

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CIVIL SERVICE, CIVIL RIGHTS, AND WOMEN'S
ISSUES

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February 17, 2011

Start: 1:19 pm

Recess: 4:56 pm

HELD AT: Emigrant Savings Bank
49-51 Chambers Street

B E F O R E:

JAMES SANDERS, JR.

JULISSA FERRERAS

DEBORAH ROSE

Chairperson

COUNCIL MEMBERS:

Michael C. Nelson

Ruben Wills

Eric Ulrich

Mathieu Eugene

Annabel Palma

Charles Barron

Melissa Mark-Viverito

James G. Van Bramer

Jumaane D. Williams

Margaret Chin

A P P E A R A N C E S (CONTINUED)

Sandra Carpenter

Adam Klein

Annette Bernhardt
Policy Co-Director
National Employment Law Project

Jeanne Mirer
President
International Commission for Labor Rights

Francine Moccio

Beverly Cooper Neufeld
New York Women's Agenda and
Equal Pay Coalition of New York City

Dina Bakst
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A Better Balance

Claude LaBlanc
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Kenneth James

Kimberly Freeman Brown
Executive Director
American Rights at Work

Patrick Purcell
Assistant to the President
UFCW Local 1500

Matt Ryan
Executive Director
New York Jobs of Justice

A P P E A R A N C E S (CONTINUED)

Atti Barken
Make the Road New York

Sarah Johnson
Hector Figueroa
SEIU 32 BJ

Carmen Rivera

Elizabeth Urmi
Urban Justice Center, Human Rights Project

Freddy Kaplan
Vice President
Stonewall Democratic Love of New York City

Marvin Wasserman
Executive Director
Brooklyn Center for Independence of the Disabled

Ernestine Bassett

Nicki Kateman
John Durso
Local 338 RWDSU UFCW

Alvin Ramnarian
Field Director
Local 1102, RWDSU UFCW

Lauren Clark
Women's City Club of New York

Skip Roseboro

[Off mic]

CHAIRPERSON SANDERS: This meeting will now come to order. Good afternoon, and thank you for coming. As people are still coming in, we need to start, of course, to stay on time, I apologize for those who are still coming in.

My name is Council Member James Sanders, Jr., and I am the Chair of the Committee on Civil Service and Labor. Today's hearing is being held jointly with the Committee on Women's Issues, chaired by Council Member Julissa Ferreras, and the Committee on Civil Rights, chaired by Council Member Deborah Rose. Thank you and your committees' participation.

Today's hearing is titled, When Wal-Mart Comes to Town: An Examination of the Company's Labor Practices. This is the second hearing by the City Council--that the City Council has had regarding Wal-Mart's potential expansion into New York City. The first was entitled, When Wal-Mart Comes to Town: The Effects on Small Business and Communities, was on Thursday, February the 3rd at 2011, and was held jointly between the Committees on Small Business,

Community Development, and Economic Development.

As chair of the Civil Service and Labor Committee, I am interested in hearing today about Wal-Mart's record regarding how it treats its workers and its relationships with organized labor. There have been allegations against Wal-Mart over the years over the issues of wage theft, denial of overtime, and lock-ins, and there are no unionized Wal-Mart stores in the United States.

But I'm also interested in hearing about alleged discriminations against women and others, including people with disabilities, hence, the participation today by the Civil Rights and the Women's Issues Committee.

I recognize that there are a lot of people with very strong opinions about Wal-Mart. I am not as interested in opinions, however, as I am interested in the facts. I, therefore, ask that everyone who testifies provides the committees with facts and refrains from too many statements of personal belief.

In addition, according to our rules, I request that the members of the public present refrain themselves from applause and all

1 outbursts of any type. This is a matter of
2 respect to the members of these committees, the
3 witnesses, and everyone else present.

4 We are going to try to stay on
5 schedule. We're going to call up panels of
6 witnesses who plan to testify on similar topics.
7 We are asking every witness to testify for about
8 three minutes--I'll say that one again--we're
9 asking every witness to testify for no more than
10 three minutes, and then there will be a question
11 and answer period after each panel finishes
12 testifying. There will be a timer, so please keep
13 this in mind.

14 I will like to acknowledge the
15 following Council Members present. To my right,
16 Michael Nelson of Brooklyn, of course, our
17 committee chairs, and the newest and latest
18 sensation to the City Council, from Queens, Ruben
19 Wills. I think that I've named everyone for the
20 moment and--

21 [Off mic]

22 FEMALE VOICE: Eric.

23 CHAIRPERSON SANDERS: Eric Ulrich
24 from Queens, of course, was here and will be here
25

in a moment.

And I'd like to thank my committee staff, Matthew Carlin, our counsel, and Faith Corbett, our policy analyst. And of course, Council Member Mathieu Eugene, Eugene Mathieu just showed up.

I will now defer to Council Member Ferreras, Chair of the Women's Issues Committee. Council Member.

CHAIRPERSON FERRERAS: Thank you, Chair. Good afternoon, I am Council Member Julissa Ferreras, Chair of the Women's Issues Committee. I'd like to thank everyone for coming to today's hearing, and I'd like to thank co-chairs, Council Member Sanders and Council Member Rose. I'd like to thank the Civil Service and Labor and Civil Rights Committees and their staff for their work on this hearing.

Unfortunately, gender discrimination in the workplace is nothing new. Generations of women have had to fight long and hard for access to the workplace and then had to fight again to receive fair treatment once there.

Over the years, legislation has

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2 been written and passed, and yet violations
3 persist. Although much has been done to improve
4 policies to open doors to women and to give women
5 the opportunity to address as well as readdress
6 workplace inequalities, there are still employers
7 willing to break the laws of this country by
8 treating women unequally.

9 Sometimes, these violations are
10 blatant harassment and wage inequalities for the
11 same work. Sometimes, these violations are more
12 subtle, such as steering women towards lower wage
13 or part-time positions with empty promises of
14 upward mobility.

15 As a city, New York must demand
16 that all who do business here follow the laws and
17 maintain certain criteria. We must hold those who
18 would do business here accountable for their
19 actions and standards. We must demand that
20 businesses treat women and all workers fairly. We
21 must mandate that they treat their workers with
22 respect, dignity, and pay them a livable wage. We
23 must make certain that businesses know if you
24 don't adhere to these standards of this city, you
25 will not reap its benefits.

Pay inequity and lack of economic opportunities does not just affect women, it affects entire families and it affects entire communities. It is not just a woman's issue, it is a societal issue.

Thank you, co-chairs.

CHAIRPERSON SANDERS: Well put. Madam Rose, the Chair of Civil Rights for the City Council.

CHAIRPERSON ROSE: Thank you, Chair Sanders. Good afternoon, my name is Debbie Rose and I am the Chair of the Committee on Civil Rights. I am pleased to be joining my colleagues--Council Member James Sanders, the Chair of the Committee on Civil Service and Labor, and Council Member Julissa Ferreras, Chair of the Committee on Women's Issues. I'd also like to thank Julene Beckford, my counsel, and Damien Butvick, policy analyst, for their help in preparation for this committee meeting today.

No one would argue with the desire to seek out cheaper prices on clothes, food, and other products, particularly in light of the current economic climate. Unfortunately, we have

seen time and again that often a store's low prices come at a high cost to its employees. As many in this room know, Wal-Mart is currently involved in the largest employment discrimination class action lawsuit involving gender discrimination in the United States history, resulting from, among other things, underpaying women, offering fewer promotions to women, and in general fostering an environment inhospitable to female employees.

Unfortunately, Wal-Mart's alleged discriminatory practices do not end there. Though it currently claims to accommodate customers with disabilities and collaborate with disability advocates, the retailer has previously been found to be in non-compliance with the Americans with Disabilities Act.

Most recently, in 2009, a Wal-Mart in Colorado was accused of racial discrimination when a new store manager allegedly stated that he didn't like some of the faces he was seeing and that the store should be hiring more local residents. He was addressing a group of West Africans. This group, who happen to be Muslim,

also claim to suffer religious discrimination. These employees were disciplined under the new management for failing to meet production requirements and were ultimately fired.

Though I have only cited a few examples, Wal-Mart's pattern of discrimination is of concern to this council. As one of the most progressive cities in the world with one of the most expansive human rights laws, it is our duty to protect everyone who comes to New York, be they a resident, a visitor, or a worker, from discrimination.

With that in mind, I look forward to hearing today's testimony and to learning more about Wal-Mart's employment practices. Thank you.

CHAIRPERSON SANDERS: Thank you, Madam Chair. Mr. Carlin, would you mind calling your first panel?

[Off mic]

CHAIRPERSON SANDERS: Oh, absolutely. Even as you get ready, I'm going to say that we've been joined by Council Members--the best of the Bronx, Council Member Palma, the best of Brooklyn, Council Member Barron, and Council

Member Mark-Viverito is making her way in past the security guard, that take at least an hour.

If we call the first panel.

MATTHEW CARLIN: Sandra Carpenter, Adam Klein, Annette Bernhardt, and Jeanne Mirer, please.

[Off mic]

CHAIRPERSON SANDERS: In the order that you were called, if you would be kind enough to present in that order. And as soon as you're ready, by all means.

[Pause]

CHAIRPERSON SANDERS: In the order that you were called, if you would be kind enough to begin. Good to see you all.

SANDRA CARPENTER: Hello, my name is Sandra Carpenter, I'm a former Wal-Mart Associate.

I worked at Wal-Mart in Laurel, Maryland, from February 2008 until July 2010. For most of my time with Wal-Mart I worked as a grocery manager in the dry grocery department. I received Associate of the Month and I was also on the Sales Floor Honor Roll in two different

occasions because of my outstanding performance in my department. I was a leader in my store that people would come to for help if they felt they had problems at work. Managers singled me out--

CHAIRPERSON SANDERS: [Interposing]
Pardon me, pull the mic a little closer to you, forgive me.

SANDRA CARPENTER: Okay. Managers singled me out as they viewed me as a troublemaker when I tried to help people resolve their problems at work by mediating. I personally felt a big shift in the way management treated me after I stood up for my own rights. It really started one day when I was called into the office. I brought a co-worker with me so that I would have a witness. Since there's always more than one person from management in that kind of meeting, I thought it was fair that I should have someone else on my side of the table. This is because this has caused a lot of confusion among the managers and they really didn't know what to do with me.

Ever since that meeting, I noticed a real change in my workload. The other

department managers had staff to help them do the work that they needed to be done, but I was usually left to work on my own.

In addition to the regular tasks in my department, I was often assigned to totally unrelated things that were not part of my job description. I felt like management was targeting me and giving me excessive amounts of work because I had stood up to them and tried to protect my own rights. For example, I had 200 price changes per shift before and suddenly I was getting more like 3,000 price changes. I was forced to work off the clock more than two hours a day several times a week for more than a year. They forced us to work off the clock on breaks and before and after our shifts. I made from 9.40 to 10.40 an hour at the time and the most conservative estimate, I lost more than \$4,000 in overtime money.

Some associates don't feel there's anything they can do in unfair situations like this at Wal-Mart, but after I stood up for myself, I began helping my co-workers realize how management was manipulating us. For example, I showed them the management policy manual entitled,

1 The Art of Persuasion the language of influence
2 and manipulation that the company gives to its
3 managers, which includes advice about how to deal
4 with or manipulate certain kinds of employees.
5 I've realized that many of my co-workers worked in
6 fear, not just the fear of losing their jobs, but
7 the fear of humiliation that the managers were
8 always dishing out. They accused people of things
9 they would never do and made people feel like they
10 were under surveillance 24/7. This is a stressful
11 working environment and one that needs to change.

13 Whenever management at my location
14 thought we might be talking about organizing, they
15 will send a man named Bob from Bentonville to show
16 us a video about how unions are bad. He made
17 threats like, if we find out that you're talking
18 about a union or meeting with people from the
19 union, there will be repercussions. I was not
20 intimidated by this kind of behavior, but the
21 store has many immigrant employees who aren't
22 familiar with the laws and rights that we're
23 supposed to have in this country.

24 Wal-Mart counts on fear to keep its
25 employees in place. There are a lot of ways that

Wal-Mart breaks the law. I'm a part of the class action lawsuit, Dukes v. Wal-Mart Stores, Inc. This is the largest class action suit in our nation's history with 1.6 million women who have been the victims of wage discrimination. [Off mic] of gender and race discrimination have become commonplace.

I hope my personal experience can give you a better perspective about what it's really like to work at Wal-Mart. Thank you for the opportunity to speak today.

CHAIRPERSON SANDERS: Thank you.
Next witness.

ADAM KLEIN: Good afternoon and thank you for inviting me to speak. My name is Adam Klein, I'm a private civil rights attorney in New York City.

I'm here to talk--or testify, rather, to the committee about the various wage and hour class action lawsuits that were filed and some of which have been settled throughout the country and the issues that were implicated in those lawsuits.

Very briefly, over the span of the

1 last, say, 10 years or so, there have been 60
2 class action wage and hour lawsuits filed around
3 the country, in various states. The issues in
4 those cases primarily focused on forcing employees
5 to work and not be properly paid for those hours
6 worked and also working through rest and break
7 periods. In many states, there is very little
8 government enforcement of those statutes, so just
9 as a parenthetical, one of the observations about
10 these lawsuits is that these were cases primarily
11 brought by private lawyers because there is simply
12 no real government enforcement of these statutes.
13

14 I think that's a very critical
15 point and I would suggest to you that that's a
16 pressing issue, not with just with respect to Wal-
17 Mart, but generally speaking, the issues of
18 employees not being able to obtain full wages is a
19 pressing concern.

20 But the lawsuits themselves focus
21 generally on systematic efforts to force employees
22 to provide labor without proper payment. There
23 were two jury verdicts, one in California, one in
24 Pennsylvania. The Pennsylvania verdict was
25 approximately \$140 million, which included a

finding of punitive damages against the company. There was a second jury verdict in California that was for, I believe, \$100 million. In total, in combination, Wal-Mart eventually settled all of the wage hour cases around the country for roughly \$640 million. Actually, that's not the complete amount, that was just the 63 wage hour lawsuits that were settled as part of one settlement process, there were other settlements as well. They all relate to the same underlying issues, though, that employees worked and didn't get paid for all the time they worked and were forced to work through rest and meal breaks. That is a common theme throughout these litigations and ultimately led to the settlements that Wal-Mart paid.

I will say, too, that, again, the question of enforcement I think is a critical one and I would suggest that that's an issue that the committee consider. Thank you.

CHAIRPERSON SANDERS: Thank you. Next witness. And if you can identify yourself as you speak.

ANNETTE BERNHARDT: Hi, good

1
2 afternoon, Chairperson Sanders and members of the
3 committee, my name is Annette Bernhardt, I am
4 Policy Co-Director of the National Employment Law
5 Project, and most recently, I was lead author of
6 the report, Working Without Laws, which you may be
7 familiar with, which documented the growing
8 epidemic of wage theft in New York City.

9 The testimony that you have before
10 you written goes into a lot more detail, but I
11 just wanted to raise up three main findings from
12 my research into Wal-Mart and wage theft. From a
13 researcher standpoint, rather than a lawyer
14 standpoint, the thing that most strikes me is that
15 Wal-Mart has a long and remarkably consistent
16 record of wage theft over the years across states
17 in the country.

18 In 2005, a research team that I
19 directed did an exhaustive inventory of employment
20 and labor law violations in cases against the
21 company and even then we were seeing more than 60
22 wage and hour lawsuits, there were more than 60
23 complaints by the NLRB against Wal-Mart for
24 retaliating against workers, there were numerous
25 instances of child labor violations and workers

1 comp violations. And during the years that
2 followed that 2005 study that we did, the number
3 of lawsuits just continued to grow. And, as my
4 colleague here indicated, the settlement that he
5 talked about in December of 2008 was
6 unprecedented, Wal-Mart settled 63 cases in 43
7 states, I have not seen that kind of mass
8 settlement all at one time before.

10 Wal-Mart was clearly trying to
11 clear the deck in that massive settlement, but I
12 would say that it's telling that just a year
13 later, Wal-Mart reported to its shareholders that
14 it, again, had 12 class action lawsuits that it
15 was dealing with. So clearly there is a
16 continuity of behavior here.

17 The second point I want to
18 highlight is just the recurring nature of Wal-
19 Mart's behavior. It is simply unbelievable when
20 you read through these cases, you are hearing the
21 same thing over and over again in terms of the
22 forms of wage theft that Wal-Mart was engaging in:
23 Employees working off the clock, either before or
24 after their shift without pay, working through
25 meal and rest breaks, employees locked inside

stores, forced to restock shelves without pay before they could leave, time shaving, which is a pernicious practice I can tell you more about if there's time, erroneously classifying their frontline managers as exempt from minimum wage and overtime protection, and hiring unaccountable subcontractors to staff their warehouses. For students of Wal-Mart, these practices are entirely consistent with the business model that Wal-Mart actually developed in the retail industry, which is maximizing profits by squeezing wages--in this case, illegally.

My third point is to highlight just again the sheer scale of what we're talking about. The number of unpaid rest breaks in some of the cases were literally number 10 million, others found more than 60,000 instances of employees not taking their breaks. Clearly, Wal-Mart stands in a class by itself when we consider the scale of its impact.

So just a final closing thought on wage theft in New York City as legislators like yourselves try to take on the fight against wage theft, it is going to take all of your powers--

1 legislative, administrative, regulatory--and in my
2 mind, a key goal for New York City needs to be to
3 build up a base of responsible and accountable
4 employers who do not break the law, who pay decent
5 wages, who support our communities. And in my
6 estimation as a researcher, Wal-Mart does not fit
7 the bill, it has an unprecedented record of wage
8 theft that is a fundamental outgrowth of its
9 relentless focus on cost cutting. Given its sheer
10 scale and its sheer market power, having Wal-Mart
11 in New York City, in my mind, would undermine
12 workers' rights and set back our collective
13 efforts to fight wage theft.

14 Thank you so much, and I'm happy to
15 answer questions.

16 CHAIRPERSON SANDERS: Thank you.
17 Last, but never least.

18 JEANNE MIRER: Councilman Sanders,
19 Councilwoman Rose and Ferreras, thank you, and
20 members of the Council. My name is Jeanne Mirer,
21 I am a partner in the law firm of Eisner & Mirer
22 and I'm also speaking here today in my capacity as
23 President of the board in the International
24 Commission for Labor Rights.
25

I have testified on many issues in front of Congress and in venues around the world about various issues involving labor rights and I know you've heard things about the discrimination against women and minorities and the issues of ADA violations. I'm going to speak about what you might not be aware of as the multinational human rights dispute that is currently going on that involves the city, which is clearly an international capital of the world.

For seven years now and continuing through the present time, the governments of at least three nations--the Czech Republic, the Republic of Poland, and Mexico--have been actively seeking vindication for the cruel abuse and exploitation of their citizens by Wal-Mart, Wal-Mart's empire in the United States.

Wal-Mart orchestrated at the top management levels at its headquarters in Bentonville a scheme to exploit citizens from emerging economies around the world, it's diverse as and as distant as Mexico, Uzbekistan, Poland, Mongolia, Czech Republic, and Slovakia. Wal-Mart used hundreds and hundreds of poor men and women

1 in these countries who spoke little or no English,
2 were culturally isolated as janitorial workers to
3 clean floors and toilets in Wal-Mart stores across
4 the nation. These desperate victims worked seven
5 nights a week, 364 days a year. They were often
6 locked in the store with no key at all. We have
7 instances of women who were bleeding from the
8 pelvis who were later diagnosed with cancer who
9 were not able to get medical attention; a man with
10 excruciating toothache was not allowed to leave
11 the store; a woman had a finger sliced off from an
12 unguarded fan was told she had to go get medical
13 attention on her own and come back to work. These
14 are some examples, the stories go on and on.

16 For all this sweat and labor and no
17 rest, they were paid little money, no overtime,
18 and sometimes no pay at all. And of course, they
19 had no workers' compensation, no medical coverage
20 or anything of the sort.

21 For the better part of a decade,
22 the governments of these countries have been
23 trying to assist these workers in getting some
24 compensation from Wal-Mart but to no avail. I
25 have submitted a series of documents to you, the

1 first tab provides documents that shows the
2 efforts by the Czech Republic, Mexico, and others
3 to try to assist their people. I'd like to bring
4 to your attention the reference in the Czech
5 Republic's amicus brief that they filed in one of
6 the court cases in which they said--

8 CHAIRPERSON SANDERS: [Interposing]
9 If you can do it briefly.

10 JEANNE MIRER: Okay. Having in
11 mind the existence of the International Human
12 Rights Conventions which set universally
13 recognized standards for all human beings,
14 including illegal migrant workers, and they go on,
15 that they are aware of all these violations.

16 I want to make a few points. In
17 the tabs I submitted, there is an affidavit from
18 Mr. Chris Walters, who was one of the people who
19 provided evidence to the government when Wal-Mart
20 was prosecuted--or was attempted to be prosecuted
21 for their violations of law. He talks about how
22 he was told by upper management that he should set
23 up dummy corporations because they like those
24 Polacks and things of that sort. The government
25 got Wal-Mart to settle a criminal complaint for

\$11 million. There's a tab three--or, I'm sorry, tab four is the settlement, it only went into--it was only in effect for five years, it's now over.

