Chelsea now

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C.B. 4 refashions Ninth Ave. at meeting

BY CHRIS LOMBARDI

As Community Board 4's Transportation Committee met on Wednesday night in the C.B. 4 offices high above Times Square, members could be heard speaking of Amelia Chiemienti, who was killed on Feb. 7 at the dangerous intersection of Ninth Ave. and 16th St.

Although the evening began with a discussion of bus traffic and grew heated with proposals on charging money for driving in midtown, without a doubt, the climax was a presentation on the future of Ninth Ave. and possible changes for the corner where Chiemienti was hit.

Proposals for the area included eliminating two northbound lanes on Ninth Ave.

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Old Homestead lawsuit highlights wage issues

BY LAWRENCE LERNER

The southern end of Chelsea, near the Gansevoort District, has been basking in the glow of its ultra-fabulousness for several years now, as glittery galleries, boutiques, haute couture and chi-chi restaurants push out the last remnants of the meatpacking industry. Amid the clatter of high heels and the swaying of Prada coats, more than a dozen area restaurants have firmly established themselves as forces to be reckoned with in the rarefied world of New York high cuisine.

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Chelsea Now photo by Jefferson Siegel

High, ho, away we go!

Last weekend, the 22nd Half Moon Sword Ale — or gathering of English sword dancers — was held at various locations throughout the city, including the community center in Building 7A at Penn South co-ops. Here, the team Griggstown Lock from New Jersey performs a rapper sword dance. For more photos, see Page 17.

Loehmann's settles human rights complaint with transgender woman

BY CHRIS LOMBARDI

Jane Garra, a tall, leggy blues guitarist with hair flopping into her eyes, is often interrupted during performances at Brooklyn's Buttermilk bar and the Ace Café in Manhattan, accosted by young women with a simple question not about her unusual instrument — a dobro guitar, which is used in Hawaiian music and is familiar enough to music aficionados at the CasHank Hootenanny Jamboree, a regular jam session held every month at Buttermilk.

No, Galla said, "The girls tell me, 'We love the way you dress! How do you do it?'" I tell them every time: "If you want to look like this, go shop at Loehmann's!"

For more than two years, Galla has been a regular at the 86-year-old discount clothing store on Seventh Ave. and 17th St. In fact, many of Loehmann's employees know her well enough to ask where she has been when they don't see her for a while.

Now, Loehmann's employees also know Garra as a plaintiff.

That is because she was denied access to Loehmann's public restrooms and fitting rooms on two occasions last year, leading her to file a complaint with the New York City Human Rights Commission.

Perhaps it was her height, her angular face, her gravelly voice that caused someone to suspect that Garra was born a boy. Garra may never know for certain. What is clear is that it was illegal for the store to order her out.

Last week, Garra and her lawyer, Michael Silverman of the Transgender Legal Defense & Education Fund, announced that the case had been settled. Loehmann's agreed to train their employees to act with sensitivity toward transgender women and men, and to grant them full access to public facilities as required by New York City's Human Rights Law, which was amended in March 2002 to "eliminate discrimination based on an individual's actual or perceived gender."

In the five years since that groundbreaking legislation was passed by the City

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Old Homestead lawsuit highlights wage-and-hour issues

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But under the glossy veneer of Dom Perignon and four-star dishes lies an inconvenient truth that continues to rear its head citywide: The waiters who serve dessert to tens of thousands of diners are often passed over when it comes to getting their slice of the pie.

That has never more apparent than in the case of the Old Homestead Steak House,

'Restaurants have a choice: Hire enough employees to fill out your schedule with 40-hour weeks, or pay overtime to the abridged staffs they normally have. Unfortunately, sometimes they try to keep their smaller staffs and avoid paying overtime.'

— Andrew Hoffmann, labor attorney

a venerable Meatpacking District institution on Ninth Ave. and 14th St. which has recently found itself on the receiving end of a class-action lawsuit initiated by four of its waiters, who have become the Norma Rae's of Chelsea.

The suit, filed last month in Federal District Court by Louis Pechman of the Manhattan law firm of Berke-Weiss & Pechman LLP, claims that Old Homestead violated wage and labor laws by running an improper tipping pool, shaving hours off employee time records, and failing to pay minimum and overtime wages. Pechman initiated the lawsuit on behalf of waiters past and present who, he says, have been cheated out of more than $1 million over the last six years.

"The meat of the claim is that Old Homestead ignored its obligation to pay its waiters what they were entitled to under federal and state law," said Pechman. "I took this case because it was a clear violation of the law."

