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Court of Appeals No. 80542-8

SUPREME COURT OF THE STATE OF WASHINGTON

ABDIKADIR HASSAN, ADEN YUSUF, AMAN ADAM, AMINA AHMED, ANAB ALI, ASHA ALI, ASHWANI BHARDWAJ, BINH LE, CHINDERPAL SINGH, FADUMO MOHAMED, FARDOUS HUSSEIN, FARHIA ADAM, FELIX GARCIA, GURMAIL SINGH, HAI PHAM, HAMZA ADEN, HANI OSMAN, HARINDER NAHAL, JASWINDER GREWAL, JASMINDER SINGH GILL, JOGGIT SINGH BHULLAR, MACARIO ESPINOZA, MALKIT SINGH, MURAYO GULED, RESHAM SINGH GILL, SALADO KHALIF ALI, SURINDER SINGH, THU THI NGUYEN, UBAH SHEIK, VALENTIN GALLETA, YASIN ABDULLAHI, ABDIHAKIM RASHID, ADEN JAMA, AHMED ADAM, ALI ALI, AYAAN NUUR, BASRA BASHIR, BURHAN FARAH, DALJINDER SINGH, FARHIO GURHAN, FARHIYO HUSSIEN, GURJIT SINGH, HARLIN KAUR, HASSAN ABDI, HUSSEIN ADEN MOLAMED, HUSSEIN ALI, ISHMAHAN MUSE, KULDIP SINGH, LARRY TULLIS, LAYLA YUUSUF, MINO YUSUF, MOHAMED WARE, MOHAMUD MOALIN, MUJHTAAR ALI, MUHUBO BARQADLE, MUHYADIIN ALI, MULKI ABDI, NAIMA AHMED, and SADIA ADAN,

Petitioners/Appellants,

v.

GCA PRODUCTION SERVICES, INC.,

Respondent.

Appeal from the Superior Court of Washington
for King County
(Cause No. 18-2-11483-7 KNT)

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONERS

Petitioners are 59 GCA Production Services, Inc. ("GCA" or "Respondent") employees, listed in the caption above ("Petitioners"), who were employed at SeaTac Airport as "Rental Car Services Drivers." CP 0976.

B. COURT OF APPEALS DECISION

Petitioners seek review of the published Court of Appeals Division I decision of May 24, 2021, holding that (1) subcontractor companies such as GCA do not provide rental car services under SeaTac Municipal Code ("SMC") 7.45.010(M)(2), and are therefore not subject to the SeaTac minimum wage ordinance; and (2) claim preclusion applies to Petitioners. A copy of the published opinion ("Opinion") is attached hereto as Appendix A. A copy of the SeaTac Minimum Wage Ordinance is attached hereto as Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Whether "[o]perates or provides rental car services" coverage under SMC 7.45.010(M)(2) applies to companies such as GCA, which provide rental car services at SeaTac Airport through Petitioners functioning as "Rental Car Services Drivers." *See* CP 0990.

2. Whether claim preclusion applies to those Petitioners who have asserted SMC claims in court after having filed different claims with

the Department of Labor & Industries ("DLI"), where:

a) DLI gave GCA counsel written advance notice of its intended ruling, months before the ruling and without giving the same or any similar notice to Petitioners;

b) 36 Petitioners' Wage and Payment Act ("WPA") complaint forms did not state WPA claims under RCW 49.48.082 & .083 because they only asserted a SeaTac Ordinance minimum wage violation, which is not a wage complaint pursuant to RCW 49.48.082(11) & (12); and

c) DLI's jurisdiction is limited to claimed RCW 49.52.050 willful ordinance violations and DLI has no authority over non-willful ordinance violations.

D. STATEMENT OF THE CASE

Petitioners are almost entirely recent immigrants, most of whom speak and write little English and lack formal education. *See* CP 0225-0226. They were "on airport" drivers, *i.e.,* in the SeaTac rental car garage, whose job is described by their employer GCA as "Rental Car Services Driver (a.k.a. Shuttler)." CP 0976. They shuttled Avis rental cars on the premises of SeaTac Airport, from the rental car return lines, through various service areas and to the parking spaces where they were left ready for pickup by new rental car customers.[1] They were paid an average $10.28 per hour (CP 0943), while the SeaTac minimum wage was $15 or higher.[2]

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[1] CP 0957. The Petitioners' claims are based on rental car shuttling at the SeaTac Airport garage – not any shuttling that might have occurred elsewhere.