The workers have received nothing and they are fighting still for their rights and we're going to have--they're coming back for a trial and our St. Mark's church in New York is going to be hosting them when they're here for their trial.

Thank you very much.

CHAIRPERSON SANDERS: Thank you.

JEANNE MIRER: I'll be happy to answer any questions.

CHAIRPERSON SANDERS: In a moment, I'm going to turn over the questions to my co-chairs, of which Council Member Ferreras will have the first. But first there's someone who's not here today that we have to recognize, and that is Wal-Mart, and I want to read part of a letter that they sent to us into the record. That way, you can respond and if my colleagues ask you questions, you can incorporate their responses and I want the letter read so my colleagues, if they choose, can respond to Wal-Mart's letter.

Counsel, will you be kind enough to read those sections into the record?

MATTHEW CARLIN: Dear Council Members Sanders, Ferreras, and Rose, thank you for your invitation to appear before your joint committee hearing entitled, When Wal-Mart Comes to Town: An Examination of the Company's Labor Practices, A Historical and Perspective View.

With 1.4 million associates in the U.S., Wal-Mart is proud to be the country's largest private employer and we have been able to achieve this status in part by offering our associates competitive wages, affordable benefits, and real opportunities for career advancement. At the same time, we remain committed to advancing racial diversity and inclusion at all levels of the company by supporting programs that impact recruiting, associate engagement, leadership training, supplier development, and community outreach.

While we are proud of our track record on this topic, we respectfully decline participation in the February 17 hearing. Our position remains that the Council should first

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2 conduct a comprehensive review of the existing
3 businesses in the city before embarking on a
4 theoretical exercise. With 280 national chains
5 operating in more than 6,500 locations across New
6 York City, there is ample evidence to conduct a
7 thoughtful investigation.

8 And a section later in the letter,
9 Dukes v. Wal-Mart Stores, Inc.--

10 CHAIRPERSON SANDERS: Go slower.

11 MATTHEW CARLIN: Okay. Finally, we
12 expect the council will hear testimony regarding
13 Dukes v. Wal-Mart Stores, Inc., and we wanted to
14 ensure that our position was clear. Many years
15 ago, Wal-Mart established strong policies to help
16 ensure women are paid and promoted fairly. We
17 believe that it is unfair to Ms. Dukes and other
18 women named in this case that their attorneys have
19 denied them their day in court for almost a decade
20 by try to turn this case into a nationwide class
21 action. We do not think that three individuals
22 can fairly represent the experience of over 1.5
23 million other women from thousands of different
24 stores with thousands of different managers in
25 multiple states throughout the country.

1 The current confusion in class
2
3 action law is harmful to everyone--employers,
4 employees, businesses of all types and sizes, and
5 the civil justice system. These are exceedingly
6 important issues that reach far beyond this
7 particular case. We look forward to the Supreme
8 Court's ruling as to whether the case can move
9 forward as a class action.

10 And it is signed Philip H.
11 Serghini, Wal-Mart Community Affairs.

12 CHAIRPERSON SANDERS: The letter
13 does go on to say many different things, it
14 praises many of the things about the company and
15 it will be for into the record at another moment.
16 However, I wanted it on the table so that my
17 colleagues and others on the panel can respond to
18 it.

19 Council Member Ferreras.

20 CHAIRPERSON FERRERAS: Thank you,
21 thank you, co-chair. In Duke versus Wal-Mart,
22 Inc., it is alleged that Wal-Mart's strong
23 centralized structure fosters or facilitates
24 gender stereotyping and discrimination, that the
25 policies and practices underlying these

1
2 discriminatory treatment are consistent throughout
3 the Wal-Mart stores and that this discrimination
4 is common to all women who work or have worked in
5 Wal-Mart stores. In addition to the salaries and
6 the promotions issue, in what other ways has Wal-
7 Mart created a hostile environment for women
8 employees?

9 ADAM KLEIN: Let me try to address
10 the issue. One of the central themes in the case
11 is that there is overall centralized control of
12 the company's employment practices and because of
13 that, because of that centralized control, that
14 women within the company are affected in a common
15 way. It's a requirement of the class action rules
16 that that type of evidence be demonstrated to the
17 courts.

18 And I will say too that the 9th
19 Circuit affirmed the class certification granted
20 by the District Court and so the case is currently
21 a class action lawsuit, something that Wal-Mart
22 seems to ignore.

23 And I will say too that what is
24 fundamental with the Dukes case relates to fair
25 treatment of women, in terms of how they're paid

1
2 and how they're promoted. And as I understand it,
3 the facts in that case support the allegations
4 that women are denied equal pay and are denied
5 proper equal promotion within the company, and
6 that that's a centralized practice within the
7 company.

8 CHAIRPERSON FERRERAS: And my other
9 question is it's clearly been demonstrated by your
10 testimony how employees and those directly
11 connected to or dependent upon the employees are
12 affected by Wal-Mart's alleged discriminatory
13 practices, but how are shoppers and taxpayers
14 affected?

15 [Pause]

16 [Off mic]

17 CHAIRPERSON FERRERAS: In many of
18 the conversations that I've had, what often comes
19 up is that employees that work for Wal-Mart also
20 have to participate in receiving benefits and have
21 to get on welfare and have to go to Medicaid
22 because they're not provided medical benefits. So
23 can you speak to that? When I talk about the
24 taxpayer base, that's what I'm trying to get from
25 you.

JEANNE MIRER: Okay. Sure, yeah, and in fact several years ago we conducted a study in New York state to estimate what we call the public cost of low wage work and we estimated of the major public support programs what percentage were workers who were actually working for wages and had to enroll in those programs because they weren't earning enough and the retail industry itself comes out as one of the biggest industries, if not the biggest, and during that time, a lot of folks were actually estimating state by state. I'm not sure if they did it for New York, we're actually able to estimate the number of Wal-Mart workers in particular who had to resort to public assistance programs in order to make ends meet. And there were also scattered reports that Wal-Mart itself was actively showing its workers how to apply for EITC, etc., in order to make ends meet, which in my mind is a clear recognition on their side that they're not paying enough.

So I think it would be fair to say that Wal-Mart, and I think the retail industry in general, are one of the biggest culprits here in terms of imposing that kind of public cost on

taxpayers by not paying their workers enough.

CHAIRPERSON FERRERAS: I mean, I know we have a few other Council Member colleagues that'd like to ask questions, so I'll come back in the second round.

CHAIRPERSON SANDERS: Absolutely, Madam Chair. Chair Rose, if you wish.

CHAIRPERSON ROSE: Thank you. I'd like to thank you for your testimony. You know, Ms. Carpenter, I wasn't going to directly ask you a question, but I'm really compelled to know, how long did you work for Wal-Mart?

SANDRA CARPENTER: I worked for Wal-Mart for 2 1/2 years.

CHAIRPERSON ROSE: And do you believe that you were the target of discrimination because of race, gender?

SANDRA CARPENTER: I probably will say a little bit about the gender, not so much race.

CHAIRPERSON ROSE: Okay. And were you ever overlooked for promotion or discriminated against?

SANDRA CARPENTER: I was overlooked

for a promotion that was given to a male counterpoint.

CHAIRPERSON ROSE: Okay. Would you--whichever one of the panelists would like to answer this--would you describe the amount of EEO lawsuits filed and/or settled against Wal-Mart as normal or excessive for a retailer? If yes, why; if no, why?

ADAM KLEIN: Let me try to answer that. I think it's excessive in the sense of the dramatic scope of the Dukes case. I mean, it could not be understated how impactful, how large that case is and what impact it would have on the company, it is literally challenging the essential HR practices of Wal-Mart with respect to every single employee that's worked there. That is a dramatic assault on the way the company does business. And I think in that respect, that is unusual. I will say it is the largest Title VII class action ever filed, and the most expensive.

Just to make the point, there really is no effective government enforcement of these statutes when you talk about a company the size of Wal-Mart, it is wildly expensive to

1
2 prosecute the cases, to staff them properly, and
3 they're risky. And so because of that, and you
4 see on the wage and hour side as well, there
5 really is very little enforcement of these
6 statutes. So to the extent that there's a private
7 nationwide lawsuit that's targeting Wal-Mart is
8 unique.

9 CHAIRPERSON ROSE: Thank you. So
10 is it safe to say that it's systemic or there's a
11 climate that is pervasive?

12 ADAM KLEIN: Yeah, I think that's
13 certainly the facts in support of the Dukes case.
14 If you look at the allegations in that case, you
15 know, they were able to obtain class wide data on
16 compensation and promotion practices, they were
17 able to analyze it, it took them a very long time
18 to do that, it was quite expensive. And so those
19 are the kinds of facts that are developed in a
20 large scale case that are only available in a
21 class action.

22 And I will say, in terms of wage
23 and hour, which is a different question, there
24 were lots and lots--I mean, there were 70 more
25 class actions filed, that's certainly unique. I'm

not aware of any employer that even comes remotely close to that kind of number.

CHAIRPERSON ROSE: Thank you.

ANNETTE BERNHARDT: Could I add a--

CHAIRPERSON ROSE: Yes.

ANNETTE BERNHARDT: --quick thought on that? Also, just again, on the wage and hour front, one of the things you see come up in these cases, this speaks to the issue of how systematic this is and how much is this coming down from headquarters, is managers were doing a lot of this type of stuff, like shaving time off of people's clocks because they were getting extremely detailed directives from headquarters saying this week, you can only have X amount of payroll and only have X amount of hours in your store, no matter what the actual amount of work that you need to run your store. I think in a lot of cases, you actually had ex-managers testifying that they were consciously doing this because they understood that they had to meet those goals. So I consider that a very strong indicator that this is part of the business model and it's coming directly from directives from central

headquarters.

CHAIRPERSON ROSE: At the top. So workers actually did work that they were not paid for.

ANNETTE BERNHARDT: Yes, and that's the main theme in most of these lawsuits and it typically comes in the form of people either putting in hours before or after shifts that are unpaid.

JEANNE MIRER: I just wanted to add to that, there's a book that was written, I don't know if the Council is aware of it, by Charles Fishman called the Wal-Mart Effect in which the whole philosophy of the centralized way in which costs are cut and costs are kept down and prices are controlled and all these managers are required to do things in order to keep the company's profit where it is, is laid out in quite detailed ways, and what you're hearing today is absolutely consistent with that.

I also am on a board of another non-profit which does work with the unions that are attempting to organize this and they refer to that non-profit the people who have legal cases

and they're all over the world, we try to find them lawyers and help all over the world. It's true that Wal-Mart is the biggest private employer in the country and one might think that they would have more lawsuits, but I think when you're looking at 1.6 million people in a class--

[Crosstalk]

JEANNE MIRER: --there's no way to say that this isn't excessive.

CHAIRPERSON ROSE: Thank you, and I will relinquish, I just have one other question and I'd like to have the right to a second round.

[Crosstalk]

CHAIRPERSON ROSE: Could you just tell me what is Wal-Mart's current policy in respect to lock-ins and do any of the large retailers use this particular procedure, and is that prohibited by federal or state law? Thank you.

ANNETTE BERNHARDT: I don't know what their current policy is and I'm not aware-- although, correct me if I'm wrong--I'm not aware that it was ever a written policy. It has come up in numerous lawsuits and I believe I was just

1 looking at one of the ones that filed recently and
2 this came up again in the lawsuit, so it feels
3 like it's potentially an ongoing practice.

4 CHAIRPERSON FERRERAS: If you have-
5 -I'm sorry.

6 CHAIRPERSON SANDERS: Oh, a follow-
7 up by Chair Ferreras.

8 CHAIRPERSON FERRERAS: Ms.
9 Carpenter, you mentioned a video once you were
10 trying to organize and that a Mr. Bob came down
11 and showed you guys a video. What was entailed in
12 this video, what did you see? And my other part
13 to that question is, would they bring every
14 employee together or was it just managers, women,
15 or what was the--the people that were in a room
16 watching this video, who were they?

17 SANDRA CARPENTER: Typically, they
18 would use all of the associates to come into these
19 meetings at different times during the day. They
20 would have like the department managers going to
21 one meeting and we view it first and then we would
22 be told to send our associates after lunch or
23 whatever and they would sit in those meetings.
24 Typically, the posters and the videos that were
25

1
2 shown were anti-union saying that the unions just
3 wanted your money, they really didn't care about
4 you guys, and telling us that Wal-Mart's a family
5 and we should be able to handle our own issues
6 without having any outsiders come in.

7 And generally it was the feel like
8 they made us sign in, they would have us sign just
9 pieces of paper, just random pieces of paper with
10 nothing on that paper and, you know, I started to
11 instruct the other associates like don't sign
12 anything, it doesn't have anything on there, you
13 don't know what potentially they could use that
14 for. So I would just sit back and I would take
15 pictures and we had a couple of ones they were
16 showing a ex-union president from like the early
17 2000 saying--and they would show you the
18 comparison saying that the union will come in and
19 tell you that you'll make this amount of money,
20 but Wal-Mart actually pays you more than that and
21 you'll get more raises if you don't speak with any
22 representatives or try to go about organizing
23 yourselves.

24 CHAIRPERSON SANDERS: Thank you to
25 my co-chairs, I want to commend my co-chairs for

1
2 allowing everyone else to get back in, but not
3 taking themselves out of an additional round of
4 questions. We will hear from Council Members
5 Barron, Ulrich, Palma, and Mark-Viverito in that
6 order.

7 COUNCIL MEMBER BARRON: Thank you
8 very much. I commend the chairs for this hearing.

9 And just initial response to the
10 Wal-Mart letter, you know, Wal-Mart is a retail
11 plantation looking for slaves to hire at a
12 minimum, below minimum wage to maximize profits.
13 Wal-Mart stop being a coward. If you're so good,
14 then why don't you come here, withstand the
15 scrutiny of the City Council, and let the world
16 know how great you are. The reason you don't do
17 that is because you couldn't withstand the
18 scrutiny with the raw numbers that shows you're
19 nothing but a plantation looking for some slaves
20 to maximize your profits.

21 Having said that, let me ask you
22 this. There were studies done in 2005, the
23 Brennan Center, when they talked about income, I
24 think it was like Wal-Mart was claiming \$11 and
25 change an hour is what they pay, and that's a lie,

1
2 but even if they paid that, that was below the
3 federal poverty level, even if they paid that, but
4 we don't even believe that. We spoken to Wal-Mart
5 workers, some said they were making seven and
6 change, eight and change, \$9, five years later,
7 maybe 10.

8 But what I wanted to ask you, some
9 of the Berkley studies also said when Wal-Mart
10 comes into a region, not only do they have these
11 low wages, but they bring down the wages of that
12 region. I know in grocery, about 1.5 % in some of
13 the other areas, 1.1 %, because when you put out
14 like they did in Chicago 82 stores out of
15 business, those stores were paying higher wages,
16 those stores were paying more health care, those
17 stores were doing better at pensions, so when Wal-
18 Mart comes in and they go, it reduces the wage
19 earning for that area, as well as the health
20 benefits, as well as the pension benefits.

21 And finally, it also increases the
22 poverty rate because if you don't have wages, you
23 will have poverty. So Wal-Mart, not only are they
24 ripping us off if they just came in and didn't
25 bother nothing, but they're also bringing down

wages, bringing up poverty, and hurting health care pension. And I wanted you to respond to that.

ANNETTE BERNHARDT: Definitely.

And I know that I think in your first hearing you actually had Ken Jacobs testify, is that right, from Berkley, and he's really the leading authority in the country on its impact. So you've summarized it perfectly actually, so I won't repeat what you said, but I just also want to back out for a minute and make sure that folks understand that Wal-Mart really was the innovator of this model and that before Wal-Mart invented this model of low wage, it's called mass retailing, the retail industry actually was a place where people could earn a living wage and importantly, build a career and get promotions to better jobs.

When Wal-Mart brought that model, a lot of other retailers had to ratchet down, Wal-Mart was cutting its margins so thin that other retailers could not survive and, as a result, you see the lack of promotions, you see the poverty earnings and I think especially for a city like

1 New York, which still has smaller, more
2 independent retail compared to a lot of other
3 cities, I think we could expect a very strong
4 version of that effect of Wal-Mart basically
5 raiding the business and shutting down higher wage
6 competitors.
7

8 COUNCIL MEMBER BARRON: Yes, yes.

9 SANDRA CARPENTER: If I could kind
10 of just piggyback what she was saying, I've been
11 in meetings where they have expressed that that's
12 Wal-Mart's ultimate goal, to come in and shut down
13 the mom and pop stores, that's why they pick the
14 areas that they pick, it's typically across the
15 street from a Target or some little retail store
16 and within the next year, that store is gone,
17 that's their plan, that's what they would like to
18 do. That's what we were told by management, that
19 they strategically pick these locations so that
20 they can come in and take over the area and shut
21 everything else down, that's what they do.

22 ANNETTE BERNHARDT: Although you
23 didn't ask about this, the model also applies to
24 the people in the supply chain and, in fact, how
25 they--if you read the book that I mentioned, Wal-

1 Mart Effect, you can see how the price
2 requirements and the cost requirements force so
3 many U.S. businesses to go to low-cost countries
4 in order to be able to make things for Wal-Mart
5 and that is an example of the kind of
6 international way in which they've created almost
7 a Wal-Mart type economy where nobody can afford to
8 buy anything except at Wal-Mart.
9

10 COUNCIL MEMBER BARRON: Just
11 finally, Mr. Chairman, I know everybody's talking
12 about East New York, we intend to be a Wal-Mart
13 free East New York. We already had an arrangement
14 with related companies for 600,000 square footage
15 of more retail space. No single entity would have
16 been over 30 to 40,000 square feet. Wal-Mart has
17 an average of 184,000 square foot of store space
18 and you will lose, for every two low paying jobs
19 you get, you're going to lose three, so you're
20 going to have a net loss of jobs coming in.

21 And just for the record, in East
22 New York, we already negotiated with the related
23 at meetings they told us and I expressed there
24 will be no Wal-Mart coming in, we have 2,385 units
25 of affordable housing, a school, three parks, so a

1 whole new community is coming with a retail--a
2 town center separate from the expansion of the
3 mall, a town center coming in with smaller retail
4 stores coming in, so we were clear that Wal-Mart
5 wasn't coming in.
6

7 And without Wal-Mart, without Wal-
8 Mart in that same area, we're talking about 7,000
9 construction jobs, 1,700 permanent jobs, we're
10 talking about talking to retailers that are coming
11 in to give us decent wages, health care. So for
12 anybody that think that they need Wal-Mart to
13 bring in lower prices--and by the way, once they
14 come in with their lower prices and wipe out all
15 of the competitors, those prices go up. So we
16 don't want to have that happen in East New York.

17 And then finally--and this is a
18 question statement, question statement--the
19 profits for Wal-Mart, I understand they have like
20 4,000 stores in the United States, 8,000
21 worldwide--the Waltons, Sam Walton, when he first
22 started, he got a lot of what they call subsidies--
23 -it's interesting when the poor people in the
24 neighborhood are getting free money from the
25 government we're on welfare, when they get it,

1 they're on subsidies, so either we're all on
2 subsidies or we're all on welfare. Sam Walton, I
3 understand they even let him put his tax in his
4 pocket, he didn't have to pay some of the sales
5 tax to some of the areas he went into, he made
6 arrangements with the government that he could
7 keep the sales tax. And so if people think by
8 them coming in some big revenue generating
9 benefits from the state or the city, they're
10 wrong. The Waltons are worth \$20 billion each,
11 they have a 13 to \$16 billion profit every year,
12 it's a shame that they're treating workers like
13 this. So what do you think?

14 [Laughter]

15 CHAIRPERSON SANDERS: Thank you for
16 your question, sir.

17 [Off mic]

18 COUNCIL MEMBER BARRON: That was a
19 question.

20 ANNETTE BERNHARDT: Actually, I
21 think that in the case of these janitors, in the
22 case of the janitors, Wal-Mart paid \$11 million to
23 the government to get out of a criminal case for
24 the scheme--
25

CHAIRPERSON SANDERS: [Interposing]
Pull the mic a little closer.

ANNETTE BERNHARDT: --for their
scheme of creating dummy corporations to import
workers because one of the guys liked the Polacks,
I mean, seriously said this, it's in the
documents. And yet Wal-Mart is fighting tooth and
nail, just like it's fighting the Dukes case, it's
fighting tooth and nail not to address the
problems that these workers have had. Just think
about that.

CHAIRPERSON SANDERS: I'll take it
to the next panel to the next questioner and
that's Council Member Ulrich.

COUNCIL MEMBER ULRICH: Thank you,
Mr. Chairman, thank you for your testimony today.
I mean, it's no secret that I'm on the record
supporting Wal-Mart's entry to New York City, so
let's just get that out of the way, but I do have
some questions pertaining to the testimony that
was given today.

