

HOUSE No. 4605

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES

REPORT
of the
SPECIAL JOINT
COMMITTEE
on
INITIATIVE PETITIONS
on the
INITIATIVE PETITION
of
ROXANA LORENA RIVERA
AND OTHERS
FOR THE PASSAGE OF AN ACT
GIVING TRANSPORTATION NETWORK DRIVERS THE OPTION TO
FORM A UNION AND BARGAIN COLLECTIVELY
(see House, No. 4253)

April 30, 2024.

MAJORITY REPORT.

A majority of the Special Joint Committee on Initiative Petitions (“The Committee”) recommends that the Initiative Petition 23-35, House 4253, “An Act giving transportation network drivers the option to form a union and bargain collectively,” (“the Initiative Petition”) as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

The purpose of this report is to provide a recommendation to the full legislature on whether to accept the Initiative Petition as written for consideration and enactment.

The proposed Initiative Petition would provide Transportation Network Drivers (“Drivers”) with the right to form unions to collectively bargain with Transportation Network Companies (“TNCs”) to create negotiated recommendations concerning wages, benefits, and terms and conditions of work.

Testimony

The Committee heard from experienced professionals, proponents of the Initiative Petition as well as members of the general public. There was no testimony in opposition of the Initiative Petition, and representatives from the TNCs clearly stated that they do not hold a position on this Initiative Petition.

Patrick Moore, First Assistant Attorney General of the Commonwealth of Massachusetts, testified that the language of this Initiative Petition would only apply to Drivers using the platforms of TNCs, most commonly Uber and Lyft, and not Delivery Network Companies (“DNCs,”) such as DoorDash or Instacart. This Initiative Petition establishes a framework to allow Drivers to collectively bargain if they choose to do so in a process overseen by the Commonwealth Employment Relations Board (“CERB”) which defines unfair work practices in this area. If 5 per cent of active Drivers, determined by the TNCs as Drivers having completed more than the median number of rides in the previous six months, authorize the organization, the organization receives a list from the TNCs of all active Drivers. If the organization receives support from 25 per cent of all active Drivers, the Driver organization may be recognized by the CERB as the exclusive representative of the Drivers. If the Drivers ratify the bargaining agreement, it goes to the Secretary of Labor and Workforce Development for the Commonwealth to certify the agreement. The TNCs may also form associations to represent them in bargaining with a Driver organization.

First Assistant Attorney General Moore noted that TNCs are currently involved in a lawsuit brought by the Attorney General to determine if Drivers should be classified as employees, given the Massachusetts Wage Act and the state’s strong “ABC Test” of employee-employer relationships. This case, which could be decided in the next few months, would either keep Drivers recognized as independent contractors in Massachusetts or classify Drivers as employees, applying both from that point forward and retrospectively to the operation of TNCs in Massachusetts. Initiative Petitions House

4256, House 4257, House 4258, House 4259, and House 4260, which also concern TNCs and Drivers and are contemplated in a separate report, would classify Drivers as independent contractors for the purposes of Massachusetts law. If any of those initiatives were to pass, Drivers would not be considered employees from that point forward (if the Supreme Judicial Court rules that Drivers are and have been employees). When asked about potential conflict between this Initiative Petition and Initiative Petitions House 4256, House 4257, House 4258, House 4259, and House 4260, First Assistant Attorney General Moore testified that there may be minor inconsistencies, but these Initiative Petitions were written so as to not conflict and that this Initiative Petition could be in effect regardless of the outcome of those five other Initiative Petitions.

The first panel of proponents of this Initiative Petition included members of the 32BJ local of the Service Employees International Union (“SEIU”), and a driver for the Uber and Lyft TNCs. The panel reasoned that the right to unionize would be the best way to ensure Drivers’ rights, regardless of the impacts of the Attorney General’s lawsuit or the Initiative Petitions outlined in the paragraph above. This panel stated that the provisions of this Initiative Petition would ensure that whether Drivers are classified as independent contractors or employees under Massachusetts law, the right to collectively bargain would give Drivers the opportunity to ensure the long-term sustainability of their profession by working collaboratively with TNCs on workers’ rights and protections, including the share of the fare Drivers receive, the deactivation process for Drivers, and minimum wage and benefits. This panel also pointed to past precedent, citing the Commonwealth’s previous efforts to allow home care and child-care workers who do not consistently work at a fixed company location to unionize as independent contractors when they previously did not have that right.

The second panel of proponents consisted of representatives from SEIU California, the Center for American Progress American Worker Project, and the International Association of Machinists District 15. While this panel was supportive of the Initiative Petition to allow Drivers to unionize as independent contractors, their posture was that Drivers are currently misclassified as independent contractors and that any proposals allowing a union should not definitively declare the Drivers as independent contractors under Massachusetts law.

Conclusion

Though the undersigned majority feels that there is merit to the subject of this Initiative Petition regarding the rights of Drivers to form a union and bargain collectively, significant questions remain as to the interplay between this Initiative Petition and the five Initiative Petitions that deal with the relationship between Transportation Network Companies and their workforce should they both be presented to the voters.

It is also evident by the testimony received at the public hearing that though inherently supportive of the right of workers to form a union, concerns were raised by some labor organizations regarding the process, and jurisdictional exclusivity of such an arrangement as petitioned. The Committee also notes that the Initiative Petition as drafted is focused

on TNCs and is free of any language that would develop this right by statute for similarly situated DNC workers.

The Committee is also cognizant of a legal challenge regarding this Initiative Petition that is to be argued before the Supreme Judicial Court in the month of May 2024, after the constitutional deadline that the legislature can enact this Initiative Petition.

For these reasons, we, the undersigned members of the Special Joint Committee on Initiative Petitions, recommend that “An Act giving transportation network drivers the option to form a union and bargain collectively” (see House No. 4253), as currently drafted and presented to this Committee, OUGHT NOT TO BE ENACTED BY THE LEGISLATURE AT THIS TIME.

Senators.

Cindy F. Friedman
Paul R. Feeney
Ryan C. Fattman

Representatives.

Alice Hanlon Peisch
Michael S. Day
Kenneth I. Gordon
David T. Vieira