[2] GCA performed in excess of 100,000 hours of "on airport" labor at Avis' SeaTac Airport lot in 2014 alone. CP 0943-44. GCA has "[o]ver 80 sites coast to coast serving all

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Introduction

This Petition raises two issues of substantial public interest in which the Court of Appeals erred by ruling inconsistently with controlling Washington law. The first issue regarding interpretation of the SeaTac minimum wage ordinance affects hundreds of outsourced rental car employees at the SeaTac Airport rental car garage. If it stands, large rental car companies will avoid paying SeaTac minimum wages simply by outsourcing their most labor-intensive jobs, such as the on-site rental car shuttling work performed by Petitioners. The primary issue is whether GCA "operates or provides rental car services," thus qualifying as a "transportation employer" subject to the ordinance.

The Opinion interpreted "provides rental car services" in the definition of "Transportation Employer" only to include "an employer that supplies vehicles to renters in exchange for a payment of fees." *Id.* at 13-14 (emphasis added). That misreads the very definition of "services" quoted at p. 13, which does not limit "services" to performing the ultimate purpose of the rental car business, *i.e.*, supplying vehicles to renters in exchange for

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of the major rental car companies." It refers to these sites as "GCA Rental Car Services Sites" in its literature and generally. *See* CP 1046. Its rental car services allow GCA's "clients to offload the largest labor pool at the site," saving customers money. CP 1017. In 2016, GCA lost the Avis contract to FleetLogix, which paid the SeaTac minimum wage. CP 1013, 1017, 1031-36, 1046 & CP 0957, 0960.

payment. Rather, "services" includes any business function that is "auxiliary" (*i.e.*, assists or aids) in the production or distribution of rental vehicles. *See* discussion, *infra*, at pp. 6-8. The Opinion is contrary to this Court's precedent because it misinterpreted this definition as an undefined term,[3] and thus failed to interpret the ordinance in a commonsense fashion.[4] The Opinion's interpretation of "transportation employer" also conflicts with the King County Official Local Voters Pamphlet provided to SeaTac voters discussed *infra* at pp. 10-12 and attached hereto as Appendix C, as well as with case authority interpreting wage and hour statutes. *See, infra*, at pp. 12-13.

The Opinion's holding relating to claim preclusion also raises substantial issues of public interest concerning the Wage Payment Act of 2006 ("WPA"). The WPA gave DLI administrative enforcement powers over certain wage and hour claims, not including claims based only on violation of any ordinance.[5] A total of 36 Petitioners only made "Minimum Wage Act" claims based only on the SeaTac ordinance. DLI lacked authority to adjudicate those claims. *See* RCW 49.48.082, including

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3 *Lyft, Inc. v. City of Seattle*, 190 Wn.2d 769, 781, 418 P.3d 102 (2018).

4 *Faciszewski v. Brown*, 187 Wn.2d 308, 320, 386 P.3d 711 (2016).

5 A WPA RCW 49.52.050 claim allows for recovery only of wages, while an ordinance and RCW 49.52.050 claim in King County Superior Court allows for recovery of wages and RCW 49.52.050 double damages.

subsections (11) and (12) in addition to RCW 49.52.050; *see also* RCW 49.48.083.[6] These Petitioners did not make any "willful violation" claims pursuant to RCW 49.52.050-070 over which DLI had some authority. DLI never contacted these individuals to explain the limits of its jurisdiction – it just proceeded even though no valid WPA claims were made.[7]

Crucially, DLI informed only GCA of its intended ruling months before the ruling favoring GCA, while not providing that same vital information to any Petitioners, who likely would have withdrawn their claims prior to such rulings to avoid claim preclusion. This process violated administrative and constitutional law and precludes giving claim preclusion effect to DLI's administrative decision under Supreme Court jurisprudence.[8] The Opinion entirely omits any mention of this notable due process issue. GCA agrees that WPA claim preclusion is of "general public interest and importance. Respondent's RAP 12.3(e) Mot. to Publish, p. 5. Petitioners contend that the issue is one of "substantial public interest" as well as involving important Supreme Court precedent regarding administrative agency claims preclusion. *See* RAP 13.4(b).

