

ABIGAIL

Catering
Relationships™

June 3, 2009

New York State Department of Labor
Attn: Jean Lindholm
Harriman State Office campus
Building 12, Room 185B
Albany, New York 12240

Re: Wage Board Hearing Manhattan

Dear Members of the Wage Board:

My name is Jim Kirsch. I am president of Pier Sixty LLC and Abigail Kirsch, Catering Relationships which operate banquet facilities and off-premises catering throughout the New York City metropolitan area.

My mother, Abigail Kirsch founded Abigail Kirsch Culinary Productions over thirty years ago starting with a cooking school in the basement of our home. The cooking school quickly moved to a retail location that in turn became a bakery and restaurant. My father, Robert, joined the business in 1975 after selling his company, and with my mother added off-premises catering services. I joined the business in 1980 and am now President and CEO.

The Abigail Kirsch brand has been a market leader for over 30 years and has received numerous awards and recognition as Zagat's top rated caterer. The Company has earned a reputation as a market leader for full service, high quality catering. Our reputation for excellence is built upon a culture that at its core recognizes that each event has to be perfect as the reputation of the Company is only as good as the quality of each event and each guest's experience.

Our culture is built upon excellent employee training programs, and a caring environment and culture for our employees—combined with fair and competitive wages and benefits. At our core is a commitment to long term relationships with our clients and employees. We have many long term employees, many of whom have worked for the company over 25 years. In fact, quite a number of our long time employees have progressed along the way from line positions to management. My family and I are very proud of what we have created and the product and services that we continue to provide for clients alongside of our employees.

Catering as a Vital Industry in New York

The banquet industry is an integral part of the New York State and local New York City economy. Banquet operations include a wide range of formats including large hotel ballrooms, free standing banquet facilities, country clubs, and off-premises catering. The industry serves

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many markets such as corporate meetings, seminars and celebrations, philanthropic fundraisers, weddings, bar and bat mitzvahs, anniversaries and birthdays.

The banquet and catering industry contribute to the community and economy in the following key ways:

- 1) They provide vital services to corporate, private and philanthropic groups which need facilities for functions;
- 2) Banquet facilities and caterers are major employers offering a significant amount of part time, full time, flexible-work weeks and entry level work opportunities across the widest and most diverse demographic of our workforce;
- 3) They provide the opportunity for a wide variety of individuals to become small business owners and operators; and
- 4) They are a significant source of revenue to New York State through sales tax.

In particular, the New York City banquet industry is a vital cog in the day to day working of the City. Businesses rely upon banquet operations for services that are critical to executing their business plans. The Philanthropic community in New York City ranges from major organizations to small faith based groups. Annual fundraising dinners occur every night of the week and are typically the most important fundraising effort the organization has on an annual basis. The wedding business which caters to thousands of brides and grooms annually creates demand for hotel rooms on weekends when hotel occupancy rates are lower. In addition, the banquet industry creates jobs and revenue in a variety of ancillary services that stimulate New York's economy, including but not limited to: audio/visual rentals and services; photographers; floral design; bands and related musical services; equipment rental; lighting.

Catering and Banquets Versus Restaurants

While catering and banquets and the restaurant industry appear to be very similar, there are significant differences which need to be understood. These differences are essential to understanding the different compensation schemes in place in these industries.

1. Nature of the Operations

A restaurant is open to the public every day for members of the general public to enjoy the food and beverage as well as the restaurant's general ambience and service. When a diner enters a restaurant there is no commitment or contract to spend a specific amount of money on services. Once seated the restaurant server assumes the role of salesperson and sells food and beverage to the guests. It is the job of the server to educate the guests as to the nuances of the menu and beverage items and to help them choose their selections.

The server seeks to establish an active dialogue and positive rapport with the guests enabling the server to maximize the check value which in turn accomplishes critical objectives

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enabling the success of a restaurant. In addition, a very successful server often develops their own clientele who become repeat customers who may return to the restaurant specifically requesting to sit in that server's section.

