
Respondents.

Calendar Date: January 13, 2026

Before: Aarons, J.P., Pritzker, Ceresia, Powers and Mackey, JJ.

Wilson Elser Moskowitz Edelman & Dicker, LLP, Albany (Christopher A. Priore of counsel), for petitioners.

Letitia James, Attorney General, New York City (Erika E. Vera Livas of counsel), for respondents.

Aarons, J.P.

Proceeding pursuant to CPLR article 78 (initiated in this Court pursuant to Labor Law § 463) to review a determination of respondent Commissioner of Labor denying petitioners' application for a license to purchase, own, possess and/or transport explosives.

Petitioner Curt Dunnam is the founder, president and owner of petitioner Linear Research Associates, Inc., and a small portion of Linear Research's business includes

fireworks displays. In this connection, petitioners must possess a valid license to own, possess and/or transport explosives (hereinafter O&P license) issued pursuant to Labor Law article 16 and renewed annually. Petitioners' most recent O&P license expired in 2021. Dunnam also held a state Pyrotechnician Certificate of Competence (hereinafter PCC) until 2019, when it expired and Dunnam did not renew it. A PCC is an occupational license issued to an individual for the use of pyrotechnics (i.e., fireworks), and the holder of a PCC issued by respondent Commissioner of Labor is a certified pyrotechnician (*see* Labor Law § 451 [11]; 12 NYCRR 39.1 [b] [3]; 61-2.2 [c], [d]).

In July 2021, Dunnam, on Linear Research's behalf, applied to respondent Department of Labor (hereinafter DOL) for renewal of their O&P license. As relevant here, the application asked Dunnam whether he held a PCC; Dunnam answered "no." That answer prompted DOL to request the list of Linear Research's employees who were certified pyrotechnicians. Dunnam responded that Linear Research would hire pyrotechnicians on an as-needed basis to operate its pyrotechnic displays.

In September 2021, DOL denied petitioners' O&P license application solely because neither Dunnam nor any other Linear Research employee possessed a PCC, notwithstanding that Dunnam held that credential for many years, and even though petitioners' previous two O&P license renewals had been granted without a current PCC. DOL's denial was upheld following an administrative hearing, and the Hearing Officer's findings and conclusions were adopted by the Commissioner in her final determination. Petitioners commenced this CPLR article 78 proceeding in this Court to annul the Commissioner's determination, alleging, as relevant here, that she acted without legal authority to make a PCC a prerequisite to an O&P license. Respondents have answered, and we now annul the Commissioner's determination.

Pursuant to Labor Law article 16, no person or entity may "purchase, own, possess, transport or use explosives," including fireworks, in the state without a valid license issued by DOL (Labor Law § 458 [1]; *see* Labor Law § 450 [1]). Before issuing a license or certificate, the Commissioner must investigate the applicant's eligibility (*see* Labor Law § 458 [5]). That investigation may include, as relevant here, "an examination as to the applicant's knowledge and ability with respect to basic safety precautions in the possession, handling, storage, manufacture and transportation of explosives," and the Commissioner may require the applicant to pass prescribed tests "as a prerequisite to the issuance of the license or certificate" (Labor Law § 458 [6] [a] [2]). Such "license or certificate, or the renewal thereof may be denied where the [C]ommissioner has probable reason to believe, based on knowledge or reliable information, or finds, after

investigation, that the applicant or any officer, servant, agent or employee of the applicant is not sufficiently reliable and experienced to be authorized to own, possess, store, transport, use, manufacture, deal in, sell, purchase or otherwise handle, as the case may be, explosives" (Labor Law § 459 [1]). "The [C]ommissioner may make rules supplemental to [Labor Law] article [16] as deemed necessary or desirable to assure the public safety as well as to provide reasonable and adequate protection of the lives, health and safety of persons employed in the manufacture, storage, handling, use, purchase, sale, disposition and ownership of explosives" (Labor Law § 462).

Even assuming, without deciding, that the Commissioner may properly consider whether an applicant for an O&P license has access to a PCC when evaluating the applicant's reliability and experience, we agree with petitioners that mandating such access constitutes a "rule" that is subject to the rulemaking procedures under the State Administrative Procedure Act (*see* State Administrative Procedure Act § 102 [2] [a] [i]). In explaining petitioners' denial, a DOL official testified that, between 2010 and 2017, an O&P license application could be approved even in the absence of a PCC. After internal discussions and consultation with counsel, DOL began mandating all O&P license applicants have a PCC or an employee with that credential, without which the application would be denied. Though DOL added a question about PCCs to the O&P license application in 2019, the PCC requirement does not concern "forms and instructions, interpretive statements and statements of general policy which in themselves have no legal effect but are merely explanatory," all of which are excluded from formal rulemaking (State Administrative Procedure Act § 102 [2] [b] [iv]). Instead, mandating access to a PCC for all O&P license applicants is a "[b]lanket requirement[] . . . to be generally applied in the future, regardless of individual circumstances" that is subject to the State Administrative Procedure Act's rulemaking process (*Matter of Homestead Funding Corp. v State of N.Y. Banking Dept.*, 95 AD3d 1410, 1412 [3d Dept 2012]; *see Matter of Cordero v Corbisiero*, 80 NY2d 771, 773 [1992]; *compare Cubas v Martinez*, 8 NY3d 611, 621 [2007]; *Matter of North Shore Hematology-Oncology Assoc., P.C. v New York State Dept. of Health*, 240 AD3d 42, 46 [3d Dept 2025], *lv denied* 44 NY3d 904 [2025]). Respondents' failure to comply with the State Administrative Procedure Act before implementing the mandatory PCC requirement renders that requirement unenforceable (*see Matter of HD Servs., LLC v New York State Comptroller*, 51 AD3d 1236, 1238 [3d Dept 2008]).

Insofar as the Commissioner's determination was based solely upon petitioners' failure to comply with the mandatory PCC requirement, the determination must be annulled, and DOL must evaluate petitioners' O&P license application based upon

properly promulgated rules and petitioners' particular facts and circumstances (*see Matter of Schwartzfigure v Hartnett*, 83 NY2d 296, 302 [1994]; *Matter of Homestead Funding Corp. v State of N.Y. Banking Dept.*, 95 AD3d at 1413; *Matter of HD Servs., LLC v New York State Comptroller*, 51 AD3d at 1238). Petitioners' remaining arguments are academic.

Pritzker, Ceresia, Powers and Mackey, JJ., concur.

ADJUDGED that the determination is annulled, without costs, petition granted, and matter remitted to respondent Department of Labor for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court