



sanitation

Kathryn Garcia
Commissioner

Dennis Diggins, First Deputy Commissioner

**Hearing on Intro 903
New York City Council Committee on Civil Service and Labor**

**Friday, September 25, 2015
10:00 A.M.
250 Broadway – 16th Floor**

Good morning Chair Miller and members of the City Council Committees on Civil Service and Labor. I am Dennis Diggins, First Deputy Commissioner of the New York City Department of Sanitation. I am here today to testify in support of Intro 903, which would authorize the Mayor to extend health insurance benefits to the surviving family members of a recently deceased member of the Enforcement Division of the Department of Sanitation.

On July 29, 2015, Sergeant Frank Musella tragically lost his life while on duty on Staten Island. His surviving family members include his wife of seventeen years, Alessandra, and his two sons, Frank Jr. and Anthony. Sergeant Musella's death was the first line-of-duty death in the 34 year history of the Department of Sanitation's enforcement division. Sergeant Musella was a 9 year veteran of that division, and was a dedicated employee who took great pride in his work. Aside from the great work he did for the Department, Sergeant Musella whose son Frank Jr. is on the autism spectrum, was also a dedicated autism advocate who was tireless in raising funds for the Department's partnership with the organization Autism Speaks. He was greatly respected by all who knew him and all who worked with him.

The Department of Sanitation relies upon and appreciates the hard work and dedication of the men and women of its enforcement division in ensuring that the City is clean and safe for the millions who work, live and visit here. Though we hope never again to have to witness such a tragedy, when a tragedy occurs, it is important that we recognize the contributions these men and women have made to this great City by ensuring that the Mayor has the option to provide their families with continuing health insurance benefits to at least ease some of their financial burdens. Therefore, I urge you to honor Sergeant Musella and pass this bill.

Local 338

JOHN R. DURSO
President

JOSEPH FONTANO
Secretary-Treasurer



RWDSU/UFCW

JACK CAFFEY JR.
Executive Vice President

DEBRA BOLLBACH
Recorder

Testimony from Alma Torres to the New York City Council Regarding the “Grocery Worker Retention Act” (Int. No 0632-2015)

September 25, 2015

Good Morning. My name is Alma Torres and I am a Brooklyn resident employed at the Food Emporium on 49th Street and 8th Avenue in Manhattan where I have worked at for the last 17 years as the part-time Floral Manager. I also proudly serve as the Local 338 Shop Steward at my store. I am here today to provide a first-hand account as to why the Grocery Worker Retention Act help thousands of grocery store workers like myself.

Five years ago, A&P, which owns Food Emporium, went through its first bankruptcy. At that time, we made many sacrifices, including taking a five-year wage freeze and giving back paid time off in order to keep the company afloat and save our jobs. Unfortunately, this time is very different. There is no saving the company. And while the stress we experienced five years ago was great, nothing compares to the anxiety and fear that my coworkers and I are dealing with now.

The Food Emporium I work at is special to me. I am a breast cancer survivor and I received so much support at the store, including from my coworkers and my union. Unfortunately, the store, which employs about 100 people, is one of the A&P locations that is currently unsold. This means that we’re in limbo until next week when our store goes to auction and anything can happen. I hope that we are purchased by a company who will be willing to not only keep all of my friends and coworkers on staff, but also maintain our wages and benefits and recognize our union. However, I know that currently there is nothing that would require a new owner to even just rehire us. There is the real possibility that a new owner could re-open the store and simply hire all new workers at the minimum wage or worse, off the books and do so without any repercussions or second thought to what will happen to us.

The Grocery Worker Retention Act, would ease some of the worry workers face during a transition period like the one that my coworkers and I are potentially facing. I can testify to the difference having 90 extra days of work and benefits, as well as the opportunity for a permanent job under a new owner would make for all of us and our families. We’d definitely all be breathing easier if it was already a law in New York City.

I have done nothing wrong except have the misfortune of working for a company that could be changing hands. As a result, I have begun going on job interviews in order to be prepared for what may happen next. This is a very difficult transition; one that is full of much uncertainty. Yet, I don’t take comfort in knowing that I am not alone in this situation, as I am just one of thousands of working people who now

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and may in the future find themselves out of work because of a store being sold or closed or a company going into bankruptcy.

