One Step Closer To A Unionized Gig Economy

Insights
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Yesterday, a federal court judge in Seattle gave a boost to those who want to unionize the gig economy. The August 9 ruling could end up having widespread implications, although unionization efforts for gig workers still have numerous hurdles to overcome before they become law.

The issue began last December, when, in a nationally unprecedented move, the Seattle City Council voted unanimously to allow the unionization of app-based gig drivers. Despite the fact that the mayor refused to sign the bill, the city ordinance became law. Under the new law, ride-hailing apps would be required – as of September 19, 2016 – to provide the City of Seattle with a list of their drivers, which would then be used by the newly formed App-Based Drivers Association (affiliated with Teamsters Local 117) to contact the drivers to determine if the drivers themselves actually want to unionize.

Notably, in the recent past when cities like Miami, Houston, Portland, Ore., Austin, Tex., and New Orleans refused to allow Uber and Lyft to operate legally in those cities, Seattle was the first city to begin regulating app-based transportation by placing operating caps on their services. Mayor Ed Murray, who supported this initial regulation of app-based transportation services, declined to support the December unionization ordinance. He predicted a difficult path for the city ahead and called the legislation "flawed."

The U.S. Chamber of Commerce apparently agreed. Last March, the Chamber filed a 31-page complaint against the City to stop implementation of the ordinance, alleging that the new law was carte blanche for an illegal cartel to collude on ride prices, in violation of antitrust and labor laws. Yesterday, however, in a move almost as surprising as Seattle's unionization ordinance itself, federal court Judge Robert S. Lasnik granted the City's Motion to Dismiss the Chamber's Complaint, stating that the member companies that the Chamber represented did not have standing to pursue the claims stated in the complaint. Specifically, the court reasoned that the "Chamber's theory of standing relies on a speculative chain of events controlled entirely by the choices of third parties not currently before the Court." The court said that alleged future injuries are not "actual," nor did the Chamber show that they are "certainly impending" or otherwise imminent."

Despite this blow, the Chamber is not alone in its opinions. Other legal experts speculate that Seattle's measure could ultimately be illegal for several reasons, chief among them antitrust concerns of vertical and horizontal price-fixing and the simple fact that independent workers like Uber and Lyft drivers are not permitted to organize under current federal labor law. Naturally

Uber and Lyft drivers are not permitted to organize under current federal labor law. Naturally, unionization has more practical and predictable consequences, too, that are inconvenient though not illegal. Earlier this month, about 100 unionized Uber drivers in Kenya went on strike and blocked traffic along a major Nairobi highway in protest of a proposed 35% fare reduction.

Additionally, the dismissal of the Chamber's complaint does not change the fact that although the Seattle ordinance's effective date is nearly here, very few of the "flawed" details have been worked out by City Council. Most critically, there is no current answer as to which driver-partners will be allowed to vote on collective bargaining issues, and what weight their vote might be given. For example, we still don't know whether the standard will be "one driver, one vote" or "one ride, one vote" (giving more prolific driver-partners a heavier vote). Just last week, the City of Seattle told the federal judge in the now-dismissed case that it may voluntarily delay implementing the new unionization ordinance by six months so it can get a few more of its ducks in a row in the midst of a divided public comment process.

The case brought by the Chamber was dismissed "without prejudice," which means that it may amend its complaint and attempt to take another bite at the legal apple. However, it is not clear what new arguments it could present to survive the sweeping, generous language of the court's order. In the meantime, gig employers should watch the Seattle process closely – unionized independent workers may be coming to a town near you, far sooner than you think.