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6 Judge Keenan ruled on this issue in the superior court below at CP 1206.

7 *See Faciszewski*, 187 Wn.2d at 320.

8 If DLI can trigger claim preclusion by what Petitioners believe is a shocking example of unfair notice and treatment, no informed claimant would ever seek this administrative remedy.

2. The Court of Appeals Opinion Is Inconsistent With This Court's Decisions[9] Because It Did Not Correctly Interpret Its Own Dictionary Definition Of "Services" In The Phrase "Provides Rental Car Services."

The Opinion held that the decisive statutory interpretation "issue is whether GCA provided rental car services." Published Slip Op., p. 13 (*citing Lyft,* as calling for "defining a term by 'its usual and ordinary dictionary definition' where the statute provides no definition.") The Opinion also set forth definitions of "control," "rent," "services," and "provide" from WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (2002). WEBSTER'S definition of "services" quoted in the Opinion at p. 13 is "to perform any of the business functions auxiliary to production or distribution of." *Id.* (emphasis added). Since "services" includes any business function "auxiliary" to production or distribution, the breadth of that definition depends on the definition of "auxiliary."

The first definition of "auxiliary" at p. 144 of the same WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED noted by the Court is "differing or providing help, assistance or support." The first definition of "auxiliary" at p. 128 in WEBSTER'S NEW

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[9] *Lyft, Inc. v. City of Seattle*, 190 Wn.2d at 781; *Faciszewski, supra; Health Ins. Pool v. Health Care Auth.*, 129 Wn.2d 504, 919 P.2d 62 (1996).

TWENTIETH CENTURY DICTIONARY, p. 128) includes "helping, aiding, assisting …".[10] Applying those definition to this case, rental car "services" include performing "any" "business functions" that are "helping, aiding or assisting" the "distribution of" rental cars by Avis at the SeaTac Airport. Petitioners' work as Shuttle Car Drivers at the SeaTac Airport was a "business function" that helps, aids, assists or supports rental cars being "distributed" to Avis customers. *See* CP 956-957, 990, 1755.

Contrary to *Lyft* and *Faciszewski*, the Opinion's analysis is inconsistent with a commonsense interpretation of the actual dictionary definition of "services." The correct dictionary definition of "provides car rental services" as used in the Ordinance is not limited to "an employer that supplies vehicles to renters in exchange for a payment or fee," as the Opinion states at pp. 13-14. Rather, the plain meaning of "provides car rental services" using the full dictionary definition quoted by the Court of Appeals includes a company such as GCA, an employer which "helps", "aids", "assists", or "supports" Avis in distributing vehicles to customers in exchange for a payment or fee. It is undisputed that most GCA employees working in connection with Avis Car Rental activities at the SeaTac airport

[10] Other common definitions include "giving help or aid, assisting or supporting" (WEBSTER'S NEW WORLD DICTIONARY of the AMERICAN LANGUAGE SECOND COLLEGE ED., pp. 95-96); and "aiding or support" (BLACK'S LAW DICTIONARY, 8th Ed. Deluxe, p. 145).

were performing such "rental car services." *See, e.g.,* CP 940, 1046, 1051-1052, 1801. It is also undisputed such work was previously done by Avis employees. *See, e.g.*, CP 956-957, 1755.[11]

3. The Court of Appeals Decision Is Also Inconsistent With This Court's Decisions[12] Given Both The Text Of The Ordinance's Definition Of "Hospitality Employer" And "Transportation Employer," And The King County Voters' Pamphlet Explanatory Statement.