Please know that passing the Grocery Worker Retention Act would be incredibly meaningful for me. All I'm asking for is the ability to continue to help my customers, pay my bills, and spoil my grandchildren. I see it simply as an opportunity to secure a future for myself and thousands of hardworking New Yorkers.

Thank you for your time.

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Recorder

Testimony from Local 338 RWDSU/UFCW to the New York City Council Regarding the “Grocery Worker Retention Act” (Int. No 0632-2015) September 25, 2015

Good Morning and thank you for the opportunity to testify today on the “Grocery Worker Retention Act” (Int. No 0632-2015). My name is Nikki Kateman and I am here on behalf of Local 338 RWDSU/UFCW, a labor union that represents approximately 19,000 men and women working in supermarkets, grocery stores, specialty food stores, retail drug stores and pharmacies throughout the Metropolitan area, including over 8,400 who live or work in the five boroughs.

In New York City, over 50,000 men and women are employed in the grocery and food retail industries. The workforce of this growing industry is primarily immigrant (approximately two-thirds) and on the lower end of the income scale. Unfortunately, many of these workers do not have union protections and often face workplace labor and/or safety violations. They also have little recourse to fight for their jobs when their employer permanently shuts its doors.

The instance of food retailers selling their stores to new ownership, leaving the employees without work and with very little notice of said sale is not a rare occurrence. Over the past few years, Local 338 members at two separate grocery stores experienced this first hand. In the spring of 2013, a South Ozone Park based Food Town with approximately 50 union employees was purchased by a non-union Key Food operator. The new owner promptly reduced the workforce in half, which Local 338 protested but unfortunately with little recourse for the displaced employees. Two years later we continue to fight on behalf of the workers at this location. Despite being certified by the National Labor Relations Board as the union designated to represent the employees, the new company continues to try to exclude some of the workforce for the bargaining unit.

Then, a few short weeks before Christmas in 2013, the workers at Trade Fair in Jackson Heights arrived for work as regularly scheduled. However, unbeknownst to them or Local 338, the owner of the company had sold the location to a non-union food retailer violating our collective bargaining agreement and leaving the workers without jobs during the holiday season. The new owner refused to rehire any of the displaced workers and instead brought on new employees at lower wages and without benefits. After a long fight with the company, we were able to attain back pay and severance pay for the displaced workers. Unfortunately, many remained without jobs for several months after the Trade Fair location was sold.

Currently, thousands of workers in New York City are facing potential displacement with A&P’s bankruptcy and the subsequent store closures and sales. While some of the new operators have indicated their intent to maintain the stores’ current workforce, the future for many other workers at A&P owned

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stores is not so secure. Next week, the remaining unsold A&P stores, including the banners Waldbaum's, Food Emporium, Food Basics, and Pathmark will be sold at auction. We have little indication of who will be purchasing these stores and there is the very real and very serious threat that unscrupulous employers and well-known anti-worker companies could potentially have winning bids. This means that hundreds of dedicated workers with decades of experience could be headed to the unemployment line, as greedy owners replace them with minimum wage or in some instances, off the books workers. These families are at risk of losing everything that is keeping them afloat through no fault of their own.

The reality is that these are just a few examples of scenarios where stores have been sold with little care as to the future and well being of the workforce. With the Grocery Worker Retention Act, these working men and women will be given a second chance. The 90-day transition period in the least will reduce the stress on these men and women by giving them almost three additional months to find alternative employment opportunities or recourse to address outstanding grievances relating to wage theft. In the absolute best case, workers will continue their employment seamlessly with the new food retail operator, ensuring their ability to support their families and contribute to their local economies.

Additionally, protecting workers in the food retail industry will have a direct impact on the surrounding communities. Often community grocery stores hire from within the community and provide local residents with jobs. These workers, particularly long-term workers, are well trained in proper food preparation and sanitation procedures, as well as how to best comply with health codes. We have seen on multiple occasions, employers opting for less experienced and lower paid workers, foregoing those with significant experience in these areas as a means to cut labor costs. The Grocery Worker Retention Act is also a community safety bill by ensuring that during a change in ownership, communities maintain the standards that they have come to expect from their local food retailer.