First like to start, Ms. Bernhardt,
I'm curious to find out if a lot of these
grievances that you spoke about have taken place

1
2 in right to work states in particular or during
3 what time periods they may have occurred.

4 ANNETTE BERNHARDT: I don't know
5 the answer to the first one, I don't know if you
6 do. In terms of the time periods, the ones that
7 I've been reviewing recently are spread evenly
8 throughout the last decade, so I don't know that
9 there was a particular pattern where they were
10 more likely to happen in one year than another.
11 It's really a cascading--in the big settlement in
12 2008, they were settling sort of a cascading pile
13 up of cases that had been filed at different
14 years.

15 COUNCIL MEMBER ULRICH: And just
16 for the record, I don't have the answer to the
17 first question, I just have the testimony, I
18 didn't come with baited questions, I'm not here to
19 play gotcha with anybody, but that's an
20 interesting question, I am curious to find out
21 because, you know, this is not a right to work
22 state, New York is not a right to work state, we
23 just passed the law, Governor Paterson signed the
24 Wage Theft Prevention Act, there are some of the
25 toughest labor laws in the country exist here on

1 the books in New York, in particular New York City
2 for the most part. So I find it difficult to
3 believe that even if a lot of the allegations are
4 true and that things have occurred in other
5 states, unfortunately, regarding Wal-Mart's labor
6 practices, that that would be allowed to happen
7 here in New York City.

8 [Crosstalk]

9 ADAM KLEIN: [Interposing] Can I
10 answer that 'cause I actually--

11 COUNCIL MEMBER ULRICH: Yeah, sure,
12 I'm going to you next anyway, so that's good a
13 transition so, yeah.

14 ADAM KLEIN: Well let me respond,
15 one, my firm prosecuted a New York case against
16 Wal-Mart and I'll tell you there's literally no
17 government enforcement in these statutes. I mean,
18 answer to your question, right to work or not,
19 where is the government enforcement? Can you cite
20 one case that the New York State Department of
21 Labor has prosecuted against a large employer? I
22 can't. So when you say that, yes, there are laws
23 on the book, but they're not being enforced. So I
24 think your question isn't the right frame, the
25

question is is there enforcement of the statutes that are on the books, not whether or not it's a right to work state.

COUNCIL MEMBER ULRICH: You know--

ANNETTE BERNHARDT: And if I could--
-just sorry, just--

COUNCIL MEMBER ULRICH: Yeah, go ahead, please.

ANNETTE BERNHARDT: --very quickly, if I could piggyback on that. The study that I talked about early in my testimony, Working Without Laws, was the first comprehensive survey ever done in New York City of wage and hour violations and found astonishing rates currently in New York City with the strong laws that you talk about, astonishing rates of minimum wage, overtime, a range of other types of wage and hour violations, and the reason is if you look at the staffing of the New York State Department of Labor which actually is trying very hard to enforce these laws, they have basically about 150 investigators for a state that has millions and millions of workers and half a million workplaces. It is just impossible with those few resources for

that department to do the enforcement that we're talking about.

And he's really right, at this point, for workers who are trying to redress wage theft, the only option is to file lawsuits because, while the department is trying its best, it is flooded with 20, 30,000 complaints a year and it can barely keep up. So I really I think it's important to understand that the enforcement is not there and I don't think it would magically get triggered on over night if Wal-Mart were to come to New York City.

COUNCIL MEMBER ULRICH: A settlement is not--the other thing that troubles me is that a settlement is not an admission of guilt, I mean, cases are settled all the time, there are plea bargaining that takes place, you know, in civil matters all across the country involving all sorts of companies or between individuals, so it's kind of unfair I think to characterize a company as being wholly unscrupulous in labor practices simply because they've settled out of court. Michael Jackson settled out of court plenty times and people

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2 worship the ground that he walked on and said that
3 he never did a thing. In this country, you're
4 innocent until proven guilty, it's not supposed to
5 be the other way around, so...

6 ADAM KLEIN: Well there were jury
7 verdicts--findings, rather, by courts in
8 Pennsylvania and California, and these are
9 centralized practices, there's really no--

10 COUNCIL MEMBER ULRICH:
11 [Interposing] They were adjudicated, were they--

12 ADAM KLEIN: [Interposing] Yes,
13 yes, they were--

14 COUNCIL MEMBER ULRICH: --they were
15 adjudicated--

16 ADAM KLEIN: --you're misinformed
17 in that respect, I think, and, in fact, the
18 reality is that these are centralized practices.
19 It's not the Wal-Mart operating in Pennsylvania is
20 going to operate using a different system than New
21 York versus any other state in the country, these
22 are centralized, they're cookie cutter stores in
23 lots of ways. And so what I think you're saying
24 is, whatever violations occurred in California or
25 other states are going to be right here in New

York as well.

COUNCIL MEMBER ULRICH: I don't--

JEANNE MIRER: And when---

COUNCIL MEMBER ULRICH: Go ahead,
yeah.

JEANNE MIRER: I'm sorry, and when
Wal-Mart pays \$11 million to the United States
government, even though it doesn't admit
liability, \$11 million is a lot of non-liability--

COUNCIL MEMBER ULRICH:
[Interposing] Microsoft pays tens of millions of
dollars--

JEANNE MIRER: Well--

COUNCIL MEMBER ULRICH: --in
settlements, I'm just saying, I mean, let's not
use a brush to paint the--

[Crosstalk]

JEANNE MIRER: [Interposing]
Microsoft had a different issue--

COUNCIL MEMBER ULRICH: Well--

JEANNE MIRER: --but--

[Crosstalk]

ANNETTE BERNHARDT: [Interposing]
Can I jump in with one more point on this?

COUNCIL MEMBER ULRICH: Sure, yeah.

ANNETTE BERNHARDT: 'Cause I think it actually is a very valid and important question, what can you get from these cases. One of the things that's striking to me about these cases is many times plaintiffs are able to get access to the actual payroll records of Wal-Mart, so that's hundreds and thousands of records over time, and neutral, outside statisticians are brought in to examine those payroll records to see if the charges of discrimination in the Dukes case are warranted. And in the case of wage theft--and I find this astonishing--statisticians were able to see the actual times when managers would go in and shave somebody's overtime hours to one minute. This is a recurring pattern that you see in the actual data, and for somebody like me, it's really data that takes the day even if it's a case and Wal-Mart settles and never admits guilt, you can see it right there that managers were altering the payroll records.

COUNCIL MEMBER ULRICH: And I don't doubt that that takes place, I don't think that it's totally systemic, though. If it was so

1
2 systemic, then why do 1.4 million people in the
3 United States work for Wal-Mart? If it's such a
4 terrible company to work for, over a million
5 people are working for them today, I mean,
6 including the woman from the Dukes case is still
7 employed by Wal-Mart.

8 SANDRA CARPENTER: I think I can
9 answer that. The easiest way to answer that is
10 people need jobs. So--

11 COUNCIL MEMBER ULRICH: And that's
12 why I support Wal-Mart coming in New York City.

13 SANDRA CARPENTER: Yes, but they
14 need good sustainable jobs--

15 COUNCIL MEMBER ULRICH: Right.

16 SANDRA CARPENTER: --they don't
17 need somebody who's going to come in--

18 [background noise]

19 SANDRA CARPENTER: --and promise
20 you the world and then not do anything. I've been
21 a victim of some of that overtime shaving. What
22 they'll do is they'll have the personnel manager
23 call you on a Wednesday or a Thursday afternoon
24 and tell you, okay, well you're point 45 minutes
25 over so you need to lose that time, go to lunch

1
2 for two hours, go to lunch for three hours, do
3 what you have to do, but don't leave early in the
4 week. If absolutely positively in the very
5 beginning when I started, I was working on average
6 two extra hours after my shift ended off of the
7 clock, so Friday came, I couldn't even clock in on
8 Friday because I was already on overtime by the
9 time I left Thursday night.

10 And it is a way to track, just like
11 she was saying, because you can see in the system,
12 every time somebody alters your time record, they
13 have to put in their numbers and their initials
14 pop up on there, that's how you know that. Or
15 they'll tell you you're so far over overtime and
16 ask you to leave an hour early and in all
17 actuality you're only two minutes over, but they
18 don't want to pay you, they want to get you to
19 work off the clock and then send you home early,
20 that's how they operate. They will tell us in
21 morning meetings, oh, well, we only have 20 hours
22 of overtime this week for 350 employees, so
23 regardless of how long you work, your work never
24 gets done. You can't keep passing the buck and
25 putting it on other associates and expecting

1 people to pick up what you couldn't finish in a
2 day, they don't allow you enough time and they
3 don't allow enough hours. I think \$400 billion in
4 a year is more than enough for you to pay somebody
5 for five minutes of overtime.
6

7 COUNCIL MEMBER ULRICH: I'm glad
8 you brought up jobs, and I'm not attempting to
9 trivialize your testimony or to cast any doubt on
10 your experiences with Wal-Mart, so just take that
11 for what it's worth. But we have 8 % or higher
12 unemployment, those numbers, those figures are
13 higher in certain communities throughout the city.
14 If you ask people do you want to work at
15 McDonald's for \$7.25 an hour selling people food
16 that they shouldn't eat or do you want to work at
17 Wal-Mart making \$12 an hour, I think the person
18 will take the \$12 an hour job.

19 Now in this economy, in my opinion,
20 there's no such thing as a bad job, you either
21 have a job or you don't have a job, and most
22 people that I know that are out of work, they've
23 been out of work for a while and they're looking
24 for a job. And while we talk about the union
25 issues and how Wal-Mart does business in New York

1 compared to other states, in other states, they
2 don't build Wal-Mart stores, as I'm sure the
3 attorney can verify, using union labor, and yet
4 Wal-Mart came to some sort of agreement with the
5 Building Trades Council and the construction
6 trades that they would use union carpenters and
7 union laborers to build their store here. So I
8 think that Wal-Mart realizes that doing business
9 in New York City is not the same as doing business
10 in Alabama or in Arkansas or wherever they're
11 from, that there's a way to do business in New
12 York. They've probably factored that into the
13 cost of doing business and if people are looking
14 for jobs, I don't think it's the government's role
15 to stand in the way of any economic development,
16 you know, it's not right. People have been out of
17 work, they're looking for jobs, and we shouldn't
18 be standing in the way.

19
20 We talk about job creation, Wal-
21 Mart wants to come here and create jobs and if
22 they open a Wal-Mart across the street or in my
23 district in Queens or in Staten Island or in any
24 borough throughout the city, the line would be out
25 the door for people with job applications in their

hand and around the corner for people who want to shop there to save on their groceries. So I thank you for your indulgence, Mr. Chair.

CHAIRPERSON SANDERS: In the [pause], if I could ever get the mic to work--in the interests of fairness to this, is there another question that you'd like to ask my colleague or you can come back at another moment. Or anyone, do you want to ask another one?

[Off mic]

COUNCIL MEMBER ULRICH: No further questions.

CHAIRPERSON SANDERS: At the moment.

COUNCIL MEMBER ULRICH: Thank you for your testimony.

CHAIRPERSON SANDERS: I wanted to do that to say this, in the City Council we do a fair and balanced hearing and I take great pride in that we do fair and balance and I am sorely disappointed that Wal-Mart did not come into this hearing because here you're going to get a fair and balanced hearing. We do professional hearings here. And I just wanted to put that on the

record.

Council Member Palma.

COUNCIL MEMBER PALMA: Thank you, co-chairs. I had a quick question but I think I'll be remiss if I don't mention because of the issue that the high unemployment rate that the city faces and that people do want and are seeking jobs. I know in the Bronx we have double-digit unemployment and we had double-digit unemployment for a long, long time and the people from my district and throughout the Bronx do want jobs, they want good paying jobs, they want meaningful jobs, they want jobs with dignity, not jobs that are going to be abuse them, and at the end of the day keep them on the welfare rolls, those are not the kind of jobs we are looking for.

So I know we agree to disagree, but government's responsibility is to make sure that when we are planning economic development, that we are taking the community's view in full and making sure that what we're bringing to each and every community throughout New York City is going to benefit us at the end of the day and then not have us scrambling to try to patch a budget together

1 because the jobs we have are not enough to pay
2 people and then we still got to make sure that we
3 are providing money for food stamps and child care
4 and shelter beds and all those other things.

5 So I've been a strong in opposition
6 of Wal-Mart since the day I got elected into
7 office and the only way Wal-Mart will come into
8 New York City, in my view, is that they will have
9 to be the leading employer to make sure that
10 they're providing good paying jobs, benefits, and
11 change their policies, not only in New York City,
12 but throughout the nation because no worker should
13 face the abuses and practices that Wal-Mart is
14 accused of facing.

15 And most of the questions and
16 answers were given in terms of wages, but, Ms.
17 Carpenter, in your testimony you mentioned that
18 you were earning 9.20, was that your starting
19 salary or how did you get to the 9.20?

20 SANDRA CARPENTER: That was
21 actually a misprint, I started at 9.40.

22 COUNCIL MEMBER PALMA: At 9.40.

23 SANDRA CARPENTER: So what happened
24 was I interviewed for a cashier position, which
25

1 they were starting out at 8.50 and then through
2 talking to a series of managers, they decided they
3 wanted to move me to a different area, which came
4 with a pay increase. So that's how I started at
5 9.40.
6

7 COUNCIL MEMBER PALMA: And that was
8 before you were trying to organize a union or--

9 SANDRA CARPENTER: [Interposing]
10 Yes, that's when I very first started.

11 COUNCIL MEMBER PALMA: Do your male
12 counterparts go in at the same salary or is their
13 salary different?

14 SANDRA CARPENTER: From what I've
15 experienced just personally, they tend to make a
16 little bit more than we do starting and then based
17 on their performances where it goes from there.

18 COUNCIL MEMBER PALMA: And how did
19 your tenure end with Wal-Mart? They were just got
20 rid of you because of your organizing strategies
21 or did you voluntarily left?

22 SANDRA CARPENTER: No, they kind of
23 hijacked me, I came into work, I clocked in and my
24 manager was standing right behind me and she
25 walked me to the office.

COUNCIL MEMBER PALMA: And if--

SANDRA CARPENTER: And they told me I was going to be terminated for late price changes, right.

COUNCIL MEMBER PALMA: And for lateness?

SANDRA CARPENTER: Late price changes, which is a--

COUNCIL MEMBER PALMA: Late price, okay.

SANDRA CARPENTER: --function, a daily essential function that we're required to do every day.

COUNCIL MEMBER PALMA: Because of the 3,000 price changes, you had to eventually do.

SANDRA CARPENTER: Right, right, right.

COUNCIL MEMBER PALMA: And then in terms of the immigrant workers being intimated, were they ever intimated with having immigration come in, were these undocumented immigrants, or were these legally--the people that were here like on visas or...?

SANDRA CARPENTER: Well I do have

1
2 personal knowledge of some illegal employees that
3 were allowed to work up until the time where, I
4 guess, their papers came back and they found out
5 that the Social Security Number didn't match and
6 they told them they had to leave, they couldn't
7 work anymore. But the majority of them are legal
8 to be in the United States working here.

9 COUNCIL MEMBER PALMA: Okay. Thank
10 you.

11 CHAIRPERSON SANDERS: Thank you.
12 Madam Viverito, Council Member.

13 COUNCIL MEMBER MARK-VIVERITO:
14 Thank you, all the co-chairs and everyone that's
15 making this hearing possible. I really want to
16 thank this panel, in particular Ms. Carpenter,
17 thank you very much because it really does take
18 strength to be able to come up here and talk about
19 your personal experience.

20 And I just want to echo my level of
21 outrage. Again, we all agree to disagree, but we
22 do have a job in protecting our constituents to
23 make sure that they're getting quality jobs and
24 dignified jobs, and no one should be in any way
25 having to accept a job just because out of

desperation and then an employer taking advantage of that situation.

Let me just read something quickly and I will explain what it is. This is from an article, workers in 27 states are suing Wal-Mart for violating wage and hour laws. The retailer also faces a sex discrimination lawsuit that accuses of wrongly denying promotions and equal pay to 700,000 women. And across the country workers have launched a massive drive to organize a union at Wal-Mart. Wal-Mart has responded to the union drive by trying to stop workers from organizing. The retaliation can be extreme. In February of 2000, the meat cutting department at a Wal-Mart in Jacksonville, TX, voted to join the UFCW--the only Wal-Mart in the nation where workers successfully organized a union. Two weeks after the vote the company announced it was eliminating its meat cutting department in all of its stores nationwide.

This is an article, an expose that came out in Mother Jones magazine in 2003, we're talking about eight years ago. Ms. Bernhardt talked about the entrenched pattern and systematic

1 long-term pattern and practices of this retailer
2 and, to me, this is ingrained in the way it
3 operates, I do not see that there is any way of
4 turning back. I do not believe that they're going
5 to have a sudden epiphany and decide that they're
6 going to change their practices. This is who they
7 are and it is up to us as a city to say, you know
8 what, we are not, that is not our value, that is
9 not what we represent, that is not what we're
10 going to allow here in New York City. And I think
11 that's a very strong statement to make and we
12 understand that it's not an easy one to make
13 because we are dealing with the world's largest
14 retailer, but this is a very important, important
15 one to make.
16

17 So I'm very concerned, I'm very
18 concerned about what's happening here. And,
19 again, and I think Charles Barron talked about it,
20 we want to attack civil service workers, the
21 working class, the working poor in this city by
22 going after their pensions, making it seem that
23 somehow we are draining this budget and somehow
24 becoming a drain on this budget and, meanwhile, we
25 more than easily want to provide corporate

1 subsidies to the world's richest retailer that
2 continues to deny benefits to workers. That is
3 not what we should be representing and not who we
4 should be defending here in the state of New York
5 and in the city of New York.
6

7 Just to say lastly, you know,
8 Massachusetts did an in-depth analysis of its
9 public healthcare system and it spent, Wal-Mart,
10 because employees at Wal-Mart were eligible for
11 the public health care system because they were
12 not getting paid enough, the state of
13 Massachusetts paid \$9 million additionally to pay
14 for those employees to receive that public
15 assistance--that is a corporate subsidies, that is
16 corporate welfare, that is what would be happening
17 here in New York.

18 And, you know what, we want to talk
19 about fiscal prudence? This is what it's about,
20 we do not have the luxury of paying the world's
21 largest retailer and richest retailer \$9 million,
22 \$5 million, \$3 million. This is intolerable to
23 me.

24 So lastly in terms of the question
25 because I had to say that. Can you please speak

1 to--'cause everybody says well why are you picking
2 on Wal-Mart, why are you picking on Wal-Mart, can
3 you please do a comparison in terms of the size--
4 understandably, Wal-Mart is the largest retailer,
5 it's in a category in and of itself, it's larger
6 in terms of revenue than Target, Costco, K-Mart
7 combined, and beyond, but when you talk about the
8 level of discrimination, the lawsuits, all of the
9 settlements, you know, proportionately, is this
10 way beyond what you've seen in any other
11 corporation?
12

13 ADAM KLEIN: In a word, yes, it's
14 dramatically different in fact. If you look at
15 the number of wage and hour class actions filed in
16 this country against other retailers, I'm not sure
17 who number two would be, it really is in a class
18 by itself. And, as you say, the gender
19 discrimination case literally affects every
20 employee within the company.

21 So it is unprecedented in this
22 country to have a case of that size, both on the
23 wage and hour end and on discrimination fronts.

24 COUNCIL MEMBER MARK-VIVERITO: [Off
25 mic] your research, Ms. Bernhardt, that that's

kind of the same response.

ANNETTE BERNHARDT: No, I mean, just to reiterate, like I said in my written testimony, scale matters and this is all about scale and, like you said, the systemic nature of this.

The one thing I just wanted to add, and some of you have already raised this, but it doesn't have to be this way and--

COUNCIL MEMBER MARK-VIVERITO:
Exactly.

ANNETTE BERNHARDT: --New York City has a lot of retailers that pay better, a lot of unionized grocery stores that treat their workers far better. We have options, this is not a choice between a low wage job and no job and I think there's a real role here for us and our communities and for leaders like yourselves to think about ways to encourage higher road retailers and grocery stores to open more stores to meet the demand that is there. I think we are lucky in New York City to have that option of much better employers than Wal-Mart and we should be exploiting that and using it.

COUNCIL MEMBER MARK-VIVERITO: And I agree and I think clearly what we--I know myself and others trying to say that we are not going to allow Wal-Mart to be setting the standard of how business is to be done in New York City, that is not the model and the value that we uphold here. So I think that that's really very much clearly--and I want to just make a plea to those that are in this room and beyond 'cause I know sometimes you see this in reviews, we can't allow--this is a game of smoke and mirrors, this Administration again is going after the public service workers, is going after the working class, the working poor. We are trying to--we're talking about providing corporate subsidies to rich retailers, this is a sleight of hand game that's being played, we cannot allow ourselves to be pitted against each other, we can't allow ourselves to be fooled. That is what this is about. This is class warfare is the way I've been determining it, I think that that is the truth.