The Court of Appeals (Slip Op., p. 14) says that "the definition of 'hospitality employer' states that a hospitality employer 'shall include … subcontractor(s).' SMC 7.45.010(D)." That characterization is incomplete. The first sentence of the definition of "Hospitality Employer" gives an initial definition of the phrase. It defines "Hospitality Employer," *inter alia*, to mean "a person who operates within the City any hotel" above a certain

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[11] There was abundant evidence that Petitioners' work driving Avis rental cars at the SeaTac airport while employed by GCA helped, aided or assisted the distribution of Avis rental cars to Avis customers. If § 7.45.010(M) (defining "transportation employer") had included a sentence defining "services" as "to perform any of the business functions auxiliary to production or distribution of" and defining "auxiliary" as "helping, aiding or assisting," there would be little doubt that GCA was a "transportation employer" under the SeaTac Ordinance. The same result applies in this case even without those explicit definitions included in the Ordinance since they are the common definitions of these undefined terms, relied upon in the Opinion.

At the very least, given the actual dictionary definition used by the Court of Appeals, the phrase "provides rental car services" is subject to two reasonable meanings (the meaning stated by the Court of Appeals and the one stated above by Petitioners using all of the words in the WEBSTER'S definition of services). At a minimum, the term "rental car services" is thus "ambiguous" (*Health Ins. Pool*, 129 Wn.2d at 508, and cases cited therein), and should be interpreted using customary methods of statutory interpretation, including those discussed *infra*.

[12] *Lynch v. State*, 19 Wn.2d 802, 812, 145 P.2d 265 (1944); *Metcalf v. Dept. of Licensing*, 133 Wn.2d 290, 944 P.2d 1014 (1997).

size and number of employees. Thus, the first sentence, standing alone, would not include employers who only provide services at such hotels.

The second sentence of subsection (D) then states that "[t]his shall include any person who employs others providing services for customers on the aforementioned premises, such as a temporary agency or subcontractor." (Emphasis added.)[13] The general category included in that second sentence is "any person who employs others providing services for customers …," and the two examples of that general category are "a temporary agency or subcontractor."

While using different format, the definition of "transportation employer" under SMC 7.45.010(M)(1) and (2) also includes employers who "operate" and employers who "provide" certain services. Subsection (M)(1) of that definition includes as employers a person who "operates or provides within the city" multiple types of "services," including janitorial and custodial services. Subsection (M)(2) then specifically states that a "transportation employer also includes any person who "(a) operates

[13] WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY at p. 1819 defines "such as" as "(a) for example."

or provides rental car services …" Thus, both Subsections (D) and (M) include as employers both those who "operate" and those who "provide."[14]

Importantly, Petitioners' understanding that the definition of "Transportation Employer" includes subcontractors (a proposition rejected at p. 14 of the Opinion) is directly supported by the King County Voters Pamphlet. The "Explanatory Statement" in the King County Official Local Voters' Pamphlet provided to SeaTac voters stated:

> This measure, proposed by initiative petition by the people, adds a new chapter to the SeaTac Municipal Code requiring certain hotels, restaurants, rental car businesses, shuttle transportation businesses, parking businesses, and various airport related businesses, including temporary agencies or subcontractors operating within the City, to:
>
> - Pay covered employees an hourly minimum wage of $15.00, excluding tips, adjusted annually for inflation.

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[14] *Medcalf v. State, Dep't of Licensing*, 133 Wn.2d 290 at 300–01, held:

> When the same word or words are used in different parts of the same statute, it is presumed that the words of the enactment are intended to have the same meaning. *Timberline Air Serv., Inc. v. Bell Helicopter–Textron, Inc.*, 125 Wn.2d 305, 313, 884 P.2d 920 (1994) (*citing State v. Hutsell*, 120 Wn.2d 913, 920, 845 P.2d 1325 (1993) and *Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 722, 748 P.2d 597 (1988)). (Emphasis added.)

The Court of Appeals at p. 9, *citing State v. Swanson*, 116 Wn. App. 67, 65 P.3d 343 (2003), stated that "where a statute or ordinance explicitly omits a provision, the court must 'give weight and significance to … the vacancy.*"* Here, the definitions of both Hospitality Employer and Transportation Employer include employers who provide "services." There was thus no omission of a provision regarding "services" herein, and *Swanson* is not applicable. The only "omission" is that the definition of Transportation Employer in Section (M) does not repeat the examples given of providing "services" in Section (D), "such as a temporary agency or subcontractor." The "*exclusio unius*" maxim should apply when a term is omitted, but it should not apply here, where no term is omitted, and examples of a term are simply not repeated.

