



August 14, 2015

Mario J. Musolino, Acting Commissioner
NYS Department of Labor
Building 12, Room 586
State Campus
Albany, NY 12240

RE: Scope of Fast Food Wage Board Resolutions

Submitted via email to wageboard@labor.ny.gov

Dear Commissioner Musolino:

The Food Marketing Institute (FMI) appreciates the opportunity to respond to the Fast Food Wage Board's report to the Department of Labor, which examined wages in the fast food industry and recommended that the hourly wage for employees in "fast food establishments" be raised to \$15.

The Food Marketing Institute (FMI) proudly advocates on behalf of the food retail industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores.

FMI agrees with and endorses the comments of the Food Industry Alliance of New York State (FIANY). FMI shares FIANY's concern that the definition of "Fast Food Establishment" recommended in the Wage Board's report could be broadly interpreted to include full service supermarkets. Like FIANY, we hope that common sense will prevail and that the scope of the recommendations will be limited to establishments whose primary business is serving individual portion size meals, drinks or desserts to the public.

Supermarkets are not restaurants

When the Commissioner convened the Fast Food Wage Board in May 2015, full service supermarkets clearly were not intended to be part of the inquiry. The Commissioner directed the

Wage Board to focus on “fast food chains,” which referred to “limited service restaurants.”¹ In its report, the Wage Board confirms that its inquiry covered “quick-service” and “fast casual” restaurants, as covered by the North American Industry Classification System (NAICS) codes for *Limited-Service Eating Places* (2007 NAICS code 7222) and *Limited Service Restaurants* (2012 NAICS code 7222513).² NAICS defines these types of facilities as “establishments primarily engaged in providing food services” and lists as “illustrative examples” delicatessens, pizza delivery shops, family restaurants, takeout eating places, fast-food restaurants, takeout sandwich shops, and limited-service pizza parlors.³

Supermarkets and other grocery stores are covered by a separate industry code, 445110, which comprises “establishments generally known as supermarkets and grocery stores primarily engaged in retailing a general line of food such as canned and frozen foods; fresh fruits and vegetables; and fresh and prepared meats, fish, and poultry.”⁴

The reason for this distinction is plain: supermarkets are not restaurants. As FIANY notes in their comments, full-service supermarkets contain a variety of departments including: produce, bakery, fresh meat and seafood, dairy, deli, non-perishable food, pet food, alcoholic beverages, floral, over-the-counter drugs, soaps and detergents, household and cleaning items as well as some prepared foods. While most supermarkets offer some ready-to-eat prepared foods, it is not the primary focus of the business and represents a small percentage of overall sales. Most prepared foods are offered as a convenience to customers who are in the store predominately to do their grocery shopping.

The distinction between supermarkets and fast food outlets is well understood in both federal and state law, and implemented through a variety of federal and state licensing regulations. In their comments, FIANY outlines several of these licensing schemes, from SNAP and WIC licenses at the federal level – which USDA issues to supermarkets – to the New York State Liquor Authority “grocery store” license to sell beer, hard cider and wine coolers at the state level. FMI would emphasize that when it comes to federal regulations, this distinction is even more defined. Supermarkets must comply with a profoundly larger array of federal regulations than restaurants: [Country of Origin Labeling](#), [Use-By Dating](#), [Nutrition Labeling](#), [Allergen Labeling](#), [Safe Handling Instructions](#), [Recall Notification](#) and [Bioterrorism Act Recordkeeping](#), to name a few. Clearly, the statutory and regulatory frameworks at both the state and federal levels envision supermarkets and fast food stores as operating in distinct industries.

Supermarkets offer strong wages and benefits to employees

Beyond the legal distinctions noted above, the Commissioner’s direction to focus on fast food outlets, and not supermarkets, makes sense because supermarkets already offer strong wage benefits to employees. We again point to FIANY’s comments that chain supermarkets in New

¹ Report of the Fast Food Wage board to the NYS Commissioner of Labor (p. 1).

² *Id.* at 7

³ North American Industry Classification System. 2012 NAICS Definition: 722513 Limited-Service Restaurants. Retrieved August 12, 2015 from <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>

⁴ North American Industry Classification System. 2012 NAICS Definition. 445110 Supermarkets and Other Grocery (except Convenience) Stores. Retrieved August 12, 2015 from <http://www.census.gov/cgi-bin/ssd/naics/naicsrch?code=445110&search=2012%20NAICS%20Search>

York offer competitive wages with benefits that include health insurance, paid vacation and holidays.

In its report, the Wage Board found that the median wage of New York State fast food workers, including managers, is \$9.03 per hour⁵. The situation for supermarket employees is much different. According to the Bureau of Labor Statistics, in June 2015, the average hourly earnings of employees, including managers, in “food and beverage stores” nationwide (NAICS code 445), which includes grocery stores, specialty food stores and beer, wine and liquor stores, was \$13.65 per hour.⁶ The contrast between the industries is readily apparent.

A \$15.00 minimum wage will jeopardize entry level jobs

Finally, FMI shares FIANY’s concern that a \$15 minimum wage imposed on the food retailing industry writ large will have a ripple effect that jeopardizes jobs, especially at the part-time and entry level. Supermarkets already operate at an average 1% profit margin,⁷ and have to compete with other retailers who do not offer the same strong employee benefits.

In light of the above, we request that the Department stay within the scope of the Commissioner’s original May 7, 2015 determination – and the Wage Board’s own findings – that “fast food chains” refers to limited service restaurants” as covered by the NAICS industry codes for *Limited-Service Eating Places* and *Limited-Service Restaurants*. Based on that definition, any recommendations should apply only to those establishments “primarily engaged” in selling ready-to-eat prepared foods to patrons who select from a limited menu and pay before eating.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Jennifer Hatcher". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Hatcher".

Jennifer Hatcher
Senior Vice President, Government & Public Affairs

⁵ Report of the Fast Food Wage board to the NYS Commissioner of Labor (p. 10).

⁶ Bureau of Labor Statistics. Industries at a Glance. Food and Beverage Stores: NAICS 445. Retrieved August 12, 2015 from <http://www.bls.gov/iag/tgs/iag445.htm>.

⁷ Food Marketing Institute. *Supermarket Facts*. Retrieved August 12, 2015 from <http://www.fmi.org/research-resources/supermarket-facts>.