And so with that, thank you for that indulgence, thank you, co-chairs.

CHAIRPERSON SANDERS: Thank you. I

will thank this panel and I will call the next panel forward. Call your panel, sir.

MATTHEW CARLIN: Is Francine Moccio, I don't know if she's still here, Beverly Neufeld, Dina Bakst, and Claude LaBlanc [phonetic].

CHAIRPERSON SANDERS: We've been joined by Council Members from Queens, Jimmy Van Bramer and Council Member Jumaane Williams from Brooklyn and Council Member Chin from Manhattan. Even as these good people get in, I just, again, want to say, I want to commend my colleagues for being well-informed and putting real questions and statements forward on all sides, well informed, and this is how a council hearing should be done, and this is how Wal-Mart or anyone needs to be here to answer their own questions.

I'm going to have to take my leave soon and I'm going to hand this over to my two co-chairs who you're in good company.

In the order that you were called, please begin your testimony. Thank you very much.

[Off mic]

CHAIRPERSON SANDERS: Press the

button, please press the button and pull the mic close to your mouth.

FRANCINE MOCCIO: Thank you very much and I really applaud the council for doing these hearings and bringing these issues out in the open. There was a wise saying that if you're not at the table, then you're on the menu and you're very wise to question in the public view and in a transparent way the practices of this particular retailer.

What I heard from the first panel, I'd like to fill in a little. A little bit about my background. I had directed the Institute for Women and Work at the School of Industrial and Labor Relations at Cornell University for about 20 years. And in that capacity what we really focused on was looking at the issue of unfair labor practices and its relationship to women who by and large, of course, we always found to be more vulnerable workers.

In our studies and research and review of the literature academically, we found that Wal-Mart has really had the most outstanding number of unfair labor practices. And why is that

related to gender discrimination? Number one, in order for women to go to work, they have to be able to make a decent wage to be able to take care of their children, to put them in child care, they have to have the health benefits and they have to have the sick leave--the things that unionization provide them with.

Now you say, well bringing Wal-Mart to New York City is going to generate all these jobs. That might be the case initially, however, what it will do is it will lower the threshold for standards to the least common denominator for the entire retail industry in New York that's mostly unionized.

What does this do to women and why is this related to gender discrimination? Wal-Mart has been accused of sex discrimination ranging from pay and promotions, intimidating women, bringing them in rooms and asking them to go to Hooters, humiliating women, and when they didn't play along, retaliating against them. Unions and fair labor practices and the right to collective bargaining helps to protect women from that kind of exploitative situation.

In addition, what else wasn't mentioned in the first panel was that the Department of Labor in Maine has also asked Wal-Mart to pay the largest fine in state history for violating child labor laws and the Department of Labor discovered there 1,436 child labor law infractions against Wal-Mart.

In addition, when you look at discrimination, in addition to these areas, you have ADA discrimination, lawsuits pertaining to the Americans with Disabilities Act and violations filed in Missouri, California, Arkansas, and Arizona.

So I ask you on the council, I do believe government has to get involved in Wal-Mart and in the business of the private business because you are the custodians of our lives, you make or you break our lives, and when you're women and you're more vulnerable to discrimination, then it's even more critical that you have that custodianship and that you have that transparency.

We need jobs, but we do, as the speaker eloquently said, need jobs with dignity, self-respect, a livable wage so that we can

reproduce ourselves and go to work.

Thank you, and I apologize, but I do have to leave the hearing, I'm very sorry.

CHAIRPERSON FERRERAS: Eric?

COUNCIL MEMBER ULRICH: Fran, I know you're leaving, so I just had a quick question for you. First of all, I--oh, Fran left, okay, very quickly, right? I was a co-sponsor--

[Crosstalk]

COUNCIL MEMBER ULRICH: --of paid sick leave, I'm for prevailing wage, I'm pro-union, so you get that where I'm coming from. The problem I have though is that Wal-Mart is coming to New York City and they say we're going to pay people \$12 an hour, that's higher than the living wage, that's higher than the living wage bill that so many of my colleagues are co-sponsoring where they say 10.50 with benefits, 11.50 without benefits. So I think it is a decent wage, \$12 an hour is better than minimum wage and having a job is better than not having one.

FRANCINE MOCCIO: You know, in my neighborhood, they say the proof of the pudding is in the eating--

COUNCIL MEMBER ULRICH: Yeah.

FRANCINE MOCCIO: --okay? The track record isn't good. When there's a bad track record, what can you reasonably expect? Another bad track record. So I really don't trust--and I believe you that they say that, but in terms of their practices, they speak a language that they have no respect for the law, the law. I don't care how high the unemployment is, no one's above the law.

COUNCIL MEMBER ULRICH: I agree.

Thank you, Fran.

BEVERLY COOPER NEUFELD: Good afternoon, I'm Beverly Cooper Neufeld and I'm here representing the New York--is it--

[Off mic]

BEVERLY COOPER NEUFELD: Okay.

Great. I'm Beverly Cooper Neufeld and I'm here representing the New York Women's Agenda and the Equal Pay Coalition of New York City. NYWA is a coalition of women's organizations across New York City that come together on issues of importance. And we in 2007 seen the continuing data that shows that women are being discriminated in New York and

1
2 in the country created the Equal Pay Coalition,
3 which is 40 groups working together. We've been
4 working together on a state, national, and a city
5 level, and I have to thank the council because
6 this is our third opportunity to speak to you
7 about gender wage discrimination. We had a
8 hearing in 2008 and we had a hearing in 2010 and
9 here we're participating again. And the reason
10 that we're so pleased is because you're
11 underscoring the fact that fair pay is important
12 and that's what we are working on.

13 So I'd like to just make a few
14 comments, I think so much of the Dukes v. Wal-Mart
15 case has already been covered and I'm not going to
16 do that, although in my testimony you'll see that
17 there are some very interesting comments from
18 Betty Duke, from Stephanie O'Dell, who is the
19 person who started this whole thing and the reason
20 she did not take the money that perhaps she could
21 have gotten, but still instead went with a class
22 action lawsuit is because she looked in the eyes
23 of her baby, she was a single mom, and she said my
24 daughter is not going to go through this and I'm
25 going to stay working on this until it's done.

This is the attitude that women have in *Dukes v. Wal-Mart*, and these are women who can least have this attitude because they are the most vulnerable women. So these are just some points that I'll think you'll find their testimony interesting.

You already know what Wal-Mart is accused of doing, what I just want to underscore that in your briefing papers you will see that while the Supreme Court will not be deciding on the merits of *Dukes v. Wal-Mart*, that is not what is going to happen on March 29th when they have the hearing. What will happen is they will talk about the class--is it too broad, is it too large.

So is there any case where Wal-Mart has been accused of and has paid for gender discrimination similar to this? Yes, there is. The EEOC has a case, it's in your records and in my notes that they were filed a few months after Dukes v. Wal-Mart and the EEOC in Kentucky had a \$12 million award toward women who were being discriminated against in similar fashion. So, yes, there is some proof, there is already some adjudication on this.

Women have not as many opportunities, retail is a place where they come in and try to make a living and so Wal-Mart happens to have the worst record of all of the retail stores. And I guess I'm here because we're working to change New York City and we appreciate this hearing, but I think that the Equal Pay Coalition and the New York Women's Agenda wants to remind the City Council that there are things that you can do to protect workers and there are some bills that we have that we want to talk to you about that will stop this kind of retaliation and will help women get the fair pay in New York City.

So we thank you for this continued conversation and hope to have some actual possible outcomes that are within the power of the City Council to protect the workers of New York. Thank you.

DINA BAKST: Good afternoon, my name is Dina Bakst, thank you for inviting me to testify today. I am co-founder and co-president of A Better Balance and we're a New York legal advocacy organization that is dedicated to promoting fairness in the workplace and helping

workers care for their families without risking their economic security.

I'll be speaking briefly about Wal-Mart as an employer and, in particular, how its practice to discriminate against women workers and endanger their economic security. I'll try and be brief and do see my full testimony.

As we've heard from previous panels, although a Wal-Mart store may create new jobs, the quality of those jobs, especially for women is poor. We know retail jobs are notoriously low paid, but retail workers at Wal-Mart earn a one quarter less than other retail workers, and Wal-Mart is a key offender of wage discrimination. According to Wal-Mart's own data, women have been paid less than men in every major job, even when they worked at Wal-Mart longer and outperformed men. And as the evidence and record shows, Wal-Mart was paying over 5 to 15 % more than equally qualified men for the same work women were paid--were paid 5 to 15 % less than similarly qualified men.

But in addition to the pay disparities that we've heard about, the other

1 things that Wal-Mart workers suffer from is what's
2 called a part-time penalty and that was mentioned,
3 brought out before, and that is really significant
4 problem in these low wage jobs where women in
5 particular are underpaid and in addition denied
6 access to key benefits because they fail to
7 qualify. So this is an issue for health care,
8 it's a significant issue for paid sick days, and
9 other key benefits that allow women to support
10 themselves and feed their families. And we can
11 expect that the vast majority of positions that
12 will be filled at Wal-Mart will be part-time, so
13 this is a significant problem that we need to
14 really give serious consideration to and to focus
15 on the economic security of families.

17 I just want to highlight one
18 particular issue around discrimination and that is
19 the evidence and the records show the
20 discrimination against mothers was particularly
21 salient, and just the stereotyping about the
22 mothers and the fact that they--one single mother
23 was ascended to store manager but was later
24 demoted despite years of exceptional performance
25 after her new district manager told her she should

1
2 be home raising her daughter. This type of
3 stereotyping of women as caregivers who are not
4 management material violates the law and harms
5 working women and their families.

6 Nearly 4 in 10 mothers are now
7 primary breadwinners and far more critical, they
8 provide income for the families and these low wage
9 jobs which provide inadequate pay, inadequate
10 benefits, and lack of advancement opportunities
11 are a serious, serious detriment and concern for
12 working women and their families.

13 If a Wal-Mart store does end up
14 opening here in New York, there are steps that
15 city government can take to help ensure that women
16 it employs are treated fairly. We had heard
17 earlier that there is a real, real need to
18 strengthen enforcement of our existing civil
19 rights laws to address the pervasive sex
20 discrimination that exists in the city and state.
21 The city should also consider legislation to
22 protect workers from sharing salary information
23 for not penalized for doing so, vigorously combat
24 employment discrimination against caregivers, and
25 pass a law guaranteeing workers a minimum number

1
2 of paid sick days. Low income workers, especially
3 women in retail, lack access to these benefits and
4 this is a serious, serious impediment to women's
5 economic security.

6 And finally, I say immediately the
7 city should establish a task force because if
8 shedding a bright light on family economic
9 security, study how low quality part-time jobs
10 inflexible and unpredictable work hours and
11 discrimination threaten the financial stability of
12 New York families. And let's start with the
13 retail sector where we know these problems are
14 most severe.

15 So thank you, thank you for your
16 consideration, and we look forward to working with
17 you on these issues.

18 CHAIRPERSON ROSE: : Thank you.

19 CLAUDE LABLANC: Good afternoon,
20 member of council. My name is Claude LaBlanc, I'm
21 a lawyer for the UFCW in the province of Quebec--
22 normally I speak French, I'm sorry for my accent--
23 and I represent the employee who lost her job with
24 the closure of Wal-Mart store at Jonquiere in
25 province of Quebec.

1
2 In 2004, United Food and Commercial
3 Worker 503, a local union of UFCW Canada was
4 certified to represent the employees of Wal-Mart
5 in Jonquiere Canada. The Jonquiere store was the
6 first Wal-Mart store to be united in the North
7 America. After nine fruitless bargaining session,
8 the union filed an application under the Quebec
9 labor [off mic] to establish the [off mic] of the
10 first collective agreement. On February 9, 2005,
11 the Minister of Labor referred [off mic] to
12 arbitration and notified the parties of the
13 referral. The same day, Wal-Mart informed the
14 employees of its decision to close the store. On
15 April 21, 2005, the employment of approximately
16 190 employees was terminated.

17 After the closure was announced
18 many [off mic] granted in different parts of labor
19 code and act respecting labor standard were
20 initiated by Wal-Mart employees or the union
21 raising how of the stores closing [off mic]
22 disclosing was much of it by anti-union animus and
23 was a step taken by Wal-Mart in a larger employer
24 strategy of hindrance, intimidation, and union
25 busting.

From the very beginning of certification process at the Jonquiere store to [off mic] of Canada, [off mic] the closing of the store and the last of job because of union activity, Wal-Mart has challenged every proceeding and ruling favorable to the union. During the course of the proceeding, Wal-Mart did not hesitate to raise all possibility objection. The situation resulting were long delays and extensive cost for the UFCW.

Wal-Mart keep the same approach in cases involving the certification of other Wal-Mart stores in the province. In fact, each decision that was favorable for the union [off mic] or the employees was ultimately challenged by Wal-Mart. Throughout the certification process at Jonquiere store and the following proceeding, Wal-Mart [off mic] many provision of the labor code of Quebec pertaining to certification of unions.

In a case regarding the closure of its Jonquiere store, Wal-Mart argued that the fact that the person belongs to an association of employees shall not be relevant during the process of certification what is a protection referred by

1
2 the labor code of Quebec to protect the ability of
3 employees to exist their association right shall
4 be declared [off mic] by the labor board. Wal-
5 Mart was trying to obtain the identity of
6 employees favorable to the union. This position
7 was quickly reject by the labor board.

8 This failure Wal-Mart challenged
9 the role of the board before the court of [off
10 mic] the highest court of the province of Quebec.
11 The even seek permission from the supreme court.

12 Finally, [off mic] on the long
13 track record of anti-union activity, it was
14 alleged by the union that the closure of the
15 Jonquiere store was intended, not only as been
16 reprisal against Jonquiere employees who had
17 chosen to be represented by the union, but to send
18 a [off mic] silent to the other Wal-Mart employees
19 at other stores. In one instance, the labor board
20 issued a sentence against Wal-Mart for having used
21 tactic and such intimidation [off mic] to prevent
22 unionization of its employees and having [off mic]
23 with union activity in a store in Quebec.

24 Wal-Mart suddenly [off mic] gets a
25 new tire and lube shop in Quebec, the first North

America with a union contract Wal-Mart said close the tire and [off mic] shop store because of cost tire to the first labor agreement imposed by [off mic].

In conclusion, the Jonquiere [off mic] experience has demonstrated that Wal-Mart will not hesitate to use all means possible to prevent the unionization of its store of the imposition of a collective agreement. Thank you very much.

CHAIRPERSON ROSE: Thank you for your testimony. I understand that you need to leave, so--

[Off mic]

CHAIRPERSON ROSE: Oh, okay, I'm sorry, all right. Panel members, could you just tell me how you feel Dukes v. Wal-Mart will change the policies regarding pay and promotion for women?

DINA BAKST: I think it's critical for--this case will set a real precedent. You know, if victims of employment discrimination cannot band together as a class, countless incidents of discrimination will go unremedied.

Many low wage Wal-Mart employees cannot afford to file individual lawsuits and many fear retaliation and have a lack of knowledge about their rights and anti-discrimination law so a class action is really their only remedy or ability to enforce their rights. So this case has important, important consequences for working women.

CHAIRPERSON ROSE: Would you know if there is any newer data or research that's being done regarding the pattern of discrimination?

BEVERLY COOPER NEUFELD: Well we do know that data has been collected, it is not available until after the Supreme Court case, so there are some papers that I think that will be coming out. And that's certainly a concern because we really don't know what's happening now, but we do know if go on their website that there is really no talk about how many--looking at the woman problem that Sam Walton knew he had in the 1980s, or in 1990s when the nuns were at meetings with signs. So we don't know what's happened about that exactly.

But I do want to point out that

1 after the last hearing that Steve Restivo was on
2 Diana Williams and he was asked, well what have
3 you learned since you were last here in New York
4 City about bringing a Wal-Mart to New York City,
5 and he said, well we've learned we have to work
6 with the neighborhoods and we've learned that
7 we're doing better with greening, and he had many
8 things that Wal-Mart had learned, but the one
9 thing that he didn't say was that we have to deal
10 with fair wage discrimination. And I know that
11 there's control because there is a Supreme Court
12 case, but one would think that they would want to
13 show the world that they are doing better in this.

14 So I think the jury's still out on
15 that.

16 CHAIRPERSON ROSE: Thank you. And
17 one last question before I give the chair to my
18 co-chair. Do you know what the current gender
19 breakdown is for upper-level management at Wal-
20 Mart for women and do you think that the
21 disproportionate use of part-time for women have
22 affected their ability to reach upper-level
23 management?
24

25 DINA BAKST: Yeah, I don't know

those numbers, but I absolutely think the use of part-time is a barrier to advancement, I mean, there's just no doubt that part-time jobs are often a path to nowhere with inadequate benefits and opportunities for advancement. And the data is there to show it.

CHAIRPERSON ROSE: Thank you.

Chair Ferreras?

CHAIRPERSON FERRERAS: We have several other panels and actually several other Council Members that'd like to ask questions, but I just wanted to ask two brief questions. In any of your conversations, have you heard anything about maternity leave and Wal-Mart's practices on maternity leave?

DINA BAKST: The record is tremendous and there are certainly instances in the record around denial of maternity leave. In terms of most recent data, I don't have it though. Do you, Bev?

BEVERLY COOPER NEUFELD: No, that's not available, I don't think.

CHAIRPERSON FERRERAS: Okay. And actually this is for the attorney over in Canada.

1
2 I know that you had mentioned in your testimony
3 that they issued a sentence against Wal-Mart for
4 having used tactics such as intimidation and
5 threats. What ever came of that after they made
6 the sentence, what came up after that?

7 CLAUDE LABLANC: The case of
8 intimidation after the decision, the tribunal said
9 that Wal-Mart [off mic] the decision in a store
10 because this case is very simple, it's a person
11 who spoke about the union in the store and the
12 manager said at this employee, if you continue to
13 speak about the union, you lost your job. And we
14 go before the tribunal with this case and the
15 tribunal said, no, it's not okay, so the person
16 don't lost the money, the tribunal said only we
17 take the decision and we won that decision in the
18 cafeteria of the employee.

19 CHAIRPERSON FERRERAS: Okay. Thank
20 you very much.

21 Council Member Palma.

22 COUNCIL MEMBER PALMA: Thank you,
23 Madam Chair. I think they're more of your
24 personal opinions in terms of the letter that was
25 written that was read by our counsel to the

1
2 committee on behalf of Wal-Mart and I think it's
3 so hypocritical of them to talk about diversity
4 and respect when, obviously, they are treating
5 women as second-class citizens. And so I just
6 want, I guess--well I'm pretty sure you would
7 agree with that is hypocritical.

8 But in terms of their claims saying
9 that it's unfair of what the attorneys is doing to
10 these women, you know, preventing them from going
11 to court, keeping them out of the court system for
12 such a long time. Can you speak a little bit more
13 about that in terms of why was that decided to
14 sort of--why it's taken so long to get these women
15 before a judge or the courts?

16 BEVERLY COOPER NEUFELD: Well Wal-
17 Mart is questioning the idea of class, you know,
18 this is a class that's women who worked from Wal-
19 Mart from 2001 to present, but the judge in San
20 Francisco in the 9th District found that there was
21 so much similarity of what was happening all
22 across the country with all of the processes that
23 Wal-Mart has. Let's remember that Wal-Mart is
24 this kind of family, they have a language, they
25 have things that everybody does, they have a

1 cheer, actually, that starts out meetings. So
2 this is not a company that is very diverse in the
3 way decisions are made, it comes down from a
4 central point, so that's one of the basic reasons
5 that in San Francisco, the highest court on a
6 federal level, came out in favor of keeping this
7 as a class of people.
8

9 Now Betty Dukes could not have done
10 anything by herself, really.

11 CHAIRPERSON FERRERAS: Right.

12 BEVERLY COOPER NEUFELD: And that's
13 true for all of these women. Intimidation and
14 retaliation is just so much a part of what
15 happened in the lives of women at Wal-Mart that
16 you cannot expect a woman who probably really
17 needs this job and doesn't have money enough to
18 pay her rent perhaps, let alone an attorney, to
19 fight for her rights, so the class is extremely
20 important.

21 And whatever happens, I think if
22 this class is held and if this actually goes to
23 trial, Wal-Mart will have to make amends, I mean,
24 financially, but it's also going to have to change
25 its practices. So we know whatever Wal-Mart does,

1 if they're keeping prices low, everybody's trying
2 to keep prices low, but maybe if they can raise
3 the bar on some of these issues on these pay
4 inequities, well maybe that will raise a bar for
5 all women, we'll have to see though.

6
7 CHAIRPERSON FERRERAS: And is this
8 class action suit closed or in terms of the
9 attorneys trying to see if there's more women that
10 need to join this suit or no one else can join?