Think of the average worker in your local grocery store. They often live in your community and are your neighbor. You see them weekly or sometimes even daily. They know your family. Grocery and food retail workers are a vital part of our neighborhoods. New York City has a strong history of protecting workers, particularly those who find themselves displaced through no fault of their own. Local 338 RWDSU/UFCW applauds the City Council for taking necessary steps to expand these protections to the women and men employed in the food retail industry, as well as providing stability to the communities in which they proudly serve.

Thank you for your time.

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Comments Regarding Proposed Int. No. 632-A - In relation to requiring successor employers in the grocery industry to retain eligible employees for a transition employment period.

Thank you for giving me the opportunity to comment on the proposed grocery employee retention legislation. My name is Josh Kellermann, and I'm a Senior Researcher and Policy Analyst at ALIGN: The Alliance for a Greater New York. ALIGN is a community-labor coalition dedicated to creating good jobs, vibrant communities, and an accountable democracy for all New Yorkers.

In this era of globalization and our rapidly-shifting economy, workers often suffer the brunt of these changes. Intro 632-A provides an important buffer between the vagaries of our economy and the real needs of workers, their families and their communities. This proposed law strikes a balance between the needs of the new employer to hire workers who have the skills to match the job, and the existing workers who will have the opportunity to demonstrate their value to their new employer. A 90-day transition period is a practical solution that serves the needs of both employees and employers.

Grocery stores are the primary distribution points for food to our communities, and the workers at these stores should be well-trained to ensure proper hygiene in the handling of food. There is no better way to do that than to protect the continuity of trained workers on the job, who not only bring experience to the job, but also offer the ability to train new workers in food safety practices. Employer-led trainings are essential, but food safety practices often require constant reinforcement on the job, which experienced co-workers can provide.

New York City has gone to considerable lengths to expand healthy food options in designated "food deserts" throughout the City. This is a laudable goal and should be continued. However, very little attention has been paid to the workers at grocery stores and whether they are respected on the job, have health care and retirement benefits, and receive a good wage. Intro 632-A will help to address some of these concerns by ensuring a steady and dependable workforce that is able to advocate for their interests on the job.

Thank you for your time,

Josh Kellermann



KEY FOOD STORES CO-OPERATIVE, INC.

1200 South Avenue, Staten Island, NY 10314 | (718) 370-4200

Comments
Key Food Stores Co-Operative, Inc.
in Opposition to
Int. No. 0632-2015

Thank you for the opportunity to testify before the Committee today. My name is John Durante, Vice-President of Business Development for Key Food Stores Co-Operative, Inc. Founded in Brooklyn in 1937, Key Food is a cooperative of independently owned and operated supermarkets. Our members consist of nearly 100 locally owned family businesses with diverse ethnic backgrounds. We are currently headquartered in Staten Island and have stores throughout the five boroughs. Many of our stores are located in low income communities and communities with vast ethnic diversity.

Our members are getting squeezed from all directions – increasing food costs, rising rents and shrinking margins are some of the factors making it more difficult for these independent stores to survive.

This legislation, if passed, will negatively impact our members and would represent yet another burden to New York's struggling independent supermarket owners.

This bill erroneously assumes the all of the existing employees are competent and qualified. When a store changes ownership, there is often significant employee retention. It makes good business sense to retain good employees, who know the store and the community it serves. However, that choice should be left in the hands of the new owner and not forced by legislation.

Further, the compensation paid and number of positions can vary greatly from store to store. This legislation, as written, will expose all new supermarket owners to an increased potential for frivolous lawsuits, especially in cases where the store purchased had a large number of employees and high wages. Such lawsuits can cripple a small business.

As Key Food's recent growth indicates, our members have a successful business model that produces profitable stores. Some of our members are parties to collective bargaining agreements, some are not. The choice is currently left to the member and its employees; for the City Council to take away that choice is misguided.

Additionally, this legislation increases the recording keeping and administrative burdens, which small independent supermarkets can often ill afford.

Finally, and perhaps most importantly, this bill creates a disincentive for new stores to take over failing ones. When a large chain store with lots of employees and high labor costs fails (and they are failing) our members historically have been able to open new stores that serve the community. This bill threatens our member's ability to take over these failing stores and the result very well may be fewer supermarkets in a city that desperately needs healthier and more affordable food choices.

Therefore, the Key Food Co-Operative, on behalf of its members, strenuously objects to the adoption of this bill. Thank you for your attention to our concerns.

