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Good morning, my name is Melissa Fleischut and I am the President and CEO of the NYS Restaurant Association, the largest and only statewide restaurant association in New York. On behalf of our more than 2,000 members and thousands more restaurants, the NYS Restaurant Association (the Association) submits the following comments on the Fast Food Wage Board process.

### **Calling of the Fast Food Wage Board**

Under New York State law there are two types of wage boards. One is often called, and is in fact required to be called within six months of any statutory minimum wage increase by the legislature. This wage board investigates the wages of food service workers and is detailed in Section (2) of N.Y. LAB. LAW § 653. Recently, this type of wage board was called to investigate the adequacy of the cash wage for tipped employees, and ultimately recommended a 50% increase to the cash wage from \$5.00 to \$7.50.

The second is outlined in Section (1) of N.Y. LAB. LAW § 653 and has never been used to create a higher minimum wage for a sector of a single industry. This is the section of law that Acting Commissioner Mario Musolino and Governor Cuomo used to form the most recent fast food wage board. It states, “The commissioner shall have power on his own motion to cause an investigation to be made of the wages being paid to persons employed in any occupation or occupations to ascertain whether the minimum wages established in accordance with the provisions of this article are sufficient to provide adequate maintenance and to protect the health of the persons employed in such occupation or occupations.”

The Acting Commissioner did not “on his own motion cause an investigation...” He was instructed to do so by the Governor, who hold significant leverage over the Acting Commissioner because the Governor has the option of appointing him to be the Commissioner of Labor or seek someone else. We know the Governor instructed the Acting Commissioner to form the fast food wage board because he flatly says it in a May 6, 2015 opinion-editorial in the NY Times. In it



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he states, “I am directing the commissioner to impanel such a board, to examine the minimum wage in the fast-food industry.”<sup>1</sup>

Furthermore, New York statute allows the Acting Commissioner to call such a wage board for an “occupation or occupations.” “Fast food worker” has never been a defined occupation in New York. The wage board itself created such a distinction and in that act took on the role of the legislature to set policy. Nowhere in the statute is the Acting Commissioner or the Governor given the authority to create an occupation to regulate without legislative action.

There have long been distinctions in New York State law for food service workers who receive tips, and wage boards are often and properly assembled to determine what regulations should be for this sector of employees. The reason the regulations for these workers are set outside of the normal process is that they are paid differently, namely through tips, and regulating them requires distinct knowledge of how the industry operates, so these wage boards include industry and employee representation. That is not the case with the fast food wage board.

### **No Industry Representation**

The fast food wage board did not include proper or fair representation from the restaurant industry. Labor law § 655 Section (1) requires that the board have equal representation from business groups, employee groups, and the public, and the representatives must be selected in “so far as practicable from nominations submitted by employers and employees in such occupation or occupations.” As the largest and only statewide restaurant association, it would have been quite practicable to call, email, write, fax, tweet, or send a facebook message to ask if we would serve on the board. We would have happily obliged and provided valuable insight that was sorely missing from the process. Or we would have been pleased to recommend a qualified restaurant owner to serve. The “business representative” was Kevin Ryan, the owner of a web company whose background is in fashion and technology. He could not have possibly

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<sup>1</sup> [http://www.nytimes.com/2015/05/07/opinion/andrew-m-cuomo-fast-food-workers-deserve-a-raise.html?\\_r=0](http://www.nytimes.com/2015/05/07/opinion/andrew-m-cuomo-fast-food-workers-deserve-a-raise.html?_r=0)



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properly represented the restaurant industry and its interests because he has no experience or stake in this business.

Not one member of the board had any experience in the restaurant industry and all three publically supported a higher minimum wage before the process began. From the beginning the Association decried these facts as unfair and correctly predicted they would lead to a biased decision and bad public policy.

Furthermore, during the public hearings restaurant owners were not given a fair shake at testifying. Labor groups bussed in large numbers of people to intimidate and heckle anyone who testified against a \$15 minimum wage. The Association had several members attend the hearings but after seeing how business interests were treated by the crowd and the board they decided not to put their business at risk. Throughout the hearings business owners were booed and jeered during their testimony and the board members did little to control the crowd. Also, a business owner's time was cut short during the Albany hearing, something that did not happen to a single advocate for a minimum wage increase.

### **Breach of the Open Meetings Law**

The New York State PUBLIC OFFICERS LAW, ARTICLE 7 §103 Section 2 (e) states that “any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed.”

During the fast food wage board's July 27, 2015 public meeting, the members of the board met via teleconference and voted on the final written report the wage board sent to the Acting Commissioner for his approval.<sup>2</sup> However, the final written report that the board members voted on was not available to the public until late in the afternoon on Friday, July 31.

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<sup>2</sup> <https://www.youtube.com/watch?v=myQsAo4gxFs&feature=youtu.be>