



2005 Minimum Wage Board Report

to the

Commissioner of Labor

November 14, 2005

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Report and Recommendation of the
Minimum Wage Board to the
Commissioner of Labor Pursuant to Section 655,
Labor Law (Article 19 - Minimum Wage Act), State of New York

I

Foreword

A. Appointment of Board

On June 30, 2005, the Commissioner of Labor duly appointed the undersigned members of the Minimum Wage Board to examine and review existing minimum wage orders governing the restaurant and hotel industries and to report to the Commissioner any recommendations for changes to these orders.

In 2000, the Legislature, in accordance with Chapter 14 of 2000, modified the then existing restaurant and hotel wage orders by including a new classification of employee known as food service worker and established specific cash wage requirements for those workers. Also in this legislation, the orders were further modified to require the calculation of meal and lodging allowance increases for service workers at no more than two-thirds of those applicable to other employees. Additionally, the legislation required that, after a change in statutory minimum wage rates, the Commissioner appoint a wage board to report and recommend any changes to wage orders governing wages payable to food service workers.

The Board would consist of representatives of employees selected upon nomination of the state American Federation of Labor/Congress of Industrial Organizations and representatives of employers selected upon nomination of the New York State Business Council. As required by Section 655 of the Labor Law, the Commissioner is mandated to nominate public members to the Board in equal ratio to those nominated by the aforementioned organizations.

On January 1, 2005, the statutory minimum wage rate was increased from \$5.15 to \$6.00 per hour with additional increases to be effective on January 1, 2006 and January 1, 2007. In accordance with statutes, the Commissioner nominated the following persons to the required Minimum Wage Board: Janella Hinds, employee member; Max K. Rausch, employer member; and Dr. Richard P. Nathan, public member.

B. Gathering the Record

. Organizational Activities

The Minimum Wage Board gathered on July 14, 2005, with the Commissioner of Labor and representatives from the Department's Office of Counsel, Division of Research and Statistics and the Division of Labor Standards to acquaint the Board with its responsibilities and establish a timeline for its further activities. Members were advised that the resources of the Department were available to them upon request. Board members did request that the Department's Division of Research and Statistics prepare a

report regarding the employment of food services workers in the restaurant and hotel industries. The Board discussed the process of obtaining public comment and established a date of August 18, 2005, for public hearings.

2. Public Hearings

The Minimum Wage Board has the power to conduct public hearings. (Section 655.3 Labor Law). In order to provide the representatives of interested employer and employee groups, as well as interested members of the general public, with the maximum opportunity to present and submit their views and data concerning possible changes to the restaurant and hotel industry minimum wage orders, and to assure the maximum elicitation of such views and data, public hearings were scheduled to be held by tele-video conferencing from Buffalo and New York City with the Board originating from Albany. Notice of Public Hearing was published in the State Register; notices were sent to labor and employer organizations who were believed to have an interest in these deliberations, and board members were also encouraged to share the information announcing the hearings with persons, groups or organizations they felt may be impacted by any changes in the Wage Orders of the Restaurant and Hotel Industries. Anyone who chose to testify in person was asked to submit a written copy of their testimony of their own volition. Persons or organizations unable to give public testimony were afforded the opportunity to submit written testimony.

II

Report

Following the completion of the public hearings and submission of documents by interested parties, the Board met on October 13, 2005, to consider all relevant views, data, documents and other materials submitted by interested parties. Upon such consideration and deliberation, the following report is respectfully submitted to the Commissioner of Labor:

At the public hearings only three (3) persons appeared to give testimony; one of whom represented the state restaurant association and two individuals who operated restaurants in the Buffalo area. The representative of the restaurant association maintained that tipped employees are earning far in excess of the minimum wage and should not continue to receive increases in their cash wages. He noted that the Fair Labor Standards Act has established a cash wage of \$2.13 per hour and only requires that when cash wages and tipped wages are combined, the total must equal the basic minimum wage rate. When questioned by the Board, he noted that by 2007, the New York State cash wage requirements for food service workers would be more than twice of that mandated by federal statute. He suggested that legislation be enacted to rescind the 2006 and 2007 increases in cash wage and if that were not possible, that the legislature consider not enacting any further increase in cash wage should the basic minimum wage rate be increased again in the future. The representative further suggested there be no distinction in the allowances for meals and lodging of food service workers

and other employees and that allowances for meals and lodging be permitted in an amount equal to their fair value.

The two restaurateurs echoed the concern of the restaurant industry representative over the increase in the cash wage for food service workers. In their personal situation, the increased costs of these requirements were met, in part by, reducing the number of full-time employees they had on their payroll. They presented a chart showing payroll hours worked by various job titles before and after the most recent increase in cash wage.

After the conclusion of the public hearings, the board received, by written submission, testimony from the President of the New York State AFL-CIO. He praised the action of the Legislature which increased the cash wage formula for food service workers, stating that this formula is critical for workers at the lower range of the income continuum.

When the Board convened on October 13, 2005, having reviewed all materials available to them, the members made the following observations:

Public Member-

The testimony delivered to this Board has been helpful but not persuasive enough to show the need for change. The public member

recommends that no changes be made to the Minimum Wage Orders of the Restaurant and Hotel Industries.

Employee Member-

The testimony, both written and oral, from both sides is quite compelling but the first role is to protect the workers. The employee member supports the Minimum Wage Orders for the Restaurant and Hotel Industries as they are now written and recommend there be no changes made.

Employer Member-

As a human resources manager in both the restaurant and hotel industry, the employer member found this to be a difficult decision. The lack of testimony on the part of the other industry members is a disappointment to him; however, this same lack of participation leads him to recommend there be no changes made to the Minimum Wage Orders for the Restaurant and Hotel Industries.

III

Recommendations

The Board recommends that the Commissioner take no action to change current language in the Wage Orders of the Restaurant and Hotel Industries.

IV

Final Note

The Board agreed that any member could attach his or her personal statement for further review by the Commissioner. Appended hereto is: (i) a copy of the personal statement from Board member Max K. Rausch; (ii) a list of the names of individuals and organization who appeared and made oral presentations and submitted written material at the public hearings; (iii) a list of the names of Labor Department staff members who assisted the Board in its operation; and (iv) the relevant documents, including existing wage orders considered and analyzed by the Board in aid of its recommendation to the Commissioner of Labor.

Dated: November 14, 2005

Respectfully submitted,

Dr. Richard P. Nathan
Chairman, Public Member

Max K. Rausch, Employer Member

Janella Hinds, Employee Member