At the end of the meal a guest has a choice, leave a tip or not. Although tipping is customary, it is not required. A guest certainly has the option to pay the bill, leave no tip, and leave the restaurant. A server knows that they are never guaranteed a tip; while it is more than likely that they will receive one, it is up to them to do their best to maximize the amount. This system benefits both the server and the restaurant in the following ways:

- The higher the check, the more likely the gratuity/tip will be higher for the server. The tip is essentially the server's compensation for selling as much food and beverage as possible at the highest possible dollar value;
- The restaurant benefits from the server "building" the check and establishing a relationship with the customer because this increases the restaurant's profits and enhances the likelihood that the customer will return on future occasions. .

A banquet, on the other hand, is a private function that a guest must be invited to attend. The banquet facility is not open to the public. A guest attending a banquet is the guest of one person or organization, not of the facility. That guest has no say in the menu or beverage selection that they will be experiencing at the function. Most significantly, banquets are operated based solely on their pre-determined contractual relationship with the client, who serves as the host of the event. The contract for an event may be entered into at anywhere from one month to two years in advance. At the point of contracting a price is set, terms are negotiated and the client and establishment agree. There will be no further negotiations on price. Unlike a restaurant, at the event there will not be any servers or bartenders trying to sell the host more expensive wines or steering them towards the lobster rather than chicken, or an extra cheese course. All the details have been set and paid for. At our facilities, this process is handled by a dedicated and seasoned sales force whose job it is to negotiate contracts and proactively seek business for our facilities.

Banquet events are centered around a specific reason for the gathering. Whether it is a wedding, philanthropic fundraiser or corporate meeting, the primary reason that guests are attending is about that specific occasion or celebration. For example, a corporate event is often about educating attendees or networking. A wedding or bar or bat mitzvah is about celebrating a wonderful life event. A philanthropic event is about raising money and building awareness for a cause and often includes auctions on site toward that cause.

The critical element about all of these events is that the guests are not there to choose -- or pay for -- food and beverages for their own enjoyment. The menu, beverages and service is

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there as an amenity provided by the host to facilitate the primary reason for the gathering: the event. As a result, unlike in a restaurant setting, the banquet facility and its staff, service team and even food are not really the focus. While the food has to be top notch, and the service impeccable, neither is the main attraction.

2. *Role and Skills of the Server*

Given the nature of the banquet operations versus the nature of a restaurant's operations, servers play an entirely different role at a banquet than at a restaurant. The objective of a banquet server is to merely blend in with the overall experience. That means servers must be unobtrusive and seamless at the event. Their role is to deliver the menu to the guests that have been pre-selected by the host. They have no responsibility or opportunity to sell any additional services to the guests. The server has no vested interest in what the guest is eating because it is not their job to build a check as they are not working for a tip or gratuity. The client is not tipping for exceptional service. On the contrary, the client-host is paying a set fee which enables the operator to pay a competitive wage for servers.

As a result of the different job responsibilities, banquet servers also require a very different set of skills than restaurant servers. Banquets servers come from a variety of backgrounds representing a wide demographic. While a banquet server generally only needs a working knowledge of English, a restaurant server in New York typically needs a greater fluency in English.

Typically, a banquet server works in the banquet industry (as opposed to the restaurant industry) for one or more of the following reasons: (a) greater flexibility in work schedules, (b) less required training in food and beverage or in-depth customer contact, (c) the constant demand for banquet servers (with seasonal peaks), (d) more flexibility in scheduling, and (e) more stabilized compensation.

3. *Compensation System for the Servers*

With respect to compensation, the compensation scheme is significantly different between banquet servers and restaurant servers. Banquet servers earn a guaranteed rate of pay that often averages more than three times the minimum wage. They know the rate of pay when they are hired and also know that they will not be working to earn tips. Guests at banquets do not leave tips and it is exceedingly rare that the host will leave additional money at the end of an event for the servers.

In a banquet facility the client may be levied a Service Charge which is a set percentage of the food and beverage costs. These "services" are not limited or even necessarily related to "serving the guest." They refer to the costs of producing the entire event. This charge generates additional revenues which are utilized for many purposes as part of the gross receipts of a banquet event. Banquet operations pays sales tax on the value of the service charge as it is part of

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the set price of the event. A portion of the money generated by the service charge is used to compensate the banquet staff. However, other portions of the charge may cover expenses that include but are not limited to, sales and administrative functions, increases in commodity costs since the date the contract was signed (typically done months or years in advance of the function), and other personnel who are part of the banquet team. However, the bottom line is all revenue generated from a banquet contract—including the service charge—goes into the general revenue of the organization.