Respectfully submitted,

John Durante
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Key Food Stores Co-Operative, Inc.
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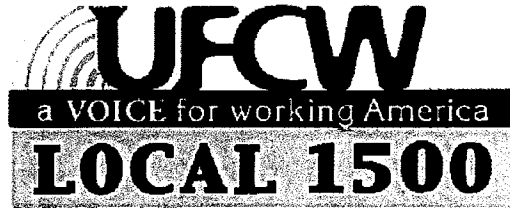
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**Testimony before the New York City Council
Committee on Civil Service and Labor
Concerning Introduction 0632-2015
September 25, 2015**

Good morning, my name is Brendan Sexton, Political Coordinator for the United Food and Commercial Workers International Union Local 1500, and I will be providing testimony on behalf of UFCW Local 1500 President, Bruce W. Both. Thank you Chairman Miller and Members of the Civil Service and Labor Committee for the opportunity to provide a voice to the over 22,000 proud union members of Local 1500.

Local 1500 members are your community's grocery and retail workers. From helping New York's families select healthy produce, to safely packaging the meals that go into your family's lunch bags, our members are the fabric of the neighborhoods we serve. When your union supermarket butcher hands you the steak that you'll prepare for your dinner, you know it has been handled safely and with care. In support and respect for the thousands of employees that are charged with handling the food we eat each day, Local 1500 supports Introduction 632, the Grocery Worker Retention Act.

Supermarket employees are the gate keepers that ensure the food we consume on a daily basis is maintained according to highest health and safety standards. New York City can only benefit by keeping these workers employed – serving our families while they can continue to provide for their own. Continued employment ensures more families can maintain their housing, have

less dependence on public assistance benefits, and require fewer social services. A continuity in service also means, experienced employees with a demonstrated track record of knowledge and expertise can maintain high standards in food safety during a company's transition period.

Retaining Local 1500 members is particularly advantageous to New York City's economic stability. On average: union employees contribute more to the local economy by having higher wages; are healthier due to medical benefits that include dental and vision; develop a higher level of expertise through proper training and higher retention rates; and are more likely to deliver better customer service do to better work conditions and overall job satisfaction.

I'd like to bring your attention to a current situation happening here in NYC. The local supermarket chain, Pathmark, which serves communities all across NYC is going out of business. Through hard work and tireless effort, Local 1500 has been able to retain the jobs of thousands of supermarket workers. This has been vital to keeping communities intact through the transition. Instead of workers and communities being upended by a supermarket changing owners, we have been able to maintain this source of fresh food and good jobs. Some supermarket workers and communities are not so lucky, because of the unscrupulous nature of the owners.

Local 1500 member Jovino is a true representation of the potential in passing the Grocery Worker Retention Act. Jovino has been a proud employee of the Co-Op City Pathmark which had been in danger of closing for many years. Finally the store was sold to an owner, that was willing to negotiate, and willing to keep Jovino and his co-workers. Now Jovino, the sole provider for his family, can rest easy knowing that a transition in ownership does not mean he will lose his pay or health benefits for which his entire family depends. With teenaged children who will soon be going off to college, continuing his employment also gives him the opportunity to help his children secure their own careers in the future.

In conclusion, UFCW Local 1500 believes that the Grocery Worker Retention Act is the responsible solution in protecting the rights of supermarket employees that are faced with ownership changes. These circumstances are beyond an employee's control, but changes don't have to result in job losses, and communities don't have to suffer service disruptions. I applaud Chairman Miller for his leadership in introducing this important piece of legislation, and commend the entire Civil Service and Labor Committee for working to push it forward. Thank you for the opportunity to share this testimony with you today.



The Council of the City of New York

Re: Int. 0632-2015

FOR THE RECORD

GROCERY WORKER RETENTION ACT

September 25, 2015

Testimony of Charlene Obernauer

Executive Director of the New York Committee for Occupational Safety and Health

The New York Committee for Occupational Safety and Health (NYCOSH) supports the efforts of New York City Council Civil Service and Labor Committee Chair Daneek Miller to pass the Grocery Worker Retention Act.

