

# Seattle Ordinance Giving Drivers Right to Collectively Bargain Not Preempted by NLRA

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A landmark law giving drivers of app-based transportation companies, such as Uber and Lyft, the right to collectively bargain is not preempted by the National Labor Relations Act, a three-member panel of the Ninth Circuit Court of Appeals has ruled. *U.S. Chamber of Commerce v. City of Seattle*, No. 17-35640 (9th Cir. May 11, 2018).

Among other things, the NLRA regulates union activity and collective bargaining among almost all private-sector employees in the United States. The Seattle law affords covered drivers with rights analogous to those accorded employees under the NLRA, such as the right to select a representative to negotiate certain terms and conditions of employment.

The Court also ruled the law is not exempted from the Sherman Antitrust Act, under the Sherman Act's exemption for states to enact laws that regulate competition. (The Sherman Act prohibits price-fixing and other practices that inhibit competition.) The Ninth Circuit panel decided that Seattle's law did not meet either of the exemption's requirements. First, the law does "not 'plainly show' that the Washington legislature 'contemplated' allowing for-hire drivers to price-fix their compensation." Second, "[i]t is undisputed that the State of Washington plays no role in supervising or enforcing the terms of the City's ordinance," the Court said, and the lack of active state supervision meant the "active-supervision requirement" of the exemption also was not met.

The Seattle City Council passed the law on December 13, 2015; it took effect in January 2016. From the outset, the law faced numerous legal challenges, with advocates for businesses and employees weighing in. On its face, the law is intended to improve public health, safety, and welfare by providing Seattle with a means to regulate for-hire and taxicab transportation services.

In addition to opening the door to further legal challenges under the Sherman Act, the panel's ruling offers a potential silver-lining to workers' rights advocates. By ruling that the law was not preempted by the NLRA, efforts to organize independent contractors, who are exempt from the NLRA, may increase through the passage of state laws similar to Seattle's.

Rachel Munoz contributed to this post.

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