To summarize, the role of a server is inherently different in banquets than in restaurants. In a restaurant, the server is in effect a sales agent for the restaurant working to build the value of the sale from which he earns a tip that makes up the majority of that server's total compensation. In banquets, the servers are simply a person who delivers a pre-contracted meal to the event's guests with limited contact and interaction. They are not working for a tip as their compensation is pre-determined, and the banquet servers have never expected otherwise.

Compliance

Our goal is to always run our business in full compliance with all state and federal laws. We employ a Human Resources department headed by a Corporate Director who is fully certified and continues education to stay abreast of changes in applicable law. Additionally, we have retained outside counsel over the years that specialize in labor and employment law to provide guidance as needed. We strive to ensure that our employees are fairly and competitively compensated.

Our contracts with clients have always been clear in communicating all aspects of services and pricing. In the event that our clients have questions with regard to any aspect of our services, we answer their questions promptly. Our commitment to fully transparent policies with clients and our employees have resulted in long term relationships with both.

Unfortunately, the recent World Yacht decision is unfair, unnecessary and threatens the entire business and industry. Essentially, we are being told after years of compliance with Department of Labor regulations and opinion letters that what we are doing may not be right and that we could be liable now for six years of penalties, attorneys' fees and interest. It is grossly unjust. In fact, by changing the rules we are being held accountable for the bad acts of operators who did not even pay sales tax on the service charge.

The World Yacht opinion and so-called "reasonable customer" standard threatens the existence of our industry and the jobs of all our employees. Our employees have always known how they are compensated. They know that they are not working for a tip. They understand that being a server for banquets and catering is based upon a culture that is not tip driven for compensation. In fact, as noted above, they like knowing that they will have a consistent earning pattern when working a banquet. We have always had a system in place that was fair to all – the customer knew what it was paying for the event, and the wait staff knew how they were being

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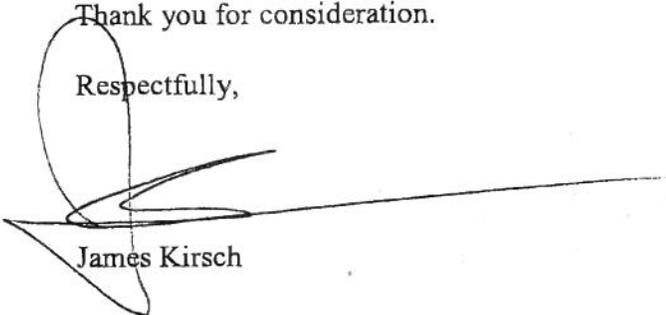
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compensated. Now, under World Yacht, we are being forced to make an assessment as to what a "reasonable customer" would expect with respect to how we apportioned our service charge. This is an impossible task, as every customer is different; some pay considerably less than others for similar events. Every negotiation is different and is based on different circumstances. All clients have an opportunity to ask questions about the terms of the contract before they sign the document. Although contract prices and our profit margins may vary considerably from event to event, our employees still leave with a consistent, fair and reliable wage—they don't have the risk.

One suggestion that I would ask the Board to consider is to create a "Hospitality Bill of Rights" of sorts which would simply explain the difference between a tip/gratuity and a service charge and when it may be appropriate or not to leave such a tip. Banquet facilities would be required to display the Bill in a non-obtrusive way so that contracting customers would see it. Rather than destroy an entire industry by holding it accountable for the bad acts of a few, why don't we work towards more equitable results? The Wage Board can then state its position that any banquet provider who fully complies with this initiative should be immune from any claims or liability with respect to its apportionment of any service charges. This would seem to fairly satisfy the interests of all.

Thank you for consideration.

Respectfully,



James Kirsch

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Pages: 7, Including Cover Sheet

Phone:

Date: June 3, 2009

Re: Wage Board Hearing Manhattan

CC:

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:**

Dear Ms. Lindholm,

Attached please find a letter regarding the Wage Board Hearing in Manhattan.

I appreciate your time and consideration.

Regards,

James Kirsch