NYCOSH is an independent non-profit health and safety organization with offices in New York City and Hauppauge, Long Island. Approximately 175 local unions and other labor and community-based organizations in the metropolitan area are members of NYCOSH, as well as several hundred individual workplace safety and health activists, healthcare and legal professionals, and concerned New Yorkers. NYCOSH has been providing technical assistance and comprehensive training in environmental and occupational safety and health to unions, employers, government agencies, and community organizations for over three decades, including technical assistance and training to supermarket employees.

The Grocery Worker Retention Act aims to “promote proper health and sanitary standards, provide communities throughout the City with locally and culturally competent service, and bring stability to an often unstable industry by providing basic worker protections through this transition period.”

Therefore, the goal of this legislation is, among other things, to ensure that an experienced workforce is performing jobs that have the potential to cause injury or illness to workers and to consumers themselves. The legislation states that eligible employees must have been employed at a given establishment for six months prior to the ownership transition and have worked an averaged a minimum of eight hours a week.

According to a study by the Institute for Worker and Health, workers new to a job remain at much higher risks of lost-time injury than is the case for more experienced workers.

Once a worker has been employed in the same job for more than a year, the risk of lost-time injuries is cut down by almost 66%.¹ The grocery industry, which employs over 50,000 workers throughout New York City, is comprised of mostly immigrant workers, whom are injured and killed at higher rates on the job than their non-immigrant counterparts.²

The Grocery Workers Retention Act (Int. 0632-2015) will allow those workers an opportunity to showcase their knowledge and experience for a transitional period of ninety days to new ownership; and for owners to see the benefit of hiring an experienced workforce; both in terms of productivity and their own bottom line caused by higher workers' compensation insurance costs caused by hiring an untrained, inexperienced workforce.

NYCOSH supports this legislation wholeheartedly for its benefit to worker and public health and urges City Council members to do the same. Thank you for your time and consideration and for proposing legislation that will protect New York City's hard working supermarket employees and the general public who frequents their stores.

¹ *At Work, Issue 69, Summer 2012*: Institute for Work & Health, Toronto

² *The Price of Life, Spring 2015*: New York Committee for Occupational Safety and Health, New York

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Food Industry
Since 1900



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Comments

By the Food Industry Alliance of New York State, Inc.

in Opposition to

Int. No. 0632-2015

Thank you for the opportunity to testify at today's public hearing. My name is Jay Peltz and I am the General Counsel and Vice President of Government Relations for the Food Industry Alliance of New York State (FIA). FIA is a nonprofit trade association that promotes the interests statewide of New York's grocery stores, drug stores and convenience stores. Our members include chain and independent food retailers that account for a significant share of New York City's retail food market and the wholesalers that supply them.

Many of our members are small businesses struggling to survive as we muddle through the seventh year of the weakest recovery on record. As a result, weak consumer spending has become the new normal. Given this context, this measure would further hurt our members, especially our small business members struggling to survive in a very low margin business being squeezed by nontraditional competitors such as warehouse clubs, dollar stores and internet sellers.

The essence of this bill is that if a store manager earns the opportunity to buy a store after running it for twenty years, then acquires it for \$1,000,000 by investing \$100,000 of personal savings and borrowing the remaining \$900,000 on a personally guaranteed basis, he does not have the right to fully assemble the team that will operate the store from the day he assumes operational control. That would be inequitable, since the failure of the business will cause substantial personal financial and emotional hardship.

As more fully explained below, we believe the restrictions of this legislation will cause fewer stores to be sold. This will cause undue hardship for operators who need to sell their businesses but can't due to the measure's mandates. We also anticipate that fewer renovations will occur. This will cause a loss of construction and permanent jobs while neighborhoods would be deprived of a better store with broader assortments, wider aisles and healthier choices that could help turn a shopping center or the surrounding neighborhood around. We also believe that, to the extent buyers consider purchasing a store, they will demand a substantial discount to offset the heightened risks created under the proposed local law. This will cause sellers of small businesses to unnecessarily suffer economic harm.

In addition, some stores are purchased because they are mismanaged. These scenarios are known as turnaround opportunities. Turnaround opportunities often require a substantial change in personnel, in order to energize the store, create new synergies, provide better customer service and send a clear message to the neighborhood that the store has changed. This measure would stop these turnaround opportunities from occurring.