According to Pechman's complaint, Old Homestead management ran a mandatory, illegal

tip-pooling scheme without its waiters' consent and that drew money away from them. Federal and state wage laws allow restaurants to take a "tip credit," or dramatically reduce the minimum wage paid to employees who make a specified amount in tips per week and keep all of the proceeds. According to the lawsuit, however, Old Homestead tried to have it both ways, taking the tip credit while still garnishing part of the tips. In addition, the restaurant diverted waiters' tips to employees not eligible to receive them, including bartenders, maitre d's and managers, and applied tips to the fees credit card companies charged the establishment, the complaint says.

"This is a tricky area that requires a lot of vigilance," said Andrew Hoffmann, partner in the Manhattan law firm of Weisman & Hoffmann, which represents employers in the restaurant industry. "Tip pools must be voluntary and be run to the letter of the law, and only servers interacting with patrons can participate — that is, waiters shouldn't be bearing the restaurant's burden of paying its kitchen staff or others — or else restaurants can lose their tip-credit benefit and be punished even retroactively."

According to Pechman, there is no incentive for restaurants in New York State not to take the tip credit, since even if a restaurant pays waiters the full minimum wage, under state law, the waiters would still keep their entire tips.

At the same time, Hoffmann noted, there is a culture at work that introduces gray areas in tip-pooling, which must be initiated by the servers and busboys at any restaurant.

"How the servers negotiate the tip pool is interesting. The culture drives some of their decisions, and it can become extremely perilous at times," said Hoffmann. "Waiters often want to share some of their tips — take care of the busboys and hostesses — to ensure they cover their tables well, since in the long run they're betting they'll make more money. But by law, this is entirely up to them."

Pechman's suit also claims that Old Homestead consistently shaved hours off its employees' time records, particularly those who worked both the dinner and lunch shift in a single day, and that management made a habit out of failing to pay overtime for hours over 40 per week.

According to Hoffmann, restaurant workers regularly work a sixth or seventh day each week, because often they can't make a living wage without them.

"Without the extra shifts, they'll walk," he said. "Restaurants have a choice: Hire enough employees to fill out your schedule with 40-hour weeks, or pay overtime to the abridged staffs they normally have. Unfortunately, sometimes they try to keep their smaller staffs and avoid paying overtime, because in some cases, they're not pulling in enough to cover costs."

Not surprisingly, Pechman sees the issue from another angle.

"You have a few elements at work here. First, waiters and kitchen staff are often more prone to intimidation because they might be illegal immigrants," he said. "Second, restaurants are generally more informal working environments and cash businesses, and this combination means that the help is more likely to be cheated out of their wages."

Whatever the case, both lawyers agreed that wage-and-hour cases such as Old Homestead's are an industry-wide problem and have been on the rise during the last five years.

"Old Homestead is just one of many restaurants in New York City and throughout the country where this is happening," said Pechman, who was the lead plaintiff attorney in the highly publicized wage-and-hours case brought against Sparks Steak House, on E. 46th St., last summer.

He went on to note that the Fair Labor Standards Act, the bedrock federal statute on which most wage-and-hour cases rest, "has been a sleeping giant, even though it's been around since 1938."

In addition, he says, the view of wage and hours from the employees' perspective is black and white: They have either been paid according to the law or not, and there's no need to prove intent. "That's made wage and hour cases the lawsuit du jour for employment attorneys the last few years," said Pechman. "Discrimination cases are much more murky, whereas 'I worked eight hours, and you paid me for six' — what's there to discuss? If an employer is wrong, then there's liability."

According to Hoffmann, there has also been a marked increase in enforcement by the three agencies that have overlapping jurisdiction over wage-and-hour cases: the U.S. Department of Labor, the New York State Department of Labor and the state's Attorney General's office.

"When there's more enforcement and settlements are publicized, workers become more attuned and are more likely to bring cases. And routine audits by the agencies also find liability," he said.

Hoffman concurs with Pechman on the attractiveness of such cases, citing firms he knows that act like personal injury attorneys, putting out advertisements to attract clients.

"There are large rewards and attorney fees for prevailing parties, which motivate lawyers to take these cases. In fact, all the labor attorneys I talk to find it to be the big growth area, just as 20 years ago, sexual harassment was big, and after that, cases concerning the American with Disabilities Act and the Family Leave Medical Act," said Hoffmann.

"No doubt about it, as traditional labor law practices for labor unions continue to dwindle, more attorneys are trolling for these cases," he said.