11 DINA BAKST: The only issue being
12 decided right now is before the Supreme Court,
13 yeah, is whether they can go forward--

14 [Crosstalk]

15 CHAIRPERSON FERRERAS: Oh, okay.

16 DINA BAKST: --yeah, I mean, it's a
17 1.6 million class of Wal-Mart former and current
18 employees.

19 CHAIRPERSON FERRERAS: Okay. So
20 there can still be some other women out there that
21 aren't--

22 DINA BAKST: Right.

23 CHAIRPERSON FERRERAS: --facing the
24 same practices that can eventually--

25 DINA BAKST: Join the class.

CHAIRPERSON FERRERAS: --join this.

[Pause]

DINA BAKST: --present.

BEVERLY COOPER NEUFELD: It's to
present.

CHAIRPERSON FERRERAS: Okay.

BEVERLY COOPER NEUFELD: It's to
now.

CHAIRPERSON FERRERAS: All right--

[Crosstalk]

CHAIRPERSON FERRERAS: --thank you.

CHAIRPERSON ROSE: Council Member
Williams.

COUNCIL MEMBER WILLIAMS: Thank you
very much, Madam Chair. Thank you to the panel
and merci beaucoup. As my colleague and I were
talking, there was absolutely no need to
apologize. In New York City, we're used to all
flavors, colors, native tongues, so I appreciate
the testimony.

I had a couple of things. The
first one, I heard one of my colleagues may have
mentioned it, I wanted to address, they talked
about the \$12 average pay, which worries me

1 because you can do averages in many ways, you can
2 do mean, median, and mode, I don't know which one
3 of those they chose and each one of those might
4 give you a different number. As well as, I don't
5 know if they took out the highest paying people,
6 which would skew how much they're actually paying
7 the lower jobs, which is the ones that I'm
8 concerned about.

10 And also I also dispute that
11 getting a job is better than not having a job. I
12 dispute it because these communities have cycles
13 of poverty that are probably cycled because of
14 beliefs such as that and just because someone
15 needs a job doesn't mean you give them any job,
16 you try to give them a job that would help them
17 break the cycles of poverty that they're in so the
18 communities can be better. And I think all the
19 communities should stick united to demand that
20 Wal-Mart give our communities what we deserve.
21 Not just 'cause we deserve it, but also because
22 they can afford it. They are one of the people
23 who should come out as a leader because they can
24 afford to be a leader and they can afford to give
25 much more than what they're offering now and I

believe that we do need to stand together.

And I'm astounded by 1.6 million people agreeing on anything. It's not 10 people, it's not 20, it's not 1,000, it's not 100,000, it's not 200,000, it is 1.6 million people who are saying the same thing. That's absolutely incredible and I can't see how anybody can argue that that's not a class of people.

And I also would like to talk and be at the table to discuss with Wal-Mart. I also have a problem with the trust. If they won't even come and show respect to the City Council to have a discussion and all they're putting out there is such negativity and I'm concerned about believing what they're going to say when they're not speaking to us. What are they going to do to people who are not City Council members, who are people who will be at kind of their mercy a little bit, that really does concern me.

So I just wanted to say that, and thank you. I did have one question, and I'm sorry I didn't get your name, I apologize, but was there any kind of punitive measure that were taking place, was Wal-Mart punished in any way for the

union busting?

CLAUDE LABLANC: Actually, we have a case before the appellate court of Quebec. In this case it's to obtain the damage for the union and for the employee. So we have a decision for the union and the employee by the arbitrator in the Superior Court so I hope then since next December, normally the appellate court of Quebec will [off mic] this case we hope.

COUNCIL MEMBER WILLIAMS: Can you keep this council posted on what happened with that and how much the damages were and what happened in the case?

CLAUDE LABLANC: The amount is not determinate for the moment, we have just a decision on the [off mic] that Wal-Mart don't close a store if it don't have economic reason. The arbitrator said in the decision that the Wal-Mart don't have a right to close if he don't have an economic reason, so the amount of damage is not now determinate by the union and by the employee. It's after that.

COUNCIL MEMBER WILLIAMS: So were they forced to reopen at all?

CLAUDE LABLANC: No reopening, just the damage or damage for the employee and the union.

COUNCIL MEMBER WILLIAMS: Thank you.

CHAIRPERSON ROSE: Thank you, Council Member Williams. Council Member Van Bramer.

COUNCIL MEMBER VAN BRAMER: Thank you very much, Madam Chair and the other chairs as well. I just wanted to echo the comments of Council Member Williams and others that, though Wal-Mart didn't come to see us and testify to these issues, I do see a letter that they sent to the council outlining all that they do in terms of diversity and one of the sections is on the LGBT community, which is very interesting. But though they include the T in LGBT, the truth is that their sexual harassment policy does not include transgendered individuals and so, once again, Wal-Mart is sending us letters with information that is not completely accurate and they don't have the decency to come here.

Also, according to the Human Rights

Campaign, they do not have universal domestic partnership benefits for members of the LGBT community, which I find unacceptable in this day and age.

So I just wanted to make sure that the LGBT community, including the T, are brought up in this committee and in this hearing and that it be done so in an honest and transparent way.

Thank you very much, Madam Chair.

CHAIRPERSON ROSE: Thank you. Next Council Member Chin and then Council Member Mark-Viverito.

COUNCIL MEMBER CHIN: Thank you, Madam Chair, thank you to the panel. I just wanted to really focus back on the number of female executive, even though you might not have the statistics, it seems like that's what they are using in the Asian community and maybe Latino community they work with some of the business groups and they support their functions or they promote their leadership like to get awards because they are like the co-sponsor of the dinner and things like that and they use those things to publicize that they have woman leadership. So I

1 think that is something that we really need to
2 kind of get some of the statistics in terms of
3 what is the real picture that they have in terms
4 of their leadership.

5
6 BEVERLY COOPER NEUFELD: I think
7 we'll be able to have some of those numbers as the
8 Supreme Court case comes forward because that's
9 data that's being crunched and it'll be available.

10 But also I want to say that Noreen
11 Farrell, who is the one of the attorneys in San
12 Francisco who is working on this case, as well as
13 the Impact Fund, they are available to the City
14 Council, made themselves available to the City
15 Council for questions. So as your investigation
16 moves forward, you do have the people who are
17 trying the case who are willing to answer
18 questions as well.

19 DINA BAKST: Yeah. Just to echo
20 just one thing that was clear in the Wal-Mart
21 record was that we know that the company passed
22 women over for promotions but female employees
23 compromised only one-third of lower level managers
24 and one-seventh of upper-level managers. And we
25 know very well that many companies put out

statements, have Best Of, but it's really about what the numbers show and it's not about promotional materials, it's about the culture and it's about practices, and that's what really indicative of a supportive workplace that promotes the advancement of women and others, and that's lacking here.

COUNCIL MEMBER CHIN: I think one last question is that do you have in terms of any comparison with some of the big box stores? Because one of the reasons that Wal-Mart's representative views is that, oh, before you pick on us, what about practices of the--

DINA BAKST: Right, right.

COUNCIL MEMBER CHIN: --other big box store that we have already in the city.

DINA BAKST: And what we do know is that the retail sector is notoriously bad, but Wal-Mart is on the low end of that. I think I had given you a stat earlier in terms of the wage gap that Wal-Mart women earn or about a quarter less than other retail workers, and there are other companies and there are other companies that provide good benefits and higher wages to their

employees and show that it's good for the bottom line, they actually shows it improves retention, reduces turnover. Wal-Mart has a tremendous turnover rate, it's something like 40 %, so it's not necessarily a smart business decision. Many companies have found that quality jobs actually make good business sense.

COUNCIL MEMBER CHIN: Thank you.

BEVERLY COOPER NEUFELD: There is from the Brennan Center a document called what do we know about Wal-Mart and that does break out different big box stores. Also I want to say that Costco has an extremely high rate of covering health care, I believe it's about 94 %, so that's significantly different number.

DINA BAKST: And Costco actually shows huge profits, far exceeding--so, I mean, that's the example of that point.

COUNCIL MEMBER CHIN: Yeah, I mean, if Wal-Mart would use some of their advertising budget to provide better benefits, that would be a great step forward.

I think that there is a role for the City Council that we need to set the standard

that anyone who wants to do business in New York City, they do have to follow the rules and do the right thing. So thank you.

BEVERLY COOPER NEUFELD: Right, and I recall the hearing that you were at in June where we talked about the pay gap in New York City as the Women's Issues Committee, and at that time we talked about what the City Council could do to protect women in terms of retaliation. This is a big issue that's come up with Wal-Mart and with the Paycheck Fairness Act not passing on a federal level, we are hoping that the City Council will look at a similar kind of retaliation clause for New York City and that is very possible to do. So that's a way that the City Council can actually protect, not just women workers, but it's mostly women and minority workers.

COUNCIL MEMBER CHIN: Thank you, we look forward to working with you on that. Thank you.

CHAIRPERSON ROSE: Thank you, Council Member Chin. Council Member Mark-Viverito.

COUNCIL MEMBER MARK-VIVERITO:

1
2 Thank you, Madam Chair, and thank you all on the
3 panel. Just I find it interesting 'cause we've
4 looking at the letter here from Wal-Mart and I was
5 reading the article before from 2003 talking about
6 a practice in 2000 where once there was a union
7 that came into one store they cut out that
8 department from all the stores. Here's Mr.
9 LaBlanc talking about the experience in Canada
10 about how they basically once the unions are
11 getting footholds they're closing down stores.
12 Clearly, you know, they say you can't change the
13 spots on a leopard, this leopard is clearly
14 showing its spots, it's not going to change, it's
15 an ingrained practice.

16 And interesting in this letter that
17 there's no discussion about its anti-union
18 practices, nothing at all, it talks about all this
19 wonderful work they're doing. And I love this
20 little section here where it says benefits, we
21 continually look for new and innovative ways to
22 offer our associates and their families a
23 comprehensive package of benefits designed to meet
24 their needs. Yeah, maybe somebody describing what
25 public assistance benefits they're eligible,

right? That's part of their benefits package.

But the fact that they don't speak anything about that and, of course, that they're not here to really answer that is obviously something that is very telling as well.

For full disclosure, I will say I was recently part of a leadership program of which one of the funders was Wal-Mart, I'm sure they're regretting that these days, but I just want to be very clear and upfront because they are attempting through many different ways to really show that they are good partners and throwing money as if it's supposed to buy people's silence and people's good will.

But we are very concerned, we do have a role to play. Thank you for all your contributions.

But, Mr. LaBlanc, just questions with regards to what happened with that facility that they closed down? What's going on there? The land, all that stuff.

CLAUDE LABLANC: You know, the experience of Wal-Mart at Jonquiere, it's very special because Wal-Mart we have a right to close

a store if the close lost money, and everybody said, yes, it's okay, if close lost money, you can close a store. So the disclosure arrive in February--April 2005 and until today Wal-Mart have many chance to give the economic reason just with the--I give an example, with the financial statement and never Wal-Mart want to said what exactly the financial difficulties. It's very special.

COUNCIL MEMBER MARK-VIVERITO: But in terms of that facility that they closed, did they own the land? Is it just sitting vacant? Like, what's happening to that site?

CLAUDE LABLANC: It's vacant, yes, it's empty, the store is empty.

COUNCIL MEMBER MARK-VIVERITO: And it's a big eyesore I imagine in that part. Okay. Well thank you for coming and sharing your experience and thank you all for your testimony.

CHAIRPERSON ROSE: Thank you, Council Member. We're going to call the next panel and I'm going to ask my Council Members if we can keep our questions to five minutes, we have at least five more panels to go through. Thank

you.

MATTHEW CARLIN: Next we have
Kenneth James, Kimberly Freeman Brown, and Pat
Purcell.

[Long pause]

CHAIRPERSON ROSE: Okay. Would you
please testify in the order that you were called
and also please state your name for the record.

KENNETH JAMES: Good evening, my
name is Kenneth James and I will be reading two
testimonies. The first testimony that I will be
reading is from a young lady who could not be
present.

My name is Joann Desbiens
[phonetic], I live in Jonquiere, Quebec, a city
located about 200 kilometers from North Quebec
City. I'm the mother of four school age children.
When Wal-Mart announced its plans to open in our
town, I thought this could be an opportunity for
me to return to the labor force. I applied for a
job, at the interview I was told that Wal-Mart
offered a great opportunity to be steadily
employed in a stimulating and open work
environment, a good chance for promotion, as well

as premiums, bonuses, and raised based on performance.

The first year, the Wal-Mart management regularly congratulated us on the performance of the store. For my part, I completely devoted myself to the job and being an associate and member of the team, taking an active part in everything, including our daily Wal-Mart cheers. But soon after I and many of my co-workers realized that the promises made at the time of hire a year earlier weren't being kept: Pay raises were rare, associates hired after us had better wages, promotions weren't being based on merit, but on favoritism. We tried to discuss these issues with the store manager, only to be told that we were part of a decision making process and that the rules of the games were not negotiable.

Soon after, I was approached by some co-workers who wanted to form a trade union. They introduced me to a trade union organizer who explained my rights and what working conditions were typically like in a unionized retail environment compared to Wal-Mart. This meeting

1 was an eye opener. The following day, we union
2 supporters started to compile relevant information
3 to canvas our fellow employees. In December of
4 2003, we spent 10 days to collect the signatures
5 necessary to make an application for
6 certification. We were nervous and frightened we
7 would be discovered, but by the time Wal-Mart
8 realized what was going on, it was too late. We
9 had finished getting the required signatures and
10 filed the application with the Labor Commission
11 just before Christmas.
12

13 The store manager tried their best
14 to frighten and intimidate us, but our
15 determination was stronger than their threats.
16 The certification vote was set for April 2004.
17 Rumors had been circulated for weeks that the
18 store would close if it went union. The threats
19 of closing, unfortunately, worked and we barely
20 lost the vote. What a disappointment, but we
21 weren't about to give up.

22 What motivated us from that day on
23 the arrogance--

24 CHAIRPERSON ROSE: [Interposing]
25 Sir, could you move it along?

KENNETH JAMES: Oh, I'm sorry.

CHAIRPERSON ROSE: Okay.

KENNETH JAMES: What motivated us from that day was on the arrogance of Wal-Mart showed to us we were labeled as losers, they thought we would give up, but the Quebec labor code allows us to reapply for accreditation after just a 3-month cooling off period.

On August 2nd, 2004, I heard that the president of TJAC 503, Marie Jose Lemew [phonetic], that the Labor Commission had confirmed we had signed up for the majority of the workers and so they certified us a bargaining unit. I was in my car when I received the call. I was so excited and overwhelmed, I had to pull off the road to stop.

A week ago, the Quebec Labor Commission upheld our charges that Wal-Mart shut the store because we decided to form an union and penalties will be applied. As for our first contract, the process continues in arbitration and even though our store is shut, our campaign led the way for workers at four other Quebec Wal-Marts to organize and become certified.

So today I am proud of my Jonquiere co-workers, I am proud of my trade union, and I am proud of me because I know what we did will someday lead to a better life for Wal-Mart workers everywhere.

CHAIRPERSON ROSE: Thank you, wow.

KENNETH JAMES: And the next one is from myself.

CHAIRPERSON ROSE: Okay. Thank you, we're trying to adhere to the 3-minute clock, okay?

KENNETH JAMES: Absolutely, absolutely.

CHAIRPERSON ROSE: Thank you.

KENNETH JAMES: I was a 9-year associate at Wal-Mart in Seattle until this past October with two years of management experience.

[Crosstalk]

CHAIRPERSON ROSE: [Interposing]
I'm sorry, can you just identify yourself?

KENNETH JAMES: Oh, I'm Kenneth James.

CHAIRPERSON ROSE: Okay.

KENNETH JAMES: I'm sorry. My name

1 is Kenneth James, I was a 9-year associate at Wal-
2 Mart in Seattle. Within two years, I became
3 support manager. In May of 2004 and 2005, I was
4 voted Associate of the Month and in 2007 was voted
5 Associate of the Year at my store in Rinton, WA.
6 This led me to believe that I was doing something
7 right.
8

9 One day, however, I was called into
10 the office and was told that I needed to change.
11 My manager said that I was being too nice to the
12 associates. I was shocked to be learning
13 firsthand that Wal-Mart's not the company that
14 they say they are. That meeting made me realize
15 that the associates in my store needed someone
16 they could count on and from that day forward I
17 decided to be that person.

18 For example, I had been hearing
19 from the guys in the back of the store that the
20 pallet jacks weren't working. I went back to
21 inspect the situation and found that seven of the
22 eight pallet jacks were not functional. That
23 meant that associates were lugging around
24 incredible amounts of weight and risking serious
25 physical harm because of the company's negligence.

When the associates approached their manager, they were told there wasn't enough money to resolve the situation. I encouraged them to stand up for their rights and their own safety and to call OSHA directly. A few days later, they had fully functioning equipment.

In June of 2009, my life changed drastically. I was one of five Wal-Mart workers who spoke out for change at a Wal-Mart press conference about working conditions and our support of the Employee Free Choice Act. I felt moved to state that if President Obama could stand up for Wal-Mart workers, why can't I. It's our civil right to vote for a union and inside this building are 400 workers, is what I said. If they could join the union without fear of retaliation, 300 would join us right now.

Soon after this press conference, my hours were cut back drastically. I was told that this was because of changes at the store, but the first two people who felt these changes happened to be myself and a co-worker who also spoke at the press conference. My hours were sliced from about 37 a week to 18 and I struggled

to pay my rent.

Things were even worse for my co-worker, who got zero hours a week from the company for three months. Her name appeared in the schedule, but week after week she wasn't given any hours until she called the EEOC.

A third co-worker of ours at another Wal-Mart store had been active in talking about the union in her store and she was fired from the company. She filed a complaint with the national Labor Relations Board for retaliation and eventually got her job back.

These are all blatant examples of how Wal-Mart manipulates--retaliates against their employees who try to stand up for their rights.

In December, I couldn't take it anymore and I finally quit my job at Wal-Mart. At a point when I was facing eviction, even my landlord was more sympathetic to my situation than Wal-Mart. Worse than the economic hardship though, was the constant surveillance on the job. Tension was rising in the store and I was being given the cold shoulder by all the managers.

I'm still in contact with the

people who work at my old store and they continue to suffer many unfair practices. While Wal-Mart donates money to the community to continue to buy favor, the associates make this company the success that it is and they feel very much left out. I remember having to make these hard decisions when I worked at Wal-Mart--do I pay the rent, half of the light bill, the mortgage, or the car note, what will I eat for the next two weeks.

So, yes, Wal-Mart associates throughout the country definitely need a change. Thank you.

[Pause]

CHAIRPERSON ROSE: --so much.

KIMBERLY FREEMAN BROWN: Good afternoon and thank you, Council. My name is Kimberly Freeman Brown and I am the Executive Director of American Rights at Work, a national labor policy organization based in Washington. With such a mission, we have a great interest in labor practices of Wal-Mart, the world's largest company and the county's largest private employer.

I'm here to tell you that Wal-Mart is known for actively violating its associates

1 legal right to form a union. The company has gone
2 to great lengths to prevent its associates from
3 organizing, including repeatedly violating the
4 law, firing workers, shutting down stores, and
5 even discontinuing a companywide meat cutting
6 service after the workers voted for a union.
7

8 For this reason I urge the City
9 Council to deny Wal-Mart the opportunity to open
10 stores in New York City.

11 When we started examining Wal-
12 Mart's labor practices, we asked ourselves how a
13 company of over 1 million employees could be
14 entirely union-free. Is it the case that Wal-Mart
15 associates just aren't interested in having the
16 ability to collectively bargain and improve their
17 working conditions? We now know from interviewing
18 Wal-Mart associates that constantly fluctuating
19 hours, heavy work load, unaffordable health plans,
20 and limited opportunity for advancement leaves
21 many wanting a collective voice at work.

22 So the answer is not that Wal-Mart
23 associates don't want union representation,
24 rather, as we detailed in our 2005 report, Wal-
25 Mart has used a coordinated centralized campaign

involving both legal and illegal tactics to keep its U.S. stores entirely union-free.

How did Wal-Mart accomplish this?

First, it took steps to avoid union activity altogether. For example, research shows that on an employee's first day at work, anti-union messages are communicated through the company's orientation video. Wal-Mart has also developed a systematic method of tracking stores with a high number of employee grievances that could lead them to form a union. When associates have chosen to take a risk and attempt to form a union, Wal-Mart has repeatedly broken federal law to quash these efforts.

Between 1998 and 2003, 288 unfair labor practice charges were lodged against Wal-Mart, accusing the company of interfering with its employees' freedom of association. With all of this lawbreaking and anti-union activity, it's no surprise that few Wal-Mart stores have even attempted to form a union. Only five U.S. Wal-Mart stores have held union representation elections since 1998 and only one yes vote occurred in 2000 in Jacksonville, Texas--and we've

heard that story about how the meat packers formed a union and they discontinued it.

So the conclusion of our 2005 report and in a 2007 Connecticut Law Review article was this: Wal-Mart has remained union free, not because its associates don't want a union, but because of the company's centralized coordinated strategies involving legal and illegal tactics to both prevent and respond to union activity. Similarly, in 2007, Human Rights Watch issued a report concluding that Wal-Mart employs a sophisticated and determined strategy to prevent union activity at its U.S. stores and when that strategy fails, quashes organizing wherever it starts.

