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www.TCWorkersCenter.org

To: NYS Wage Board

From: Pete Meyers, Executive Director, Tompkins County Workers' Center, Ithaca, NY

Re: Testimony Regarding Issue of 'Tipped Workers' in Service Industries

Date: October 3, 2014

I speak on behalf of the Tompkins County Workers' Center located in Ithaca, NY. I am the Workers' Center's Executive Director, and would like to speak to the Wage Board on the issue of 'tipped workers' in the service industry. I appreciate the commitment that you on the Wage Board are bringing to this issue that has long deserved to have a closer look at by the State of New York.

To tell you a bit about the Workers' Center, we had our start in 2003 as the Tompkins County Living Wage Coalition. To this day, the imperative that no worker in our society should be paid less than a Living Wage--the amount of money that a person needs to be truly self-sufficient--is central to the mission and vision of the Tompkins County Workers' Center. In fact, in 1933, our great President, Franklin Delano Roosevelt, once said "“No business which depends for existence on paying less than living wages to its workers has any right to continue in this country.”"

Six months into our founding, we decided to start a Workers Rights Hotline which has since been veritably institutionalized in the Finger Lakes and Central New York. Our first big 'case' was with four Central and South American workers that worked in a pizzeria in the Collegetown area of Ithaca who were paid \$4/hour, working 70 hours a week (but not being paid overtime) and sleeping in the basement of the pizzeria. Working closely with Eliot Spitzer's Attorney General's Office, we were able to get a settlement that was amicable for all the workers.

AND, this case with Collegetown Pizzeria set the stage, as it turns out, for the fact that our Hotline (which sees close to 400 people and cases a year) is disproportionately dealing with restaurant workers. It is because of this fact that I am here today to testify to you on the Wage Board about the lack of regulation that is found in the restaurant industry. One has to wonder

how it came to be that this particular industry became so unregulated!! I've always wondered why this industry gets the special dispensation of being able to pay workers below the minimum wage that every other employer has to pay.

While I am here to primarily speak about how we at the Workers' Center, and many people in our larger community believe that the sub-minimum wage that is paid to 'tipped workers' is unfair--both to the workers who receive this sub-minimum wage--but also grossly unfair to all the other businesses that can't pay a sub-minimum wage, I do want to talk about a few other things first with regards to restaurant workers. These issues primarily have to do with that of enforcement by our State regulatory agencies.

First off, the National Employment Law Project found that over 30% of tipped workers are not even being paid the 'tipped worker' minimum wage!! We have found this to be true in the cases we see at the Tompkins County Workers' Center. We have also found that there are times when restauranters are not making up the difference between the sub-minimum wage and the regular minimum wage, as they should be. We have also had numerous situations where owners are actually stealing the tips of the workers who should be rightfully receiving them. There is also a great deal of confusion amongst workers about who should be receiving tips and who is allowed to determine how these tips are shared.

In 2009, through our close work with the NYS Department of Labor, we were successfully able to persuade the-then NYSDOL Commissioner, Patricia Smith, to order a Wage and Hour 'sweep' of close to 25 restaurants in the Ithaca area. Smith, whom is now the Solicitor General in the Obama Administration's Labor Department, felt it very important to look at industries, such as the restaurant industry, that are particularly rife with wage and hour violations. The DOL found a range of violations totaling close to \$90,000 in 14 of the restaurants that the DOL investigated in Ithaca.

As many of you know, arguably, New York now has the strongest Wage Theft Prevention Act in the country. However, this doesn't necessarily mean very much when we have a State Dept of Labor that is woefully underfunded to be able to do both adequate and timely investigations! The Tompkins County Workers' Center has been successful in our work eventually leading to close to \$1.3 million in successful wage theft judgments. HOWEVER, as many of you will already know, actually collecting this money is another matter altogether!

I ask the Wage Board to consider recommending to Governor Cuomo that the 'tipped wages' system be ended. I am presenting to the Wage Board a petition that we started this past week and has been signed, to this point, by 105 people. The people who've signed this petition will be on the final pages of my printed testimony that I am submitting today. This petition simply says:

- *Governor Cuomo has called for a Wage Board to study the state's sub-minimum wage for tipped workers – and with the stroke of a pen, the Cuomo administration can end this unfair and outdated policy by issuing a wage order requiring employers to directly pay tipped workers the full minimum wage, with tips in addition. I ask the New York State Wage Board and Governor Cuomo to do the right thing and raise up all workers in New York State to a minimum wage.*

I am sure that you will be hearing from spokespeople from restaurant industries, writ large, about the damage that they believe could result from paying all workers the same minimum wage as other workers. But I would like you to think about several things when considering your decision:

1. Perhaps the restaurant industry has been getting an unfair subsidy all along with this unfair sub-minimum wage, no?
2. What would happen if we turned other professions into 'tipped industries'? What if Home Health Aides were paid \$5/hour, plus tips received from their clientele? And think about this for every other industry out there!
3. When I hear businesses and corporate America decry how higher wages will hurt their business, and cause them to lay off workers, I believe that we really need to think about this. Every single worker in this country is a small business themselves that are hiring out their services to another business. There is no reason that a service and retail business is more important than the very workers they hire. We workers are not able to organize well-funded business and restaurant associations to lobby for our own interests. At best, we are able to have unions and Workers' Centers, but the amount of money available to organize with and on behalf of poor and working people utterly pales in comparison to the money available for wealthy business owners to organize on behalf of their own interests. Of course, both businesses and workers must succeed in order for us to all win. However, in our society, too often it is the workers that are clearly on the short end of the stick!!

I would like to leave you with a quote from an owner of a very respected local business in Tompkins County, Autumn Leaves Used Books, in Ithaca. Joe Wetmore, owner, in regards to the 'tipped wage' stated: *“When employers are claiming tips as part of a person's salary, and pay them a sub-minimum wage as a result, what they are actually doing is taking the extra money from tips away from the worker. Tips are a gift from a customer to a wait-person, they should not be an excuse to pay the wait-person less.”*

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