

New York Farm Bureau President David Fisher's Dissenting Comments on the Farm Labor Wage Board Report

I was hopeful when I was appointed to this wage board that what we would learn would be taken to heart in the final outcome. I sincerely appreciate the courtesy and attention that Brenda and Dennis have shown during the more than two years we have been together. It has been an awkward process, where the three of us could not sit in the same room together to have meaningful discussions about what we heard.

In the end, I believe the report which was written by the Department of Labor does not reflect the data, research and scope of the full testimony that was provided. I offered up a number of suggestions, most of which were not taken into consideration.

I will briefly highlight some of the major concerns I have with the report.

For starters, it makes a number of conclusions that are based on nothing more than opinion, not facts, and puts weight behind derogatory charges about the industry, even though the report says there was no findings of racial injustice on farms. New York State has strict regulations in place to ensure the health and safety of workers in every industry, including on farms, and we work with and rely on those state and local agencies to ensure anyone violating those rules are held accountable – across all business sectors.

The report further asserts with no supporting evidence that a large number of farm employees are paid off the books. This claim is patently untrue. Even if it was true, this is a DOL failure to enforce their own regulations. Until DOL can prove their assertions or that farm employers engage in this unlawful practice in a more pervasive way than other industries, this language should be taken out of the report.

The report calls out what it says are significantly lower wages for farm employees versus those in private industry. That report says farm wages are nearly \$40,000 a year for farmworkers, but nowhere does it take into account that seasonal workers earn that in a matter of 4-to-8 months, or the multitude of unique benefits provided on top of the wages, like free housing, utilities, food from the farm, and transportation that are not provided to most other workers.

The report also refers to similarly situated industries that have overtime but does not include any of the testimony that outlines how those are not fair comparisons and how different the industries truly are.

The report includes the testimony from proponents of a lower threshold on how a 40-hour threshold has not had a negative impact in California but makes no mention of the testimony that the 40-hour threshold just kicked in this year and that no data was presented in the January hearings to support such a claim that it is not hurting agriculture there.

In highlighting the testimony from economist Chris Wolf of Cornell, the report conveniently leaves out the employee survey that showed 72% of farm workers said they would leave the state if their hours were cut. That is a major piece of hard data.

It also completely discounts the voice of the farmers simply because a majority wants to stay at 60. It barely touches on the testimony of how this will make our farms less competitive and how labor

shortages are already a challenge and will only get worse if workers leave the state to seek more hours elsewhere. The facts cannot be ignored, even if the report does not give them their due diligence.

What may be most disheartening is the references of historical racist policies to justify lowering the threshold. The report cited no evidence or testimony of racial discrimination on farms but highlights Ms. Dixon's testimony that says "the history is connected to New York state's present-day denial of labor protection to its largely Latinx Farmworker population." In fact, farmworkers in New York have some of the strongest, if not the strongest set of protections in the country.

We are here today because of a major overhaul of the farmworker regulations in this state, some of which the farm community advocated for, this includes the 60-hour overtime threshold that was a compromise that all sides supported just three years ago. New York is a leader in farmworker protections. Some farm labor protections are even stronger than those for the rest of the private sector, including a mandatory day of rest, overtime if an employee works a seventh day regardless of total hours worked, and using a card check system to join a union versus a private vote.

The report, and the department of labor, completely failed to recognize all of the work the agricultural industry has been doing to improve the working conditions on our farms. We championed an ag workforce development specialist through Cornell Cooperative Extension, have made major investments in safety training and equipment, human resource development, higher wage rates, and new housing construction. It also does not take into account that collective bargaining allows for workers and employers to bargain in good faith for additional benefits and workplace conditions. This report paints a picture of farmworker protections that is not grounded in truth.

Finally, the report makes the conclusion that a significant number of farmworkers did not testify because of fear of retaliation or because they are low-wage or often undocumented. It does not mention that most of the hearings were scheduled by DOL when seasonal workers are out of the country and unavailable. While it refers to letters written by farmworkers, it clearly discounts their merit versus those who presented in person. Every farmworker's voice should be heard. Every bit of testimony should be weighted equally. It also fails to mention that the wage board did not see all of the videos that were submitted. DOL should not make charges of a lack of participation when not all of the testimony was referenced or even considered.

I do not support this final report.

No matter the outcome today or in the coming weeks, one thing we can all agree on is how valuable our employees are to the work of feeding our fellow New Yorkers. Farmers cannot do it without them, and we will continue to stand with them and do the best we can to provide our employees with good jobs and opportunities. Let's just hope we are able to find enough employees once the threshold begins to drop. Our food security depends on it.