Regarding legislative intent, we do not believe the stated intent provides a rational basis to determine that the proposed local law will achieve a legitimate local governmental purpose. As a result, we believe the legislation is arbitrary. The Legislative intent section of the measure provides that "...the City has a direct interest in making sure that it provides for the welfare of its residents **by maintaining health and safety standards at [grocery] establishments**. To that end, it is important that these establishments are staffed by experienced grocery workers who have knowledge of proper sanitation procedures, health regulations **and who are familiar with the residents of the communities they serve**...Through this Local Law, the City can make sure the health and safety of its residents will be secured through the maintenance of a **steady and dependable workforce** (bold and italics added)."

We are aware of no evidence that incumbent grocery workers are inherently better at maintaining health and safety standards at stores than the workers of successor employers. What if a store is persistently failing food safety inspections with incumbent workers? Indeed, to the extent a successor's employees maintain higher food safety standards than the retained workers, customers of those stores would actually shop **in a less healthy, less safe environment**.

If it is true that retained workers are automatically better at maintaining health and food safety standards than a successor employer's workers, then why doesn't the law apply to food service establishments (such as restaurants, cafes, food concessions, etc.)? This would make sense, since typically all the sales of a food service establishment are derived from food processed on the premises, which is clearly not the case with a grocery store. This would also make sense since, under longstanding state policy, food service establishments are regulated and inspected by the City with regard to food safety. In fact, under the bill's logic, the retention mandate ought to apply to any private industry that impacts the "health and safety" of the City's residents, including health care facilities, exterminators, HVAC companies, Con Ed workers, etc.

Moreover, under the longstanding Memorandum of Understanding between the NYS Department of Health (NYSDOH) and the NYS Department of Agriculture and Markets (Ag and Markets), with regard to health and food safety, Ag and Markets has exclusive regulatory and inspection jurisdiction over food processing establishments (including grocery stores) while food service establishments (restaurants, cafes, food concessions, etc.) are regulated and inspected by health departments. This is why the NYC Department of Consumer Affairs has no health and food safety jurisdiction over NYC grocery stores (its jurisdiction is limited to weights and measures and other matters unrelated to food safety such as sign requirements, short weight packages and item pricing). Accordingly, the City cannot achieve the law's stated purpose of providing "for the welfare of its residents **by maintaining health and safety standards**" at grocery stores. Any attempt to do so under the proposed local law would conflict with longstanding state policy.

The underlying assumption of the legislation is that health and safety standards at the City's supermarkets are systematically violated or substantial noncompliance is imminent. To our knowledge, neither assertion is true nor has Ag and Markets, the state agency that enforces health and safety standards at NYC retail food stores, made either assertion.

In addition, to our knowledge, there is no connection between the maintenance of health and safety standards at the City's grocery stores and having experienced grocery workers on hand "***...who are familiar with the residents of the communities they serve.***" There is no evidence of a connection between knowledge of health and food safety standards and familiarity with the residents of a particular community. In addition, to the extent that residents of a community are not customers of a particular store, familiarity with those residents would not contribute to maintaining health and safety standards at that supermarket. Moreover, employee performance with respect to health and safety standards is primarily driven by experience, track record, knowledge of rules and best practices as well as a good working relationship between employers and employees, rather than mandated hiring. The industry believes that mandated retention is highly unlikely to lead to a good working relationship between workers and management, in which case health and food safety compliance is likely to ***decline.***

The contention that the measure facilitates the maintenance of "...a steady and dependable workforce" is dubious, since there is nothing steady about a temporary retention period and, assuming workers identified by a successor employer are better at maintaining health and food safety standards than the retained employees, the retained workers would actually be *less* dependable in that regard than the successor's workers. Moreover, requiring "...an opportunity to demonstrate [retained workers] value as employees..." amounts to a mandated tryout period that imposes substantial, unnecessary risks on both incumbent and successor employers.

In addition, as more fully explained below, we believe this legislation provides a significant disincentive to purchase and renovate stores, which means the neighborhood around it would be deprived of a better store with wider assortments, healthier choices and more jobs. This would hurt the health and well-being of an area, not help it.

