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Hearing before the New York City Council
Subcommittee on Zoning and Franchises
of the Committee on Land Use

on

The Food Retail Expansion to Support Health (FRESH) Program

City Hall, New York City

October 26, 2009

I would like to thank the Subcommittee on Zoning and Franchises of the City Council, and its Chair, Councilmember Tony Avella, for the opportunity to testify here today.

My name is Paul Sonn. I am legal co-director of the National Employment Law Project (NELP). NELP is a national research and advocacy organization that partners with federal, state and local leaders on employment-related policy.

Millions of New Yorkers live in "food deserts" – neighborhoods that lack supermarkets providing quality, fresh food at reasonable prices. A growing body of research confirms the unsurprising fact that lack of access to quality food retailers in many urban neighborhoods has serious adverse health consequences for low-income families.

The Food Retail Expansion to Support Health (FRESH) Program is an important initiative to begin to address the problem through a combination of zoning changes, subsidies to incentivize new stores, and initiatives to use city-owned land for this purpose.[1]

But these same neighborhoods suffer from another equally serious crisis: lack of good jobs. According to the Community Service Society, in low-income New York families, fully two-thirds of workers make less than $10 an hour. Retail jobs are the second fastest growing occupation nationally and in New York.[2] But they are also one of the lowest paying, generally offering poverty-wage jobs that provide scant benefits.

However, the industry-wide statistics hide important differences. Within food retailing there are defined segments that provide better or worse jobs. One major segment consists of green grocers and the emerging "gourmet" grocery chains that one sees increasingly across the city. These food retailers almost uniformly pay very low wages and either provide no benefits, or benefits that are so minimally subsidized by the employer that few employees can afford to access them. A key practice, which is a hallmark of these employers, is not paying their employees an hourly wage at all, but instead paying many employees a flat weekly salary – typically $300 or $400 – which doesn't vary with number of hours worked. Evidence indicates that employers that pay flat weekly salaries are much more likely to violate minimum wage, overtime and other basic workplace laws than other employers.

The New York State Department of Labor (DOL) and legal services advocates have documented in high profile lawsuits how employers in this segment routinely violate even minimal workplace protections. Representative was DOL's enforcement action in February 2009 against the Amish Market gourmet grocery chain, which operate across the city, under a variety of names including Zeytuna. DOL's settlement which recovered more than $1.5 million in unpaid wages for 550 workers, found that many workers were paid only $300 a week for 60 to 70 hours of work, which translates to four to five dollars an hour – far less than the minimum wage.[3]

My organization, NELP, has just published a major study of employment practices among low-wage employers in New York and other cities. The report, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, found that such violations are not an exception. Rather, in our survey of 4,400 employees we found that they are virtually the norm in food retailing and other low-wage industries, and that violations are much higher among smaller employers and those that pay flat weekly salaries.[4] This is precisely the segment of the industry represented by green grocers, gourmet grocers, and the smaller, non-union supermarket chains.

In contrast to this segment of food retailers stand full-service supermarkets. They pay hourly wages, not flat weekly salaries, and they are far less likely to violate minimum wage and overtime laws, because they are large companies with standardized payroll systems and human resources departments. But even among full-service supermarkets there are important differences, marked chiefly by whether the supermarket chain is unionized. Unionized chains provide pay levels that are consistently higher than non-union supermarkets; provide health benefits that are more substantially subsidized by the employer, which is necessary in order for them to be even remotely affordable for low-wage employees; and provide other basic benefits such as retirement programs and paid days off. New York's non-unionized supermarkets, by contrast, provide lower wages, more limited benefits, and are far more likely to violate basic workplace laws.[5]

Thus the types of food retailers that are likely to participate in the FRESH program represent distinct segments of the industry – with one, high road, unionized supermarkets, providing clearly better jobs for low-income New Yorkers than the others.

The FRESH program as now proposed ignores the job impacts that are associated with bringing more fresh food retailers into New York's food deserts. In its current form, it is likely to incentivize the creation of more bad jobs in the city's neediest neighborhoods, and to miss the chance to address jointly the shortages of fresh food and quality jobs afflicting low-income communities. The program should therefore be modified to take into consideration the wages, benefits and working conditions that are offered by food retailers seeking to participate in the program.

A coalition led by United Food and Commercial Workers (UFCW) Local 1500 has developed a realistic proposal for doing this, which is currently under consideration by the Bloomberg Administration. Under the proposal, which is similar to one being considered in Los Angeles, food retailers applying to participate in the program would be evaluated by the city using a scorecard. The scorecard would assign points based not just on retailers' capacity to provide fresh food, but also based in part on the wages, benefits and working conditions that they offer – together with other factors. Applicants would be required to meet a minimum level on the scorecard in order to be eligible for benefits under the Fresh program.

The decent job standards proposed under the scorecard would include:

- Non-poverty wages
- Affordable health insurance
- Other basic benefits such as retirement program contributions and paid days off
- Not being repeat violators of wage and hour laws, and workers compensation requirements

These are not by any means unrealistic standards. New York's high road, unionized supermarkets, which comprise a significant segment of the city's food retailing, meet them. The FRESH Program should be focused on these sorts of retailers, who can deliver the quality food and decent jobs that New York's low-income communities need.

It makes little sense for the city council to approve the zoning changes that have been proposed as part of the FRESH program until the city has resolved these important questions about how the program's incentives will be directed. Instead, the Council should decline to act on the zoning changes – or disapprove them, if necessary – until the Bloomberg Administration has agreed to revise the rules for the accompanying incentive program to ensure that food retailers participating in the program will provide decent jobs. Only with these changes can the program deliver the food retail options that will help New York's low-income communities the most.

Thank you for the opportunity to testify today. I would be delighted to try to answer any questions that members of the subcommittee may have.

[1] Http://www.nyc.gov/html/dcp/html/fresh/index.shtml.
[2] Source: U.S. Bureau of Labor Statistics, http://www.bls.gov/news.release/ecopro.t05.htm.
[3] Abha Bhattarai, Grocery Chain to Pay Back Wages to 550 Workers, *New York Times* (Feb. 26, 2009).
[4] Annette Bernhardt, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (Sept. 2009), http://www.nelp.org/BrokenLaws.
[5] For background on the segments of New York City's grocery and supermarket industry, and the differences between unionized and non-unionized stores, see Brennan Center for Justice, Unregulated Work in the Grocery and Supermarket Industry in New York City (2007), http://www.nelp.org/page/-/EJP/Unregulated_Work_Grocery.pdf. (The Brennan Center's Economic Justice Project, which published this report, merged with NELP in 2008.) For more general background on wage and benefits differences between unionized and non-unionized supermarkets, see Robert Johansson and Jay Coggins, Union density effects in the supermarket industry, *Journal of Labor Research* (Dec. 2002).