



Comments of the Competitive Enterprise Institute regarding the City of Seattle's Department of Finance and Administrative Services (FAS) draft rules implementing Seattle Ordinance 124968

City of Seattle

Department of Finance and Administrative Services

Attention: Matthew Eng

P.O. Box 94689

Seattle, WA 98124-4689

DriverRepresentation@seattle.gov

On behalf of the Competitive Enterprise Institute (CEI), we respectfully submit these comments in response to the City of Seattle's request for comments on the Department of Finance and Administrative Services' (FAS) draft rules for implementing Seattle Ordinance 124968. CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective.

On November 23, 2016, the City of Seattle's FAS issued draft rules implementing Seattle Ordinance 124968, which allows taxi, for-hire, and Transportation Network Company (TNC) drivers who are independent contractors the privilege to collectively bargain. There are several troubling provisions in the draft rules that do not serve the interests of drivers and should be modified to better suit the individuals needs of all drivers and their passengers.

Union Election Process

FAS's proposed union election process denies a significant amount of ride-share drivers the right to vote on the Exclusive Driver Representative (EDR) or union. Ordinance 124968 deprives ride-share drivers of the right to vote unless they fulfill the arbitrary requirement of having completed 52 rides in a three-month period during the preceding 12 months prior to implementation of the ordinance.

Such narrow voting eligibility strips many workers—possibly a third of Seattle Lyft drivers—from voting on a union that will represent them. A union dramatically impacts the workplace lives and wallets of all workers in a bargaining unit, not just those who vote in favor of unionization, because the EDR is allowed to require fee payments from all drivers, not just those who chose to join the union.

In addition, research shows that only 6 percent of all workers covered by a collective bargaining agreement actually voted for the union that currently represents them.¹ The FAS rules will only exacerbate this unjust situation, forcing workers to accept unwanted union work rules and pay fees to an organization they did not vote for.

No worker should have to pay to a union he or she does not support, especially those workers who were not afforded the right to vote on union representation. Further, it is possible that the EDR's forced union



fees may exceed some drivers' earnings, as the FAS rules do not cap them. Most likely, the drivers who end up paying more in union fees than they earn will be those with less than 52 completed rides.

For the above reasons, all individuals currently using ride-sharing platforms should have the opportunity to vote on a potential union representative.

Vast Scope of Collective Bargaining

A vast majority of ride-share drivers enjoy the flexibility that comes with being your own boss. According to an internal Uber survey, 73 percent of Uber drivers said they prefer being their own boss rather than taking "a steady 9-to-5 job with some benefits and a set salary." Moreover, 63 percent of Uber drivers use the service to gain more flexibility.²

In contrast, collective bargaining agreements are one-size-fits-all arrangements. Under the FAS rules, areas subject to collective bargaining include minimum hours of work, scheduling, off-boarding, and wages. Imposing an EDR and collective bargaining agreement on drivers will limit the flexibility and independence of drivers, a primary reason why many individuals decide to drive for TNCs.

Moreover, many drivers use both the Uber and Lyft platforms. It is likely that there will be EDRs for each platform. That means drivers who choose to use both platforms likely will be forced to pay dues to two different unions, so drivers will probably choose one or the other platform to limit dues collection. The end result will be a *de facto* restriction on drivers' ability to use both platforms to gain more business.

Ride-Share Driver Privacy

The City ordinance puts ride-share drivers' private information at risk. The law compels TNC companies to hand over drivers' personal information—names, home and email addresses, and phone numbers—to any union representative who requests it while seeking to organize drivers.

Compelling TNCs to share drivers' private information with a third party increases the risk of harassment, intimidation, and identity theft to drivers.³ The federal National Labor Relations Board (NLRB) recently issued final regulations with similar provisions that require employers to share workers' private information with unions. In fact, an accompanying guidance memo from the NLRB's General Counsel acknowledges that the rules could threaten worker's privacy and that their information could be sold to telemarketers or given to political campaigns, and the lists used to "harass, coerce, or rob employees."⁴ It should be up to ride-share drivers alone whether they wish to share their personal information.

Recommendations

CEI recommends that the rule be withdrawn for further consideration because of the matters of basic justice described above. At the very least we recommend:



- The rule should be amended to allow all drivers the opportunity to vote in the election.
- The scope of the rule should be narrowed to reduce its deterrent effect on opportunities to drive for more than one TNC.
- Any sharing of ride-share drivers' personal information by TNCs should be optional.

We thank you for the opportunity to comment.

Trey Kovacs and Iain Murray

Competitive Enterprise Institute

Trey.Kovacs@cei.org

¹ James Sherk, “Unelected Representatives: 94 percent of Union Members Never Voted for a Union,” August 20, 2016, The Heritage Foundation, <http://www.heritage.org/research/reports/2016/08/unelected-representatives-94-percent-of-union-members-never-voted-for-a-union>.

² “The Driver Roadmap Where Uber Driver-Partners Have Been, And Where They’re Going,” December 7, 2016, Benson Strategy Group, https://newsroom.uber.com/wp-content/uploads/2015/01/BSG_Uber_Report.pdf.

³ William Messenger, Testimony to the U.S. House of Representatives Committee on Education and Workforce, “Culture of Union Favoritism: The Return of the NLRB’s Ambush Election Rule,” March 2, 2014. http://edworkforce.house.gov/uploadedfiles/william_l_messenger_testimony.pdf.

⁴ Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015, NLRB Memorandum GC 15-06, <https://www.scribd.com/doc/271654351/GC-15-06-GuidanceMemorandum-onRepresentation-Case-Procedure-Changes-Effective-April-14-2015-PDF-10>.