There are other legal issues raised by the legislation. What is the specific legal authority that allows the City to force private employers to hire specific individuals, when the private company has not expressly agreed to that requirement as part of a subsidy package? If the "general welfare" of the City's residents is the asserted legal authority, what specific interpretation of that power authorizes NYC to require private grocery employers to hire specific individuals for a designated period? Does the City have the power to mandate the hiring of specific individuals for a particular period in furtherance of the maintenance of health and safety standards when it does not have the authority to adopt the standards themselves with regard to grocery stores?

In addition, the bill prohibits successor employers from discharging retained workers during the transition employment period without cause. It is our understanding that New York is an "at-will" state. To our knowledge, under that rule, employees can be terminated for any reason, or no reason at all, subject to anti-discrimination laws. Is the proposed local law preempted under the state at-will law? If not, how can the conflicting laws be reconciled?

The mandates in the legislation regarding retention as well as seniority and rights of first refusal in connection with layoffs are typically negotiated through collective bargaining. Will federal and state labor laws governing the organization of labor be violated by imposing these requirements via local

law? Do federal and state laws regarding collective bargaining preempt the City from enacting this measure?

Regarding workers subject to a collective bargaining agreement, such employees should be exempt from the provisions of this bill, since they have the ongoing opportunity to fully address these issues through collective bargaining.

Finally, is the legislation preempted under the federal Worker Adjustment and Retraining Notification Act (WARN)?

The proposed local law establishes a private of right of action for the retained workers. That is unreasonable, given the significant insurance and litigation costs already incurred by businesses, which are particularly burdensome to small businesses. Moreover, the private of right of action imposes an inequitable choice on successor employers: Retain the workers indefinitely or face the likelihood of litigation. In this context, any settlement of litigation would amount to a de facto severance payment.

Further, the legislation requires that at least 15 days prior to the *execution* of any transfer document, notice of a change in control be posted *publicly*, including the identity of the purchaser. Accordingly, the proposed local law requires disclosure of confidential, proprietary information while sensitive negotiations are ongoing, for a contract that may never be signed regarding a deal that may never close in the event a contract is executed. Confidential information, however, is intended *not* to be disclosed to avoid damages. As a result, the mandated disclosure of this confidential, proprietary information can disrupt the business of both the incumbent and successor employers and result in economic harm.

Moreover, the bill provides that "A successor grocery employer shall retain each eligible grocery employee for a transition employment period beginning upon execution of the transfer document and continuing for ninety days after such successor grocery employer's...establishment is fully operational and open to the public." This is impossible, since the successor employer does not employ the workers as of the date of the execution of the transfer document. In addition, if the store is shut by the successor employer for renovations, the transition period will effectively be longer than 90 days. During this extended period, the retained workers "...shall be employed under the terms and conditions established by such successor grocery employer, as required by law and pursuant to the terms of any relevant collective bargaining agreement." This imposes an undue hardship on successor employers, which after paying a substantial purchase price for a store, would have to pay workers retained under a mandate (even though the store is shut) while financing an expensive renovation. This provides a substantial disincentive to purchase a store and renovate it, which means the neighborhood around it would be deprived of a better store and job opportunities.

You only get one chance to make a first impression. Accordingly, the initial period of operating a store is vital. Operational failures during this period will cause a loss of customers, thus increasing the chance of failure. Once the store fails, jobs are lost, the surrounding neighborhood is negatively impacted and a default under a personal guarantee would lead to significant personal financial and emotional hardship. Unfortunately, this legislation increases the prospects of such a failure.

In light of the foregoing, we believe that the proposed local law will make some stores impossible to sell. Alternatively, we feel that the measure will cause a significant reduction in asset values, as buyers seek to offset their substantially increased risk through a reduction in purchase price. Either way sellers, many of them small businesses, will be forced to suffer unnecessary losses. In addition, chains will be deprived of the capital they need to build bigger, better stores that offer broader assortments, wider aisles, healthier choices and more jobs per store.

Accordingly, FIA, on behalf of its members, opposes adoption of this bill. Thank you for your time and attention to FIA's concerns and we are happy to address any questions you may have.

Respectfully submitted,

Food Industry Alliance of New York State, Inc.

Jay M. Peltz, General Counsel and Vice President of Government Relations

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Testimony by David Mertz, New York City Director, Retail, Wholesale and Department Store Union, UFCW

To the New York City Council Committee on Civil Service and Labor

Intro 0632-2015 *Grocery Worker Retention Act*

A Local Law to amend the administrative code of the city of New York, in relation to requiring successor employers in the grocery industry to retain eligible employees for a transition employment period.