Appendix C (emphasis added). That statement explicitly covered both certain "hotels" and "rental car businesses" as "including temporary agencies or subcontractors operating within the City." [15]

The "Explanatory statement" of the Voters' Pamphlet quoted above informed SeaTac voters that the "proposed ordinance required all of the "certain businesses" identified in subsection 7.45.010(D) and (M), "including temporary agencies or subcontractors operating within the city," to pay the $15.00/hour minimum wage. That could not reasonably be understood by the average informed voter to limit "temporary agencies or subcontractors" only to hotels or to the "Hospitality Industry." An average informed voter would understand the phrase "including temporary agencies or subcontractors operating within the City" to apply to all of the previous terms, including both "hotels" and "rental car businesses." As explained in *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 673, 146 P.3d 893

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[15] Respondent's Court of Appeals Brief at p. 12 agreed that it should be "presumed" that the voters on the SeaTac ordinance relied on that Explanatory Statement. That brief relied on *Lynch v. State's* holding, which GCA quoted as follows:

> The argument with reference to the referendum measure was published in pamphlet form and mailed to each voter for the express purpose of advising the electorate of the merits and applicability of the proposed legislation. It is to be presumed that the voters relied upon the information thus given to them in the manner provided by law.

19 Wn.2d 802, 812, 145 P.2d 265 (1944) (emphasis added). Respondent then argued that it "will rely on the plain language within the voters ' pamphlet as the voters would have seen it at the time in assisting its interpretation of the Ordinance." *Id.,* p. 12 (emphasis added).

(2006), that is particularly true because the phrase was preceded by a comma.

While quoting the Explanatory Statement (Published Slip Op., p.16), the Opinion never addresses the above analysis and cases contradicting its position. The Opinion instead reiterates that a "liberal construction does not change the commonsense understanding of rental car services, which do not include shuttle driving service like those offered by GCA." *Id*. This misunderstands the significance of the Explanatory Statement. The Statement shows that the drafters of King County Official Local Voters' Pamphlet not only (1) understood the SeaTac Proposition to cover both "certain … rental car businesses" and their "subcontractors," but (2) so informed the SeaTac voters.

The Explanatory Statement is inconsistent with the Court of Appeal's conclusion that Subsection (M) could not reasonably be understood to include subcontractors, since that is just how the drafters of the King County Voters' Pamphlet understood it. It is also inconsistent with the position taken by the Court of Appeals that based "on the plain meaning, we conclude that GCA is not a transportation employer for purposes of SMC 7.45.010(M)(2)." Therefore, it is not the case that the language is "plain unambiguous and well understood according to its natural and ordinary sense and meaning." *Amalgamated Transit Union Local 587 v.*

State, 142 Wn.2d 183, 205, 11 P.3d 762, 780 (2000). Moreover, given that ambiguity, the definition in the Ordinance is subject to interpretation and should be interpreted liberally because it relates to practices, procedures and remedies for wage and hour violations. *Hill v. Xerox Bus. Servs., LLC*, 191 Wn.2d 751, 762, 426 P.3d 703 (2018); *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582, 587 (2000).[16]

4. Evidence Of GCA's Statements That Petitioners Were Engaged In "Rental Car Services" Is Relevant.

The record in this appeal contains abundant evidence that GCA characterized the drivers it employed driving cars at sites such as SeaTac as providing "rental car services" (CP 1485); and that GCA referred to those sites as "GCA rental car services sites" (CP 1046). GCA also admitted at CP 1485 that it sometimes referred to the work done by drivers such as Petitioners as "rental car services." The Court of Appeals refused to

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[16] Petitioners' position in this appeal is also supported by the Court of Appeals Division One's analysis at pp. 6-7 of *Alemu v. Imperial Parking (U.S.), LLC*, No. 80376-0-1 (April 5, 2021) (unpublished opinion). The Court there rejected an interpretation of SMC 7.45.010(D) that would have enabled hotels to evade the applicability of the ordinance simply by subcontracting out all of its of work:

> [a]nd if the subcontractor clause did not apply to the hotel clause, a hotel would be allowed to subcontract for all of the work on its premises, including maid services, receptionists, and valets, and evade the ordinance entirely.
>
> We are not persuaded that this how the average lay voter would have understood the initiative.