Until Wal-Mart respects the right of the associates to come together and collectively improve their jobs, the company does not deserve to expand its operations. When the world's largest employer operates as a union buster, it has a hand in legitimizing and accelerating the widespread use of such activity among its vendors and rivals.

Thank you so much.

CHAIRPERSON ROSE: Thank you so much for your testimony, Mr. James and for your co-worker, Ms. Desbiens. I am really sorry for the egregious behavior of your former employer. Excuse me?

FEMALE VOICE: [Off mic] have one more [off mic].

CHAIRPERSON ROSE: Oh, I'm sorry. I am really sorry. Now I'm misbehaving. Please.

[Crosstalk]

PATRICK PURCELL: No, no, no, by all means finish your statement 'cause it's a very profound and straightforward one, so you should, please.

[Pause]

PATRICK PURCELL: Well I think for the sake of expediency, my name is Patrick Purcell, I'm assistant to the president of UFCW Local 1500. Our union represents 23,000 grocery workers in the metro New York area.

I believe for the sake of expediency, I'm simply going to submit my testimony, I will simply tell you that I was asked to talk briefly about the problems with

unionization, I think you've heard them all. From the situation in Texas where they were ordered to finally bargain by the circuit court in New Orleans, not exactly your most left wing court down in New Orleans. Arizona where they had numerous violations, administrative law judge cited them for surveillance and what have you. Greeley, Colorado, I presented to you two copies of the Human Rights Watch study where this extremely reputable organization did a study of what happens when workers try to organize, and it is very well documented the horrifying experience that people go through.

To the situation in Canada, I mean, let's remember one thing, whatever success they've had in Quebec it's because in Quebec they have what we fought for years here for and will always continue to fight for is they have the elements of the Employee Free Choice Act. Quebec has card check, mandatory card check, they have binding arbitration. Wal-Mart never negotiated a contract with those people, they eventually submitted it to binding arbitration and the results of the contract were done by the government.

1
2 So I would simply say to you that
3 in each case, whether it's in Canada where they
4 have more level playing ground when it comes to
5 it, the reason they've organized in Quebec is
6 because it's fair level ground for them to do it
7 because the laws are fair and give workers a
8 chance. In this country we know that's not true
9 and Wal-Mart is an absolute expert at looking at
10 the law and trying to figure out how to use it to
11 make sure that workers do not organize--that is
12 their biggest fear.

13 So, again, I will leave the
14 testimony here. I think the testimony of the
15 former workers and the experts here say it all.
16 This is a viciously anti-union, anti-worker
17 company and I would say that the City Council has
18 not only the right, but it has the obligation to
19 make sure that they improve their business
20 practices before they benefit for the consumer
21 dollars of the city.

22 CHAIRPERSON ROSE: Thank you. Do
23 any of the panelists know of any efforts to
24 organize once they've gone through the process and
25 have been defeated by Wal-Mart?

KIMBERLY FREEMAN BROWN: No, the practices of Wal-Mart, their union busting practices are so well-known by their workforce that it has really created a chilling effect among their workers, despite the fact that they may want to organize, that knowing that it seems so insurmountable in light of the company's policies, that very few actually attempt to form a union.

KENNETH JAMES: Excuse me, in addition, some of the anti-union meetings that they held in my store, we're very diverse in my store, we have 21 different national cultures in our store and the store manager went to some practices to say that if we get a union in the store, you won't be able to go to your country any more for two and three months at a time, which really had an impact on these people because they said, no, of course not, I'm going to stand up for myself if these people are going to say I can't go to visit my people in my country.

CHAIRPERSON ROSE: Thank you.

CHAIRPERSON FERRERAS: Hi, my question is for Mr. Purcell and it's in particular to how do you think the opening of Wal-Mart stores

in the city would affect union jobs at competitors to Wal-Mart and in particular to the supermarkets in our area?

PATRICK PURCELL: Sure, I think I'll take two quick ways to go with that. I'm sorry that Council Member Ulrich had actually left because he made a comment regarding the building trades, you know.

Let me say this to you, I think he's right in the sense that the building trades came to an agreement to pay--Wal-Mart to pay what we consider to be the area standard wages and benefits in the area and so our response was that's great, why not do it for the retail workers. They have as much right to the area standard wages and benefits in the grocery industry than the construction workers have a right to the area standard wages and benefits in their industry.

It simply proves that Wal-Mart will pick and choose which workers it's going to do. It is nothing more than advantageous for them to so-call come to this agreement so they have the PR of what Council Member Ulrich had actually did for

them by saying that.

So I think the reason I say that is it then goes to what we were saying, if Wal-Mart however is not willing to pay the wages, benefits of the grocery industry in the city, you're going to have an opportunity where you're going to start dragging down then those workers. We've always say that the question's going to be are we going to pull workers up to a better life with union contracts, or we going to allow companies like Wal-Mart to drag workers down with their low prices, cheap wages, and no benefits. So the competition would be, it's not an even playing field and that's simply what people are asking for, they're asking that they come in and respect the necessary wages and benefits so all competitors and folks can actually be able to provide jobs and what have you. Wal-Mart's made it clear: It kills businesses, it closes stores.

Study after study after study has been done, it's been done by neutral third parties, it's been done by professors. This is clear, I didn't do this study, they did this study. And the bottom line is that the wages and

the benefits will go down, workers will lose jobs, and Wal-Mart will do the same thing here in New York City: It will profit off of the despair of others.

CHAIRPERSON FERRERAS: Thank you very much. My following question is for you, Mr. James. Was there any time while you worked for Wal-Mart, especially towards the end, that you had to go on public assistance or need any type of subsidies?

KENNETH JAMES: No, it wasn't, and excuse me if I get a bit emotional because I just had faith, I took a \$500 check once, it was \$514 and I knew I had to pay my rent, I paid the 500 and I had \$14 for two weeks and we got a little tired of eating Top Ramen, but I made it through, and it was only because of my faith and strength that I had been taught to just hang in there and keep fighting the good fight.

CHAIRPERSON FERRERAS: Well I thank you and I think that that speaks to all of us and we want to ensure that nor you nor anyone else has to survive in New York City by faith.

And my other question is, we talk

about promotions and discrimination of women, but it was interesting in your testimony how you went from a 37 a week to an 18 a week hour, yet your-- well you said, yeah, she wasn't given any additional hours, she actually got zeroed out--

KENNETH JAMES: Absolutely.

CHAIRPERSON FERRERAS: --so there was--do you think that this was based on the fact that she was a woman?

KENNETH JAMES: That was in part, but I believe it was because of the press conference because shortly after the press conference, maybe a week after the press conference, her name was put on the schedule, but zero hours and when she went to management and said, why isn't my name on the schedule, they said we don't have any hours for your area. If you want more hours, you have to go to another department and get it, but because of a surgery she had on her shoulder, she wasn't able, and she had that in her L & I papers, that information was in there. So we felt that it was a retaliatory effort after the press conference.

CHAIRPERSON FERRERAS: Well it

seems to me that they discriminate even after the fact that, you know--it's horrible that you were given 18 hours, but for a woman to be zeroed out and for them to allege that it was because of a disability, it just kind of reconfirms a lot of the issues that we have here with Wal-Mart. So I thank you.

FEMALE VOICE: Do you have any--

[Pause]

CHAIRPERSON ROSE: Okay. Thank you so much for testifying today and we're going to be calling up our next panel, thank you.

MATTHEW CARLIN: Matt Ryan, Atti Barken [phonetic], Sarah Johnson, and Carmen Rivera.

[Off mic]

[Long pause]

CHAIRPERSON ROSE: Hi, would you start in the order that you were called and please identify yourself by stating your name for the record.

MATT RYAN: Yes, good afternoon, I'm Matt Ryan, I'm the Executive Director of New York Jobs of Justice, we're a coalition of worker

and community organizations working to build power to secure good jobs and strong communities for all New Yorkers, and thank you for the opportunity to speak today.

Right now New York City is at a pivotal moment, we can choose to either build an economy on a strong foundation of quality jobs and shared prosperity or a shaky foundation of poverty wage jobs and inequality. Allowing Wal-Mart to enter our city would put us on a collision course with poverty and equality, which truly is a road to nowhere.

New York Jobs of Justice has long stressed that one of the keys to building a strong economy lies in transforming the retail sector. According to the One City, One Future, a study that we co-authored in 2009, the retail industry is among the five largest and fastest growing sectors in the New York City economy, but it pays hourly workers less than half of what shrinking sectors, such as manufacturing, wholesale trade, and utilities pay.

We are going to build an economy that works for everyone, we must transform retail

1 jobs into good middle class jobs. Through
2 initiatives like the Health Care Security Act and
3 the Green Grocery Code of Conduct, we have worked
4 to ensure this crucial industry is governed by
5 high road business standards that lift New Yorkers
6 out of working poverty and allow them to lead a
7 decent life.

8
9 Wal-Mart is an industry leader in
10 creating precisely the kind of dead-end jobs from
11 which our communities have been struggling to
12 escape. A 2007 study found the company paid its
13 workers at least 25 % less than its closest
14 competitors and provides health benefits with a
15 deductible so high that a 2011 study estimated it
16 would cost Wal-Mart workers 25 % of their annual
17 income before they even started receiving
18 benefits.

19 But these figures only scratch the
20 surface of the miserable experience for working at
21 Wal-Mart. An esteemed scholar, Nelson
22 Lichtenstein, has noted Wal-Mart has documented a
23 systematic training in managers to deny them
24 overtime pay, routinely force workers to work off
25 the clock, and regularly force workers to quit

rather than lay them off and face an increased unemployment tax obligation. Perhaps this is why their turnover rate is at 40 %.

All these offenses would not be so bad if they were not self-contained, however, like a weed, Wal-Mart's employment practices invades surrounding communities, sapping them of the same resources they deny employees. As local businesses struggle to compete with Wal-Mart's cutthroat practices, they either go on to adopt the same low road practice--they often go on to adopt these same low road practices. A 2000 study found that Wal-Mart openings reduced aggregate earnings throughout the retail industry by an average of 10 %.

Sadly, taxpayers are often left footing the bill for what Wal-Mart refuses to pay. According to a 2004 congressional study, Wal-Mart's failure to cover the cost of its employees basic subsistence cost U.S. taxpayers \$1.6 billion a year, including expenditures for health care, housing, and school lunches. Matters have not changed much since. In 2009, 41 % of Wal-Mart's Massachusetts employees receive publicly

subsidized health care at a cost of 16.6 million. That same year, Wal-Mart had more employees and dependents on Ohio's Medicaid plan than any other company, at an estimated cost to taxpayers of \$45 million a year. In fact, Wal-Mart tops the list of companies with the most employees receiving Medicaid in all 24 states that track this data.

Wal-Mart executives seem to think that they're getting a good deal. As former Wal-Mart CEO Lee Scott glibly put it, public health care plans may actually be quote a better value with the relatively high income limits to qualify. While Scott may see value in plundering the public treasury for the cost of providing these workers with basic necessities, New York City should not. Faced with record budget deficits, New York cannot afford to Wal-Mart for Wal-Mart's negligence. More importantly, though, New York has values of its own.

We believe that if you work hard, you should be able to leave poverty behind, that the strongest economy is one built on shared prosperity. Wal-Mart believes in shifting the cost of the most basic human needs onto taxpayers

so it can maximize its bottom line. If we choose Wal-Mart's values over ours, we lose the chance of watching our children grow up in a city with opportunity in which everyone has a chance to thrive.

It's my sincere hope that council do everything in its power to prevent this from happening. Thank you.

[Pause]

ATTI BARKEN: --Ferrereras and Rose, Council Member Van Bramer, thank you. My name is Atti Barken, and I am a workers' right advocate at Make the Road New York out in Jackson Heights. And, as you know, we represent over 8,000 low income primarily immigrant New Yorkers and we fight to help hundreds of workers every year end wage theft, combat discrimination, in particular discrimination facing LGB and T members of our organization, and Q members of our organization.

And you've heard a lot of testimony today and a couple weeks ago about Wal-Mart and their terrible wage practices. I just wanted to touch on one other impact which is on you as legislators trying to balance the city's budget.

The state faces a \$10 billion deficit this year, as you know very well, we face a \$22.4 billion deficit here in New York City, and unfortunately, Wal-Mart is continuing its practice of shifting the costs of its labor onto taxpayers and onto the city.

Only about 54 % of its employees receive employee health insurance through the company and, unfortunately, because full-time workers only qualify for benefits after six months and part-time workers only qualify for benefits after a full year, a majority of workers actually never get health benefits, a majority of the workers who work at Wal-Mart.

So what does that mean for states? It means that 46 % of the children of company's employees are either on Medicaid SCHIP or out of insurance entirely. It means that in every state that we have data from Wal-Mart is the number one employer in terms of number of employees on Medicaid and relying on publicly funded health care. In Massachusetts, 41 % of Wal-Mart's employees is using publicly subsidized health care as of 2009. The numbers are strikingly high in

other states as well: 25 % in Tennessee, 16 % in Pennsylvania.

It's very hard to collect comprehensive numbers across the entire country, but based on the figures that have been released, at least one estimate puts at \$2 billion the amount of money that American taxpayers have to spend to provide health care every year to Wal-Mart employees.

So you've heard, I think, convincing evidence about the negative impact that Wal-Mart has on its workers and on our community and we ask that you stand up and demand more of Wal-Mart, and demand that they take a high road here in New York City. Thank you.

SARAH JOHNSON: Hi, Council Members, my name is Sarah Johnson and I work with SEIU 32 BJ, I'll be reading testimony today on behalf of Hector Figueroa, our secretary/treasurer.

Our union represents over 120,000 building service workers, including 70,000 that live and work here in New York City. And thank you for the opportunity to testify today.

We all know, I mean, certainly 32
BJ knows that times are tough here in New York and
that, despite recent reports that our economy is
in recovery, 1 in 3 New Yorkers still struggle to
get by while working low wage jobs.

The supporters of Wal-Mart's
efforts to open a New York City store have
suggested that with so many struggling
economically, now may be the right time. We
strongly agree that difficult times demand
innovative and resourceful thinking about our
city's economic future, however, we strongly
reject the suggestion that supporting a low road
retailer with an abysmal record on workers'
rights, wages, and benefits qualifies as the kind
of innovative thinking that we need.

Wal-Mart will not be the magic
bullet to our city's recovery, in fact, it's
likely to do more harm than good, hurting already
vulnerable middle class and low wage workers and
drawing on already-stretched public coffers. And
we know moderate and low wage workers have borne
the brunt of the economic downturn, they've
suffered employment loss and stagnant and

declining wages. Recent data from the Fiscal Policy Institute has shown that 44 % of the wealth in New York City is in the hands of only 1 % of the population. Allowing employers like Wal-Mart into our city will only exacerbate these trends, further depressing wages in our communities and contributing to the proliferation of the working poor.

Creating any jobs, even jobs that pay poverty wages, may seem like a quick fix to some, but if jobs do not get working families back on their feet, they won't contribute to a real economic recovery from our city.

We also have concerns about the public benefits, although I think some of my co-panelists spoke a little bit in more detail, so I'll gloss over that part. But we strongly believe that taxpayer dollars should never subsidize poverty level jobs in our city and in addition to tacitly supporting the reliance of workers on public benefit programs, Wal-Mart also does have a history of relying on taxpayers and state and local governments for economic development subsidies. And even if in New York

1 City they were to decline to apply for
2 discretionary subsidies, it's very likely that
3 they would receive as-of-right subsidies such as
4 the Industrial and Commercial Abatement Program
5 and which many other big box stores receive in New
6 York. So SEIU 32 BJ strongly believes that they
7 should not be able to do that.
8

9 It's our belief that New York
10 City's economic recovery will necessitate a
11 fundamental rethinking of our approach to economic
12 development, that's why we're here today to
13 express concern regarding Wal-Mart's intentions in
14 New York City and it's also why we've worked with
15 labor unions, community groups, and elected
16 officials like yourselves to support alternative
17 economic development strategies, such as those in
18 the Good Jobs bill, Intro 18, and the Fair Wages
19 for New Yorkers Act, Intro 251, which would attach
20 wage standards to economic development subsidies.

21 With New Yorkers all over our city
22 struggling to get by, we need more than a quick
23 fix that will create poverty level jobs and
24 squeeze New York City taxpayers. We need real
25 strategies for a long-term recovery that will

create good jobs, build the middle class, and keep our city strong.

CARMEN RIVERA: Good afternoon, my name is Carmen Rivera, I recently got fired unjustly from Wal-Mart. I know that there are thousands of people who have the same story as mine. I gave nine years of my life to Wal-Mart, I was considered to be an excellent and loyal associate, according to all my performances and evaluations. My pay brought me just above the poverty line and the insurance was totally unaffordable. Most of my co-workers were on assistance from government for health care, even food stamps. Can you believe that, a taxpayer subsidizing the wealthy company.

I was forced to manually move skids over, actually five times my weight, without help or support. I ruptured four discs in my back on the job. I filed a workers' comp from the moment that I was injured, Wal-Mart targeted me. They began to watch my every move. The department the assistant managers and store managers undermine me publicly and ignored me and basically shunned me. They told other associates and friends not to talk

to me or take directions from me.

Co-workers ask me all the time why were they treating you this way. What they are doing is evil. Everyone knew that they were trying to make me quit or--I'm sorry--or trying to find a way to fire me. They used constant surveillance as a form of intimidation and sometimes someone assigned to watch over me. For the last three months of working there, the pressure of the intimidation just added to my pain and stress [pause] from the injury.

Wal-Mart also actively and aggressively--I'm sorry, I can't see--are fighting my workers' comp. Refusing to pay my medical bills, they have refused to pay all my bills. My understanding of Wal-Mart policy is that you need three weeks notice before you can take time off, even for a doctor's appointment. I had many requests denied and medical release from the doctors were not recognized as an excuse for missing work. They used these rules to finally fire me.

Wal-Mart has a public relation campaign, Save Money, Live Better. I stand before

you today unemployed, injured, humiliated, and living off the support of my community.

The only people who are saving money, living better are the CEOs and shareholders. The taxpayers are losing money and our health and quality of life doesn't fit into Wal-Mart's bottom line.

Thank you for letting me share my story. Oh, I'm sorry.

I also have another letter from an associate that couldn't be here, her name is Leona Miranda.

My name is Leona, I began working at Wal-Mart in 1999 when the store opened. I worked there until 2 '07, I finally left the store because of genuine lack of respect for employees. Luckily I was able to find a better job, but many are not that fortunate. I worked for Wal-Mart for eight years, living below poverty line, getting food stamps, Section 8, and managed medical program, health insurance for my children. I also had really rely on food pantries to guarantee my family wouldn't go hungry. I didn't like hand-outs, especially since I was working very hard at

a full-time job.

Wal-Mart employees health and safety by focusing us to move pallets along--I'm sorry, I can't even see this. [Pause] When I spoken up and questioned these practices, I was singled out and targeted. I worked under eight different managers, each manager attitude towards employees and customers seemed to be worse than the last one.

During the time when my son needed regular medical attention, I had to protect myself by filing a Family Medical Leave Act form to ensure that I was given permission to leave work early weekly. I did this because it was well-known that leaving 20 minutes early would be considered an incomplete shift and result in termination. Many of Wal-Mart policies make it extremely hard to deal with and realities of family life.

The final straw for me was when one of Wal-Mart policy affected my family directly. In an emergency call would come into the switchboard for an associate, the operator was instructed to first page or contact a member of

management. Okay. One day my mother was hospitalized and my family was trying to reach me. My brother called the switchboard--my brother called, the call was transferred to the switchboard. Nevertheless, the manager decided not to give me the call. I carry my cell phone on during my shift due to my son's health and got message about my mother's hospitalization, despite their efforts to keep this information from me. I was so angry that I let a full half-hour prior to the cell phone notification. The managers made the decision to--I'm sorry--not to tell me. So basically what she did was she punched out and went home. I'm sorry, I apologize, thank you for listening to me.

CHAIRPERSON FERRERAS: Thank you very much to all of those who testified on this panel. I have a quick question to you, Ms. Rivera.

CARMEN RIVERA: Yes.

CHAIRPERSON FERRERAS: You mentioned that you worked for Wal-Mart nine years--

-

CARMEN RIVERA: Yes, ma'am.

CHAIRPERSON FERRERAS: --as an
associate?

CARMEN RIVERA: Mm-hmm.

CHAIRPERSON FERRERAS: Were you an
associate the entire nine years?

CARMEN RIVERA: Yes, well I started
in maintenance and worked my way off to department
manager.

CHAIRPERSON FERRERAS: Okay.

CARMEN RIVERA: That's when they
fired me, I was a department manager.

CHAIRPERSON FERRERAS: You were a
department manager.

CARMEN RIVERA: Yes--

[Crosstalk]

CHAIRPERSON FERRERAS: Were you
ever shown the union video that was mentioned
earlier?

CARMEN RIVERA: Oh, I just came in,
I didn't know.