September 25, 2015

Good morning Chairman Miller and Members of the Committee. My name is David Mertz and I am the New York City Director for the Retail, Wholesale and Department Store Union (RWDSU). I am pleased to testify today on this legislation requiring successor employers in the grocery industry to retain workers for 90 days following a change in ownership of a grocery store.

The RWDSU represents 100,000 workers in the United States, with 45,000 residing in New York. RWDSU members work in food and non-food retail, food processing, and other low-wage sectors. Our union is deeply involved in progressive activism and movements for economic and social justice. RWDSU is committed to raising job standards for workers across all industries and occupations.

There are well over 50,000 workers in the grocery store industry making up almost a quarter of our city's retail workforce. Employment in the industry grew by 30% from 2000 to 2012 according to the New York City Economic Development Corporation. Changes in this industry are occurring at a rapid pace, with new players and formats entering the market with greater rapidity. In the city it is very common for grocery stores to change ownership, and when this happens workers often lose their jobs through no fault of their own. This circumstance is bad for all three stakeholders: workers, owners, and customers. A worker retention policy such as in this legislation protects working families, provides a stable and experienced workforce for owners, and thus maintains a safe and reliable service to customers.

That is why RWDSU stands firmly in support of the Grocery Worker Retention Act (GWRA).

The main provisions of GWRA will require:

- new employers to retain employees for at least 90 days;
- a review/re-hire process to give the employees of the former owner priority hire;
- retention of employees by seniority if fewer are needed by the new owner and that the new owner keep a preferential hiring list for any jobs that become available;
- just cause for discharge during transition period;
- new employer to complete a written performance evaluation for each employee retained under this law. If satisfactory the employer must consider offering worker a position.

The GWRA directly addresses the fundamental condition of ownership change in the grocery industry. The GWRA seeks to lessen the adverse impact of ownership transitions on hardworking women and men that make up this industry and helps to ensure that industry workplace standards are maintained. By protecting grocery employment, this legislation also maintains the health and safety standards at grocery stores by making sure the stores are staffed by experienced grocery workers who have knowledge of proper sanitation procedures and health regulations in the food industry.

New York City needs to address the problem of grocery store ownership change and the adverse impact on workers and the communities these stores serve. The GWRA seeks to minimize the harmful effects of this situation with common sense policies. The city needs to pass this legislation to protect experienced grocery workers that in turn protect our communities.

Thank you for allowing RWDSU to submit testimony today.

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Name: Pedro GOICO (PLEASE PRINT)

Address: 45-02 DITMARS BLVD #238 ASTORIA

I represent: NSA (NATIONAL SUPERMARKET ASSOCIATION) NY 11354

Address: _____

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I represent: _____

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Name: Jenny Jorge (PLEASE PRINT)

Address: _____

I represent: Small business owners / Compare Foods

Address: @Brooklyn

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Name: Josh Kellerman

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I represent: ALGN

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Name: HAILE RIVERA

Address: 30-50 Whitestone Expressway

I represent: National Supermarket Association (NSA)

Address: 30-50 Whitestone Expressway, Queens

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Name: Brendan Sexton

Address: _____

I represent: UFCW Local 1500

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Name: Dennis Diggin

Address: First Deputy Commissioner

I represent: NYC Dept. of Sanitation

Address: 125 Worth St, NY, NY 10013

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Name: John Durante

Address: 8 Carol Pl. Pequannock NJ

I represent: Key Food

Address: _____

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Name: David Mertz

Address: 30 E. 29th St NY, NY 10016

I represent: RWDSV

Address: 30 E. 29th St NY, NY 10016

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Name: Nikki Kateman
Address: 112 Lorimer St, Apt 2 Brooklyn 11222
I represent: Local 338 RWDSU/UFCA
Address: 1505 Kellum Place, Mineda 11501

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Name: Alma Torres
Address: 140 Wyckoff Ave.
I represent: FOOD EMPORIUM LOCAL 338
Address: _____

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Name: Jay Peltz
Address: 1395 Boston Post Rd, Carlisle, MA
I represent: Food Industry Alliance of NY
Address: Same

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Name: Zullo, Mark

Address: _____

I represent: The Bodega Association

Address: _____

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