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Judge says towns can't set own minimum wage

By: Lea Kahn , Staff Writer

Lawrence coalition might appeal ruling.

The Lawrence Living Wage Coalition's effort to set a municipal minimum wage was dealt a blow Wednesday afternoon when a judge said state law does not give towns that power.

State Superior Court Judge Linda Feinberg's ruling also means a coalition-proposed public question asking Lawrence voters to approve raising the minimum wage for selected employers will not be placed on the Nov. 7 general election ballot.

"Your argument belongs not here, but just a few blocks away (at the State House)," Judge Feinberg told the attorneys for the coalition as she delivered her ruling at the Mercer County Court House.

Despite the ruling, the issue is not over yet, coalition attorney Falk Engel said. He said the group would consider whether to appeal Judge Feinberg's decision, given the "compressed time frame" to get the question on the ballot, which must be submitted to the Mercer County Clerk's Office by Sept. 8.

The proposed ordinance would apply to retailers whose parent companies generated at least \$1 billion in sales and operate stores in Lawrence of at least 100,000 square feet.

The state minimum wage is \$6.15 per hour and will increase to \$7.15 per hour in October. The ordinance would require retailers to pay employees a living wage of at least \$11.08 per hour, plus a benefits rate of no less than \$3.50 per hour, with subsequent cost-of-living adjustments for both.

Under those conditions, the ordinance would apply to Wal-Mart, which is seeking Planning Board approval to build a 149,000-square-foot store at 1060 and 1100 Spruce Street.

Four stores at the Quaker Bridge Mall — Sears, J.C. Penney, Lord & Taylor and Macy's — also would have to comply. All of the stores occupy at least 100,000 square feet and have parent companies whose sales exceed \$1 billion.

The ordinance landed in Superior Court after the Lawrence Township Council tabled action on it at its Aug. 15 meeting. The coalition gathered more than 1,000 signatures on a petition in support of the ordinance, which gave the coalition legal footing to force the Township Council to consider it.

Municipal Attorney Kevin Nerwinski said he wanted to get a judicial ruling on whether the township has the legal authority to set its own minimum wage.

The Living Wage Coalition, represented by Mr. Engel and attorney Jennifer Sung of the Brennan Law Center of New York University School of Law, argued that state law sets a floor for wages. The courts have allowed local governments to enact stricter standards in certain instances, Ms. Sung said.

When Judge Feinberg asked Ms. Sung why the advocacy group is focusing only on businesses that generate sales of at least \$1 billion or that occupy at least 100,000 square feet of space, the attorney said the U.S. Supreme Court has allowed a "one step at a time" approach to issues.

"You can't be required to tackle the whole problem," Ms. Sung said.

Ms. Sung said that in an ideal world, every company would pay its employees a living wage. It is well documented that the retail industry pays poverty-level wages, she said.

It makes sense to allow towns to set their own minimum wages because the cost of living varies from one part of the state to another, she said. A minimum wage of \$17 to \$22 per hour is needed to support a parent and child in New Jersey, she said, adding that it is important to allow towns some flexibility.

Ms. Sung also argued that allowing towns to set minimum wages would allow employees to live in the town where they worked, an assertion Judge Feinberg publicly questioned. The judge said many people work in Lawrence but do not live in the township.

Attorney Angelo Genova, who represented the New Jersey Retail Merchants Association which joined in the lawsuit on behalf of Lawrence Township, noted there is "an obvious divergence of opinion" on the issue of minimum wage.

"For 75 years, the minimum wage has been set by the Legislature," Mr. Genova said. "There is a minimum wage law. Ms. Sung's characterization of 'setting the floor' is a miscalculation. The state says, 'This is what you will pay.'"

Mr. Genova also argued that allowing towns to set their own minimum wage laws would act as a deterrent for businesses to operate in those towns because they would vary so much. The Legislature made it clear that the state sets the minimum wage, he said.

Before delivering her legal opinion, Judge Feinberg praised all of the attorneys for the points that they made. But in the end, she said, the lawsuit "rises and falls" on the concept of pre-emption, and that state law takes precedence.

After the judge dismissed court for the day, Mr. Nerwinski said he was gratified that Judge Feinberg acknowledged that pre-emption, as a legal issue, existed and that the issue was resolved.

"The unfortunate thing is that Township Council and I were made to be an enemy in the process (by the Lawrence Living Wage Coalition), when we only sought clarification on the legal right for the township to enact a law," he said.