CHAIRPERSON FERRERAS: Well I mean,
while at Wal-Mart, did you ever hear anyone trying
to organize, was there any talks about--

[Crosstalk]

CARMEN RIVERA: [Interposing] No, actually they have meetings that tell you, as a supervisor, if you hear anyone talking about a union, my job is to go tell management and tell them who said it, you know, so that they could take care of it.

CHAIRPERSON FERRERAS: So if anyone mentioned anything about union organizing, you immediately had to tell your--

CARMEN RIVERA: Yes, ma'am.

CHAIRPERSON FERRERAS: --your boss.

CARMEN RIVERA: Yes, and--

[Crosstalk]

CHAIRPERSON FERRERAS: Did you ever have to do that?

CARMEN RIVERA: No, well we're upstate, it's a small--

CHAIRPERSON FERRERAS: Okay.

CARMEN RIVERA: Yeah, but one time they got close, they were protesting in front of the store, but immediately management came and tell them they had to leave.

CHAIRPERSON FERRERAS: And when you say they, it was a group of people that wanted to

organize the store?

CARMEN RIVERA: Yes, ma'am. As a supervisor, you're trained that, even if it's your best friend and he's mentioning the union, you have to let them know.

CHAIRPERSON FERRERAS: It's interesting because Wal-Mart is a family, so even your family.

CARMEN RIVERA: Yeah, basically.

CHAIRPERSON FERRERAS: All right, thank you very much--

CARMEN RIVERA: You're welcome.

CHAIRPERSON FERRERAS: --for your testimony.

CHAIRPERSON ROSE: Thank you. This is quite a dysfunctional family I found out today. I want to ask Mr. Barken particularly about the immigrant services. So in 2005, a 4-year investigation of the Department of Justice had revealed that Wal-Mart had employed 345 undocumented workers in over 60 stores for janitorial services. Since that federal probe ended, how, if at all, has Wal-Mart changed its practices with regard to the employment of

undocumented immigrants?

ATTI BARKEN: I unfortunately can't speak to that personally.

CHAIRPERSON ROSE: Okay. All right. All right, thank you.

CHAIRPERSON FERRERAS: I'm sure someone, someone on another panel I'm sure can. We thank you for your testimony and for being on the record on this. And we're going to call up our next panel.

FEMALE VOICE: Right.

MATTHEW CARLIN: Elizabeth Urmi, Freddy Kaplan, Marvin Wasserman, and Ernest Stine or Ernestine Bassett.

[Long pause]

CHAIRPERSON FERRERAS: You may begin in the order that you were called up.

[Pause]

ELIZABETH URMI: Hi, my name is--a little bit more?

[Off mic]

ELIZABETH URMI: Okay. Hi, my name is Elizabeth Urmi and I am here today as a representative of the Urban Justice Center, Human

Rights Project to share our concerns about allowing Wal-Mart to come to New York.

We are concerned in particular with Wal-Mart's history of violating human rights and we support all efforts toward preventing Wal-Mart from coming to New York City. By allowing Wal-Mart to set up shop in New York City, we would not be serving the human rights interests of New Yorkers. We are concerned with four areas of human rights.

The first is the right of association and to organize. Wal-Mart does not support employees' right to organize and freely associate, which is a clear human rights violation as the right to unionize is outlined in Article 234 of the Universal Declaration of Human Rights which states that everyone has the right to form and join trade unions for the protection of his or her interest. Wal-Mart directly and openly combats efforts for employees to do so, as we've heard today.

As posted by the National Labor Relations Board, Wal-Mart has threatened benefit loss if workers organize, repeatedly interrogated

workers about union activity, illegally refused to bargain, and conducted surveillance on workers who were thought to be discussing and sharing information about union organizing through the use of video cameras, intimidation, and management tracking.

We are also concerned with their failure to provide a living wage. Also stated in Article 23 of the Universal Declaration of Human Rights, everyone without discrimination has the right to equal pay for equal work and to just and favorable remuneration ensuring for himself or herself and his or her family an existence worthy of human dignity.

Fifty-seven class action lawsuits have been filed since 2000 documenting complaints that Wal-Mart broke wage and hour laws by forcing workers to work off the clock, failing to pay them overtime, and denying meals and rest breaks. Additionally, Wal-Mart's practices, which aim to eliminate and replace [off mic] workers with new hired workers to decrease wage and benefit costs as documented in inter-organizational communications and memos are highly troubling and

concerning.

Thirdly, we are concerned with the discrimination against women. As documented in one of the largest employment discrimination cases in the nation's history, the sex discrimination lawsuit against Wal-Mart filed in 2001 with a class of more than 1.5 million current and former women employees documents that despite women being the majority of employees at Wal-Mart, a company with roughly 1.3 million employees in the U.S., of which 65 to 72 % are women who are paid on an hourly rate, disproportionately discriminates against women in pay, compensation, and opportunities for advancement in the workplace.

Further, despite women comprising roughly two-thirds of the company employees, only one-third of them are managers and supervisors.

Further, because most employees are women, the suppression of union organizing and collective bargaining noted earlier has a disproportionate affect on women.

Discrimination against migrant workers is the fourth area we are concerned with. As revealed through the recent rates conducted on

Wal-Mart janitorial staff in 2003, Wal-Mart did not have any safeguards to prevent exploitation of migrant workers and to protect their rights to reasonable work hours and overtime, as also outlined in the Universal Declaration of Human Rights. All persons, regardless of their nationality, race, legal or other status are entitled to fundamental human rights and basic labor protections, including migrant workers and their families. Migrants are also entitled to certain human rights and protections specifically linked to their vulnerable status.

The current discussion about Wal-Mart's violations of human rights of workers, specifically low income women, could not illustrate any clearer the desperate need for structural mechanisms that aim to weigh the human impact that organizations such as Wal-Mart have on our local communities. There is a bill currently pending a hearing in City Council, Human Rights Government Operation Audit law, Intro 283 that would require the city to weigh the human impact of its operations. Such an analysis should also be required for economic development decisions,

such as the subject of Wal-Mart.

Intro 283 would require organizational data be disaggregated and require organizations to be audited for discriminatory practices and policies, which would increase transparency and allow council to make more sound decisions based on clear data of what is in the best interests of the people.

It is in the opinion of the Urban Justice Center, Human Rights Project that bringing Wal-Mart to New York City would not be in the interest of the human rights of New Yorkers.

FREDDY KAPLAN: Good afternoon, my name is Freddy Kaplan and I am the Vice President of Stonewall Democratic Love of New York City. We're the oldest and largest citywide lesbian, gay, bisexual, and transgender democratic organization in New York. Stonewall Democrats is committed to building a city that is free from intolerance and New York City that remains Wal-Mart free.

Wal-Mart represents a culture of intolerance and insensitivity towards its LGBT workers. This company is far behind the curve

when it comes to promising fair treatment of its employees. In the previous two years, the Human Rights Campaign Corporate Equality Index, an annual measure of how equitably large private businesses in the United States treat their lesbian, gay, bisexual, and transgender employees, consumers and investors gave Wal-Mart a failing grade of 40 %. This dramatically contrasts with other progressive retailers such as Costco, Walgreens, and Macy's, all who earned 100 %.

Wal-Mart has bucked the industry trend of offering domestic partner benefits to its gay and lesbian workers. Even more disturbingly, some of the products that they sell, last year, more than 100 Wal-Mart stores were found to be promoting a children's book called, Chased by an Elephant, the Gospel Truth About Today's Stampeding Sexuality that suggests that gay people can quote overcome and be 'cured' of sin and convert to heterosexuality with the help of counseling.

Wal-Mart's CEO, Mike Duke, has signed the Arkansas Act I, a petition specifically aimed at prohibiting foster, parenting, and

1 adoption of children by gay and lesbian parents in
2 that state. In Las Vegas, a former Wal-Mart
3 employee has filed a complaint with the Nevada
4 Equal Rights Commission charging that his manager
5 asked him point-blank in front of other co-workers
6 if he was gay and then proceeded to make sure he
7 was alienated and shunned at that location.
8

9 Among our nation's most vulnerable
10 employees, transgender individuals frequently face
11 violence and harassment on the job, and even
12 termination. Wal-Mart lacks a non-discrimination
13 policy towards transgender workers and does not
14 include gender identity in its diversity training.

15 We wish to point out that New York
16 State has [off mic] protections in places
17 regarding gender identity. Although companies
18 such as Coca-Cola and Sears Holding Corporation
19 understand that there's no place for prejudice and
20 intolerance in the workplace, Wal-Mart just
21 doesn't get it. We have fought too hard for too
22 long for equality to roll out the red carpet for a
23 company that doesn't share New York City's values
24 of equality and fairness, as well as acceptance
25 and inclusiveness in the workplace. And we use

the word acceptance, not tolerance. We're not looking--I don't think any community is looking to be tolerated, looking to be accepted as we are for who we are and to be given equal treatment, just like any other community and any other individual.

Thank you.

COUNCIL MEMBER VAN BRAMER: Thank you very much, Freddy, I just want to cut in 'cause I'm going to have to take off, but I wanted to thank you, I think it's really good that Stonewall is here and that you are here to voice those concerns. I knew some of these things, obviously I commented on them before, but I have to say, hearing your testimony and reading it I am so angry at some of the things that Wal-Mart has been engaged in, I think it's disgraceful actually, and I'm just really glad that you're here--as my partner is calling me as we speak. So I just think it's really, really important that you're here today and that these issues were raised and, more than ever, we have to recommit ourselves to not allowing Wal-Mart here to perpetuate these horrific and discriminatory policies. I just wanted to thank you.

FREDDY KAPLAN: [Off mic] I just want to just raise one point, I know that there was a letter that was read from Wal-Mart, just a point of clarity, they do offer some domestic partner benefits only if they have to, only in those states that it's the law. If not, they won't do it as their own initiative. They are below the level of progressiveness and have made no efforts, despite all of these facts that they know about for the last 10 year practically, they have shown no progressiveness to correct this so far.

MARVIN WASSERMAN: Good afternoon, Council Members.

[Off mic]

MARVIN WASSERMAN: Good afternoon, Council Members, I'm Marvin Wasserman, Executive Director of the Brooklyn Center for Independence of the Disabled and I'm here to talk about Wal-Mart's employment policies as they relate to persons with disabilities.

Wal-Mart projects itself as a model corporate citizen as it relates to issues of disability. The Wal-Mart Foundation has provided

substantial funding to major organizations in our community. However, this doesn't negate a pattern of pervasive discrimination against people with disabilities in their employment policies.

By June 2001, the Equal Employment Opportunity Commissioner had filed 16 lawsuits against Wal-Mart for violating Title I of the ADA--the most filed against any corporation since the ADA went into effect in 1992. At least four others were filed by September 2008. In 2001, Wal-Mart was ordered to pay \$6.18 million to resolve 13 lawsuits under the ADA in federal courts throughout the country. Wal-Mart was required to employ an ADA coordinator with expertise in the ADA and personnel matters to oversee compliance and implementation of the consent decree.

Since then, well over 100 similar cases have been filed against Wal-Mart in district courts. Some recent examples include, in January 2010, the EEOC filed a lawsuit on behalf of an employee who was deaf for failure to provide a sign language interpreter or written notes, despite repeated requests.

In 2008, Wal-Mart was ordered to pay \$250,000 to an employee for whom they failed to provide reasonable accommodation after suffering a gunshot wound.

In April 2008, Wal-Mart was cited for failure to hire an employee with cerebral palsy.

In February 2005, Wal-Mart was ordered to pay 7.5 million to an employee with cerebral palsy after transferring him from a position he was capable of doing and asking impermissible pre-employment questions regarding his disability.

Last year, Wal-Mart was sued for firing a cancer survivor with limited ability in his right arm after requiring him to replace another employee in a job that required heavy lifting.

Many of these cases resolve from a failure to--involving the leave of absences and their policy seems apparently works as follows according to Wal-Mart Watch. One, an employer requests an ADA-mandated reasonable accommodation in order to deal with a permanent or temporary

disability.

Two, Wal-Mart orders the requesting employee to take a leave of absence while the company "acts" on the reasonable accommodation request.

Three, the employee agrees to take leave, one of two things generally happens: one, the accommodation is granted but there are no positions available for the employee returning from leave or the accommodation is denied with management claiming that the employee must be 100 % capable of working for Wal-Mart, at which point, the employee is terminated for failing to return from leave.

These lawsuits, I believe, represent the tip of the iceberg. Many who are discriminated against don't know their rights or afraid to assert themselves. No matter how much Wal-Mart may assert it is a good corporate citizen, it doesn't negate its poor record regarding employment policies for its people with disabilities.

Thank you.

ERNESTINE BASSETT: Hello, my name

is Ernestine Bassett and I am a Wal-Mart associate in Laurel, Maryland.

I have worked at Wal-Mart for almost four years and I have been greatly disappointed by my experiences with this company.

In 1999 I retired from my position as an inside technician with Verizon, it had been a pretty good job with good union wages and benefits. Unfortunately, like many Americans, I found that I needed to go back to work a few years ago to bring home a little more income. The contrasts of working at Wal-Mart has been shocking. The best way to describe it is that at Verizon I was treated like an adult and at Wal-Mart, we are humiliated and treated like children.

I am technically a full-time cashier, however, I haven't been scheduled to work a full 40-hour work week in about a year and a half, except maybe during the busy Christmas season. Wal-Mart never schedules enough associates to complete all the work that needs to be done so we are all under an incredible amount of pressure. It is demeaning to work so hard for \$10.70 an hour after four years.

And honestly, it's more about the lack of respect than the pay. I have worked hard for many years of my life and I know that I was one of the lucky ones to have a good union job for so long, however, I don't believe that work with dignity and respect should be a privilege reserved for the lucky few. A company like Wal-Mart, the biggest retailer in the world, can certainly afford to do better.

One of the most frustrating things about working at Wal-Mart is the bathroom break policy. A few years ago I was informed that I was taking too many trips to the restroom, even though I was never told what the limit of too many was. Because of my diabetes, I needed to measure my blood sugar level and I was on a medication that sometimes made me feel nauseated. By the way, this medication was luckily covered by the insurance plan of my previous employer. For the comfort of everyone around me, I needed these brief trips to the restroom, but my manager would just tell me that I wasn't allowed to go until she decided it was okay. It made me feel like a child to have to ask to use the restroom. And since the

answer was usually no, I began to feel more and more demoralized and humiliated. This is just one of many examples of how Wal-Mart disrespects its employees.

I feel that if people come to work every day willing to work hard and do their job right, they should be allowed some dignity on a job, but that is not what you get at Wal-Mart.

Thank you for the opportunity to speak with you today.

CHAIRPERSON ROSE: Thank you all for your testimony. As the chair of Civil Rights Committee, you all express gross, gross examples of discrimination and inequitable treatment and so I'd just like to ask a few questions.

Did non-white racial groups experience the same disparate treatment in wages and promotions as female employees, would any of you know?

ELIZABETH URMI: I actually I haven't seen any data that seems disaggregated in that way, so I can't speak to that.

CHAIRPERSON ROSE: And in terms of disabilities, approximately how many individuals

with disabilities apply to Wal-Mart each year and do you know how many are currently working?

MARVIN WASSERMAN: I can't speak to that, I know that Wal-Mart does employ people with disabilities, one Wal-Mart I've been to in White Plains, the greeter was a wheelchair user.

But my concerns are at the level of the employment opportunities at all levels and I can't really speak to whether or not Wal-Mart does allow people with disabilities to become managers, but there clearly is a pervasive pattern of discrimination.

CHAIRPERSON ROSE: When a person with disabilities asks for reasonable accommodations, how often are those requests honored or are they mostly denied?

MARVIN WASSERMAN: I can't state, apparently Wal-Mart is supposed to--under the consent decree in 2001, was to provide training to its managers and employees throughout the country on enforcement of the ADA and [pause] apparently in many instances it's not followed and the challenge in the courts, they tend to, you know, their [pause] to challenge it and oftentimes

there's a court decision.

CHAIRPERSON ROSE: So usually when you ask for reasonable accommodations, that's when the, I think you called it the leave of absence trick comes into play?

MARVIN WASSERMAN: Apparently, yes, that's according to a study that was done by Wal-Mart Watch.

CHAIRPERSON ROSE: And in so doing, then it usually winds up where you're left without employment as opposed to making reasonable accommodations, is that safe to say?

MARVIN WASSERMAN: That's correct.

ERNESTINE BASSETT: I have something to say. At the store I work at in--

[Off mic]

ERNESTINE BASSETT: I work in the store in Laurel, Maryland, I've been there, like I said, just about four years now and I've only known two disabled people there and I do remember one particular lady. She eventually left because the hassle was just too much, she couldn't take it anymore. It just made her situation worse dealing with Wal-Mart.

CHAIRPERSON ROSE: Do you feel that your medical condition attributed to the fact that you are no longer working a 40 hour week?

ERNESTINE BASSETT: No, no, my diabetes have nothing to do with my hours, I'm able to work 40 hours, it's just--

[Crosstalk]

CHAIRPERSON ROSE: [Interposing]
Yes, you are, but--

ERNESTINE BASSETT: Yeah.

CHAIRPERSON ROSE: --do you feel that that was part of when you needed to have some reasonable accommodations made because of your diabetes and it was not met, do you feel that that's why your hours were cut?

ERNESTINE BASSETT: No--

CHAIRPERSON ROSE: Okay.

ERNESTINE BASSETT: --I do not.

CHAIRPERSON ROSE: Okay.

ERNESTINE BASSETT: I do not.

CHAIRPERSON ROSE: Could you tell me why your hours were cut?

ERNESTINE BASSETT: Just at the mercy of the store manager. This was just a

personnel decision. The store--

CHAIRPERSON ROSE: Do you--

ERNESTINE BASSETT: Go ahead.

CHAIRPERSON ROSE: --do you have to
work hours off the clock?

ERNESTINE BASSETT: No, I never had
to do that.

CHAIRPERSON ROSE: But you just
feel that it was this particular manager that has
relegated you to less than 40 hours? Or is this--

ERNESTINE BASSETT: [Interposing]
And it's not just me, it's all the workers--

CHAIRPERSON ROSE: Exactly.

ERNESTINE BASSETT: --it's all the
workers in the store.

CHAIRPERSON ROSE: Okay.

ERNESTINE BASSETT: Yeah.

CHAIRPERSON ROSE: Thank you.

ERNESTINE BASSETT: Yes.

[Pause]

CHAIRPERSON FERRERAS: My question
is for Mr. Kaplan. In 2007, Wal-Mart discontinued
financial support to the LGBT organization stating
that it does not make contributions to support or

1
2 oppose highly controversial issues. In 2010, as
3 you stated in your testimony, it was reported that
4 Wal-Mart would begin selling a book that refers to
5 homosexuality as deceitful and predatory and
6 claims to assist LGBT identified youth in curing
7 themselves from same sex attractions. Does this
8 constitute a double standard in terms of giving
9 support to controversial causes?

10 FREDDY KAPLAN: Well if I [off mic]
11 understand your question, well yes, it is a double
12 standard. What's interesting is researching
13 before coming here a lot of stuff about Wal-Mart,
14 they're kind of schizophrenic in a lot of the
15 products they sell. They'll claim in some stores
16 they sell things that are for the gay community, I
17 don't know specifically for the gay community, but
18 they then will sell these kind of books and
19 literature, which are definitely under the
20 pressure of the conservative groups, which I would
21 argue are their main financial supporters. You
22 can't have your cake and eat it, you can't have
23 products that you want to claim are for the gay
24 community and then sell these kind of books which
25 basically promote violence, violence based on

1
2 morals and these are morals based on who's got the
3 most money and who's contributing the most to Wal-
4 Mart.

5 I don't know if they realize this,
6 I think they do realize this and they're more
7 concerned, not about civil rights, regular rights,
8 they're more concerned about bucking and getting
9 under the radar and not being caught on what
10 they're doing. So slowly but surely there's been
11 more and more consumer watchdogs watching them,
12 there's more civil rights groups that are watching
13 them and exactly what this committee is doing is
14 the ultimate pressure and getting this out there
15 and disseminating this information to the public
16 is what's the best thing that can happen.

17 CHAIRPERSON FERRERAS: Thank you,
18 thank you for that. You know, these are the, I
19 guess, testimonies that we want to get on the
20 record and it really is invaluable.

21 And, Ms. Bassett, I just want to
22 say--and all the other former and current Wal-Mart
23 employees--since Wal-Mart didn't come to testify,
24 you are really our vision into the store, so I
25 commend you for coming here to New York City and

being able to testify as you have done.

Did you experience any--in your personal opinion, was any of your discrimination or any of the hardship that you experienced while you have been working at Wal-Mart, do you think any of it has been because you're a woman?

ERNESTINE BASSETT: I think so, the women are treated differently from the men. You go to your manager with an issue, you have an attitude. Women have attitudes, men don't. They are treated so much better, they respect the guys and the [pause] attitudes.

CHAIRPERSON FERRERAS: Now in the upper management, are there many women--if you had to say or file a complaint or wanted to, your requests, were they going to men or women in majority of the times?

ERNESTINE BASSETT: Repeat that?

CHAIRPERSON FERRERAS: Your supervisors or the supervisors of the store, the top-tier management, is there a mix, do you remember what the ratio is men to women?

ERNESTINE BASSETT: Oh, let's see, well within the last six or eight months, there

are more women right now, not we have more women in the store, before, it was mostly guys.

CHAIRPERSON FERRERAS: So within the last six to eight months, there has been an increase--

ERNESTINE BASSETT: [Interposing]
They have added, they have added more ladies.

CHAIRPERSON FERRERAS: So I'm sure the men that have been already are probably making more than the new managers that just came in.

ERNESTINE BASSETT: Of course, of course.

[Crosstalk]

CHAIRPERSON FERRERAS: Okay. Thank you very much for your testimony.

ERNESTINE BASSETT: You're welcome.

CHAIRPERSON ROSE: In terms of immigrant labor or undocumented workers, in 2005, a four-year investigation by the Department of Justice had revealed that Wal-Mart had employed 345 undocumented workers in over 60 stores for janitorial services. Since that federal probe ended, has Wal-Mart changed its practices with respect to the employment of undocumented

immigrants? And if so, how?

ELIZABETH URMI: I can't speak to specifically, I'm unaware of any changes that have been made, and it was clear after those arrests and raids that the workers who were undocumented were working seven days a week with no overtime pay, with no benefits, and there were clearly no mechanisms in place to ensure that their human rights were being met and that there were safeguards and mechanisms for them to fall back on to have time off to ensure that they were being paid equally and having benefits for themselves and their families. So that's a major concern as a human rights violation. And also I'm unaware of ways in which--and if I'm correct, if I remember correctly, this was the case that you're referring to is in 2005--

CHAIRPERSON ROSE: Yes.

ELIZABETH URMI: --but there were a number of other cases in previous years and the fact that in 2005 the case remained the same, I would bet that they did not make those changes over the course, I think, of the last decade in which these raids started to change their policy.

So their record is dismal in terms of that and I would doubt that they've made changes to those policies.

CHAIRPERSON ROSE: And my last question is for all of the panelists. Do you think with the spotlight having been on Wal-Mart, all of the lawsuits that they've had to go through, do you feel that the culture of Wal-Mart has changed, has it brought about any change in their behavior and treatment of workers across all classes--racial, gender, LGBT--do you think that any of the lessons--have they learned any of the lessons from any of the lawsuits and past practices?

FREDDY KAPLAN: No. The short short answer is no--

[Crosstalk]

FREDDY KAPLAN: --again, referring back to the issue with transgender individuals, this has been an issue that's been ongoing publicly, okay, for the last several years and they have not made any efforts whatsoever. I actually think they kind of enjoy this type of-- it's a challenge for them, that's arrogance. I

think they've reached a position where they feel--
and this is my opinion--where they feel they can
go into any town and just do whatever they want
because, given the time period that we're in,
given the poor economy, given unemployment, that
now is their time to sweep in as many cities as
they can, have as many people work for them under
their conditions and not challenge them.

So there's a bit of arrogance over
here, I don't think they've made any changes.
They've been given opportunities, this is not the
first time they've heard about LGBT issues, it's
not the first time they've heard about--

FEMALE VOICE: Right.

FREDDY KAPLAN: --handicapped
individuals--disabled individuals, immigrants, and
they've made no efforts. And, again, there's been
various studies, HRC being one of them, that's
been trailing them over the last 10 years and, no,
they have not seen to be breaking that--

CHAIRPERSON ROSE: Thank you.

FREDDY KAPLAN: --40 %, 50 %
rating.

CHAIRPERSON ROSE: Well thank you.

So is there a consensus that probably past practice is still the sort of the law of the land for Wal-Mart?

MARVIN WASSERMAN: I'd like to say that there has been a steady pattern of disability cases going up until as late as December of 2010 and since this has happened since they've had an ADA coordinator and they've repeatedly violated the consent decrees.

CHAIRPERSON ROSE: Thank you. So New York has nothing to look forward to, is that your consensus? Yeah.

ELIZABETH URMI: I would agree as well, and I think that just sitting through five panels today of representatives from different communities--the deaf community, the disability community, the LGBTQ community, immigrant communities, workers from the store--I think it's evident that the fact that so many individuals showed up to give testimony to the fact that their rights are being violated and their community is being oppressed by this retailer, that it is still a current issue. And it also seems that only in instances in which their arms are being twisted by

the law that they comply and it is not of their own will or their own initiatives and incentives to meet the needs of the people. So I don't think that--I think their bottom line is very clear and their intentions are clear and I don't think it's in the best interest of New Yorkers.

CHAIRPERSON ROSE: Thank you all, thank you. Next.

MATTHEW CARLIN: We have six witnesses left, we're going to call them up three and three. We have Nicki Kateman, I think it is, Alvin Ramnarian, and Lauren Clark.

[Long pause]

CHAIRPERSON ROSE: Please state your name for the record and you can begin your testimony in the order that you were called.

NICKI KATEMAN: Good afternoon, my name is Nicki Kateman, I'm with Local 338 RWDSU UFCW, I will be reading testimony from the union's president, John Durso, who is unable to make it to the testimony today.

Good afternoon, members of the City Council, and thank you for the opportunity to testify today on the issue of Wal-Mart's labor

practices and why this company bringing a store to New York City would be detrimental to the well-being of working men and women.

My name is John Durso and I am President of Local 338 RWDSU UFCW, a labor union that represents nearly 18,000 men and women working in industries throughout New York City, Long Island, Westchester County, and parts of New Jersey.

For years, Wal-Mart has been a notorious violator of the country's labor laws. Over the past decade the company has faced dozens of lawsuits in nearly every state for wage and hour abuses, including not allowing employees to take breaks, requiring them to work through lunch, or forcing them to work off the clock without pay. Other lawsuits have dealt with child labor law violations where minors work too late at night, during school hours, or work too many hours in a day.

Such allegations are not limited to the United States. In Mexico, thousands of minors between the ages of 14 and 16 volunteer as baggers in the company stores. They do not receive a

paycheck or benefits from Wal-Mart, instead they rely solely on gratuities.

Wal-Mart has also faced lawsuits for violations of health and safety laws in cases where employees have been locked into stores overnight with no means of leaving in case of fire or emergency. Two thousand three, Michael Rodriguez, employee at a Sam's Club in a location in Texas, had his ankle crushed by heavy machinery. It took over an hour before a manager could be reached in order to unlock the store so Mr. Rodriguez could be taken to a hospital to receive the necessary medical care.

This was hardly an isolated incident as examples of this unsafe policy have been documented in Pennsylvania, Florida, Indiana, and Colorado.

In 2005, a secret internal memo to Wal-Mart's Board of Directors was published by the New York Times. The memo outlined proposals designed to make long-term employment with the company unattractive and create a workforce that will be younger, healthier, and cheaper. To accomplish this, Wal-Mart has changed several

employment policies. Since then, the company has implemented wage caps on hourly wages, increased the percentage of part-time employees and required employees to be available around the clock as their shifts will be determined by a computer system located at their corporate offices.

Additionally, the company has sought ways of decreasing the costs associated with associate's health benefits, including changing job descriptions to require more physical activity in order to attract healthier workers, adding a surcharge to employees who have health coverage for their spouses, and moving the workforce from traditional health insurance to health savings accounts which are funded solely by the employees.

The memo, which was drafted by Susan Chambers, the company's executive vice president of the Global People division, also outlined distressing statistics in regards to the health of their associates. Chambers wrote, we also have a significant number of associates and their children who receive health insurance through public assistance programs, 5 % of our

associates are on Medicaid compared to an average for national employers of 4 %; 27 % of associate's children are on such programs compared to a national average of 22 %; in total, 46 % of associates' children are either on Medicaid or are uninsured.

Since the memo was made public, Wal-Mart has hired an impressive public relations team to highlight their new policy of corporate social responsibility. They have flooded the media with advertisements about charitable contributions and opportunities for advancement within the company. However, it is merely a façade to deflect attention from Wal-Mart's continued violations of employees' basic rights.

Late last year, Wal-Mart announced that they intend to stop paying the dollar Sunday premium for all the new employees hired after January 1st, 2011, siting premium pay as its single biggest expense. The company will also be before the U.S. Supreme Court this year facing the potential of a class action suit that claims women face gender discrimination in pay and promotions. This suit covers between 500,000 and 1.5 million

women who have worked for the company since December 1996. As a result, the National Organization of Women has referred to Wal-Mart as a merchant of shame.

Wal-Mart has traditionally been committed to an anti-union policy, issuing the guide, A Manager's Toolbox to Remaining Union Free, and showing associates union busting videos. The company continues to be forthright in this stance, issuing the following statement on their official website: It's all about taking care of our people. If we do that and do what is right for our communities, we will be fine. We will continue to foster an environment of open communications and encourage our associates to express their ideas, comments, and concerns. We are not against unions, they may be right for some companies, but there is simply no need for a third party to come between our associates and our managers.

And while actions typically speak louder than words, their actions make it clear that Wal-Marts puts its profits before the well-being and wishes of its associates. In April 2005

Wal-Mart shut down a store in Jonquiere, Quebec after it became the first Wal-Mart location in North America to receive union certification.

The health care situation for Wal-Mart employees has not improved much. Almost half of Wal-Mart's associates, a total of approximately 644,000 workers, were not insured through the company in 2010, 182,000 of that total were left completely uninsured, while another 43,000 relied on Medicaid and other state funded programs.

Wal-Mart's dependence on state programs to subsidize those associates who were not eligible for or cannot afford their insurance policies costs the public millions each year. In Ohio, a report by the State Department of Job and Family Services revealed that 15,000 Wal-Mart employees and their dependents were on Medicaid or received food stamps, a statistic that cost taxpayers \$68 million in 2008 alone.

Wal-Mart ranks number one on this year's list of Fortune 500 companies. In 2010, the company's revenues were over \$408 billion, they made a profit of 14 billion, a surge from 7 % from the previous year. The company claims that

\$80 billion of that revenue goes towards labor costs, a number they have spent the last six years attempting to lower.

Wal-Mart has one of the country's highest employee turnover rates--a fact the company acknowledged in their 2010 filing with the Security and Exchange Commission, yet they spend millions on media campaigns glorifying their labor practices, millions that instead could be reinvested into their workforce through raises, more hours for their employees and/or making health insurance more affordable and accessible.

It's time we hold Wal-Mart accountable to the people who comprise their workforce and contribute to their overwhelming success. Until then, we cannot allow them into New York City to take advantage of and silence the voices of our hard working men and women.

Thank you for your time and attention to this matter.

CHAIRPERSON ROSE: Thank you for your comprehensive [off mic].

ALVIN RAMNARIAN: Good afternoon, I would like to thank the City Council members for

convening this important hearing examining the labor practices of Wal-Mart.

My name is Alvin Ramnarian and I serve as a field director for Local 1102 of the RWDSU UFCW. Local 1102 represent 11,000 workers throughout the New York metropolitan area, including thousands of retail workers who live and work in the five boroughs.

The members of my local work in stores that have long commitment to New York City such as Sims and Modells, as well as retail shops that are newer to the city like H & M. But whether they've served New York for 5 years or 50 years, these employers have something in common: They are employers which treat their workers well, understands that workers have rights to come together and join a union.

The members of my locals are concerned about Wal-Mart coming into New York City. This is because, as the largest employer in the United States, Wal-Mart's behavior becomes the model for the entire retail industry. It's a model that fights to keep standards low, discriminates against women, and violates labor

1 laws. Wal-Mart's model cannot and should not be
2 accepted in New York City. Responsible employers
3 like the ones that employ the members of my union
4 will struggle to compete against such a low road
5 employer.
6

7 Wal-Mart claims that its store
8 creates jobs for the community, but that's a claim
9 that just doesn't stand up to close scrutiny. In
10 fact, a 2000 study entitled, The Effects of Wal-
11 Mart on Local Labor Markets, found that Wal-Mart
12 store open and reduce retail employment in a
13 county by 2.7 %--meaning that every Wal-Mart
14 worker hired a new store effectively replaces 1.4
15 retail jobs. And the jobs that are created
16 provide low wages, no benefits.

17 Studies in 2005 and 2007 have shown
18 that the impact of the opening of Wal-Mart results
19 in lower wages for retail workers in the
20 surrounding area and the average wage paid by Wal-
21 Mart to their employees keep them below the
22 poverty line and the company steers their employee
23 towards public assistant program--a huge drain on
24 public resource.

25 They are also the plaintiff in the

largest class action suit in history. A gender discrimination suit brought by female employees who say they were paid less than men for the same jobs and they receive fewer promotions than their male counterparts. Wal-Mart has been fined for breaking child labor laws and during the recent holiday they announced they were cutting the \$1 per hour premium pay it gives workers for their Sunday shift.

This is a company that shut down an entire store in Quebec, as we heard later, when their employees voted for a union. Across the United States, Wal-Mart stands out for the sheer number of labor violation ranging from illegal firing workers who attempt to organize to unlawful surveillance, threats, intimidation of associates who dare to speak filed against them.

Even when they take into account their size, in fact, Wal-Mart themselves reported in January 2009 that the company was involved in at least 73 class action lawsuit alleging wage and hour violation. Wal-Mart may be trying to project a different image as they try to open stores here in New York City, but what won't change is their

treatment of their employees. And New York City must support good retailers who treat their workers with the dignity and respect they deserve. New York City must say no to Wal-Mart.

LAUREN CLARK: Good afternoon, my name is Lauren Clark and I am here on behalf of the Women's City Club of New York, a non-profit, non-partisan multi-issue civic organization founded in 1915. Our president could not be here this afternoon so she asked me to read an abbreviated testimony from the written one that I have submitted in her stead.

The WCC expects any company doing business in New York City to provide equal pay for equal work. Pay equity is an issue of particular concern for us as we have long supported all forms of gender equity, including equal pay. We were one of the founding organizations of the Equal Pay Coalition of New York City and continue to fight for pay parity for all workers.

According to the Institute for Women's Policy Research, if women were paid fairly, poverty levels would fall across the board for women by at least 50 %. With over 18 % of New

York City's population living in poverty, the positive difference pay equity could make in our own cannot be ignored.

Additionally, the WCC supports the rights of all disadvantaged people to seek redress through all possible avenues. Class action lawsuits are essential in addressing the rampant sex-based discrimination in pay and promotion. If the plaintiffs in the Dukes v. Wal-Mart case are denied the creation of this class, they'll be forced to file claims as individuals. This is tantamount to denying them access to justice as they will not be able to afford the cost or time involved in pursuing individual claims. We therefore, support their right to form a class and have signed onto an amicus brief to be submitted by the National Women's Law Center and the ACLU foundation. If the Supreme Court prevents the class action from proceeding, it would deal a broad blow to women and other victims of discrimination by setting dangerous precedent which diminishes their right to institutes a class action suit.

In sum, we urge you to endorse pay

equity and support employers that practice pay parity. New York City has long been in the vanguard of gender equality and we believe that pay equity should be a priority in this struggle.

Thank you again for your time and work on this important task.

CHAIRPERSON ROSE: Thank you. I want to thank you for such comprehensive testimony and it's pretty clear where Wal-Mart sort of-- based on the history. But can you tell me how you think the opening of a Wal-Mart store in the city would effect union jobs at competitors to Wal-Mart, particularly supermarkets?

NICKI KATEMAN: Knowing that Wal-Mart has incredibly low prices, it would eventually drive competition to Wal-Mart while reducing sales at union shops. We represent supermarkets in the city, so naturally there's the fear that these businesses will lose money and, therefore, we'd lose union jobs that pay well and provide benefits.

ALVIN RAMNARIAN: It also makes it harder when you sit down to renegotiate a contract because the employers will naturally say, well

Wal-Mart doesn't pay for health insurance, they don't pay for pension, and they don't pay as much we do. So they really drag down existing workers also.

CHAIRPERSON ROSE: Do you know how many workers that that could potentially affect?

ALVIN RAMNARIAN: I think it could potentially affect all workers.

CHAIRPERSON ROSE: Thank you so much, thank you. We'll call the next panel.

MATTHEW CARLIN: The last three slips I have are Anna Bowens, Skip Roseboro, and Jane Thompson.

[Long pause]

CHAIRPERSON ROSE: Would you identify yourself and then testify?

SKIP ROSEBORO: Hello, I'm Skip Roseboro, I'm a leader with [off mic] I apologize for not having testimony, I wasn't planning to give testimony today, so if I get an address or whatever, I'll send something to...

Okay. Excuse me. Before I give my actual testimony I wanted to lift out the two most salient points within it. We're here today to see

1 if we should allow Wal-Mart into New York. The
2 only arguments for Wal-Mart are more jobs and low
3 prices. Well the reality is that for every two
4 jobs Wal-Mart brings in, three are lost. And as
5 for low prices, if we, the taxpayer, are providing
6 Wal-Mart employees with food stamps, welfare, and
7 Medicare, and unemployment to employees of
8 competitors that have been forced out of business,
9 then those same products are costing us
10 significantly more than retail. So much for jobs
11 and so much for low prices, Wal-Mart provides
12 neither. In fact, they provide fewer jobs and
13 higher actual costs.

14 This is my actual testimony. This
15 is about more than just Wal-Mart's destruction of
16 its competitors, it's also about the destruction
17 of our communities as well. Yes, we are lulled in
18 by low prices, but at what cost?

19 Let me give you an example. Let's
20 say a local Target and K-Mart have 150 employees
21 each for a total of 300 workers. Wal-Mart comes
22 in, creating an additional 200 jobs, but within
23 two years they forced Target and K-Mart out of
24 business, thereby taking away the 300 jobs that
25

you had pre-Wal-Mart, so your original 300 community jobs are now down to 200--a net loss of 100 jobs--for 100 community jobs.

Two documentaries--the High Cost of Low Prices and Frontline's Is Wal-Mart Good for America--show town after town where one-time thriving main streets have become desolate following Wal-Mart's entry into that community. Make no mistake, your community is as much a town as thousands of others. Note that mom and pop stores on your shopping main streets will be eaten up by Wal-Mart in exactly the same way that they have been in towns across this country.

I end with two very quick points. For years, Wal-Mart's new employee handbooks have given employees information on how to use public welfare to supplement their meager pay. This means that we, the American taxpayer, are subsidizing Wal-Mart's low wages to the tune of more than what I believe is over a billion dollars, I need to recheck that, but I believe it's actually over a billion dollars that we're supplementing Wal-Mart to.

My final comment is that this

panel, the full City Council and the Chamber of Commerce will all be doing this city an immense disservice if they don't view the documentary, the High Cost of Low Prices before making any decision on Wal-Mart in New York.

I thank Chair Sanders and this panel for allowing light to be shed on Wal-Mart, its business model, and practices. Thank you.

FEMALE VOICE: Good evening, thank you, Councilwoman Rose, and thank you for sticking it out and thank you to your co-chairs, Councilwoman Ferreras and, I'm sorry, James Sanders. We appreciate you putting together this hearing. I'm actually I have and submitted into the record testimony from my brother at the UFCW Canada, Herman Dalierre [phonetic] and just he's an organizer and it just kind of lays out some of the issues that he faced when he worked with the store in Quebec that we've heard about from both the lawyer and the worker.

In the interest of time, I'll let you digest it, but it really just kind of goes through once they started talking about of a union, the bullying tactics, the anti-union, and

the illegal acts that Wal-Mart took to and then ultimately against the law shutting that store down. So in the interest of time, you've heard a lot about it, but I did want to make sure that this testimony got added, I think it adds a little bit of flavor to what happened up there.

And, again, I appreciate you highlighting all these issues today, they're very important to the workers of New York in terms of what kind of jobs that they can get and what kind of jobs Wal-Mart will actually bring in to the city. So thank you again.

CHAIRPERSON ROSE: Thank you. And I want to thank all of the participants--you can leave, you can be dismissed. I'd like to thank all of the participants in today's hearing.

MATTHEW CARLIN: I just want to mention--

[Pause]

CHAIRPERSON ROSE: Oh.

[Pause]

MATTHEW CARLIN: I don't want to
[off mic]

CHAIRPERSON ROSE: No, you're fine.

Okay. There's some more testimony that we need to read into the record.

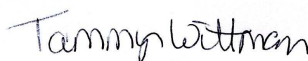
MATTHEW CARLIN: I'm just going to acknowledge that we received testimony from Dorian Warren from Columbia University, from the New York Central Labor Council, and from the Washington Heights and Inwood Development Corporation, all those will be added to the record.

CHAIRPERSON ROSE: I'd just like to thank all of the participants and for standing out. I think it's very telling that this is respectful all week and that Wal-Mart chose not to respect the City Council and the residents of New York by not coming. Thank you for all of your comprehensive testimony, this hearing is now adjourned.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A handwritten signature in cursive script that reads "Tammy Wittman". The signature is written in dark ink and is positioned above the printed word "Signature".

Date March 14, 2011