That is equally true of the interpretation adopted by the Court of Appeals in this case, which allows a company such as Avis to "evade the ordinance entirely" by subcontracting all or almost all of its work.

consider any of this evidence because it took the position that "any factual evidence does not affect our interpretation of the Ordinance" and thus that "GCA's characterization [of the language] does not change our analysis." *Id.* at 12. This misstates the test which logically may include "evidence" of what the average informed voter would understand. The fact that Respondent (which was obviously "informed" of Petitioners' work activities) repeatedly characterized employees such as Petitioners as performing "rental car services" is, at a minimum, relevant to whether "an average informed voter" would think so as well.

5. The Opinion's Failure To Address The "Findings" of SMC Ordinance 7.45 Is Inconsistent With Multiple Washington Appellate Opinions Including *Matter of Custody of M.W.*, 185 Wn.2d 803, 814, 374 P.3d 1169 (2016).

Section I of the Ordinance approved by the voters reads as follows :

> Section I. Findings. The following measures are necessary in order to ensure that, to the extent reasonably practicable, all people employed in the ... transportation industries in SeaTac have good wages . .. " (Emphasis added.)

Appendix B, pg. 1. The "transportation industries" covered by the Ordinance include "rental car services." Petitioners' primary job as GCA employees was to drive rental cars so that they could be cleaned and made ready for customers, and this work was necessary for Avis cars to be

available for rental. These activities are part of the "transportation industries" as that term is used in the Findings.[17]

6. The Court of Appeals' Claim Preclusion Analysis Is Contrary To Cases On Which The Court Relied as well as Due Process and the Washington Administrative Procedure Act ("APA").

The Opinion (Published Slip Op., p. 7) citing, *inter alia*, *Stevedoring Servs. of Am., Inc. v. Eggert*, 129 Wn.2d 17, 914 P.2d 737 (1996), acknowledges that the necessary requirements for applying claim preclusion in the administrative setting require not only a "valid and final judgment" but that the parties have had "an adequate opportunity to litigate," as well as policy considerations.

Petitioners were not given an adequate opportunity to litigate this matter before DLI because DLI's actions violated both due process and the APA.[18] DLI violated due process because Petitioners had a protected

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[17] *See Matter of Custody of M.W.*, 185 Wn.2d 803, 814, 374 P.3d 1169 (2016) (canons of statutory interpretation require interpreting specific statutory provisions in the context of the statute as a whole, including clear and explicit statements of legislative intent), *citing Oliver v. Harborview Med. Ctr.*, 94 Wn.2d 559, 565, 618 P.2d 76 (1980); *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246, 249 (1978) ("Declarations of policy in an act, although without operative force in and of themselves, serve as an important guide in determining the intended effect of the operative sections.").

[18] Because DLI is a state agency, the APA (ch. 34.05 RCW), governs. *Westberry v. Interstate Distrib. Co.*, 164 Wn. App. 196, 205 (2011). The APA provides:

> (2) .... a presiding officer may not communicate. directly or indirectly, regarding any issue in the proceeding, with any person not employed by the agency who has a direct or indirect interest in the outcome of

property interest in being paid by Respondent in accordance with the SeaTac Ordinance if they came within its terms. Petitioners who filed a claim with DLI against GCA were entitled to due process in connection with the adjudication of their claims. Washington has adopted the three-part due process analysis enunciated in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Det. of Hatfield*, 191 Wn. App. 378, 396-97 (2015).

The DLI actions discussed herein violated both due process and the APA and thereby prejudiced Petitioners. The evidence of record shows that DLI violated due process by its actions between April and August 2017. No Petitioners in this case received the same prior notice of DLI's intended ruling on their claims until months after GCA's attorney was informed.[19] At deposition, DLI's CR 30(b)(6) witness agreed that if the Petitioners had known of DLI's determination in advance they could have withdrawn their complaints (which would have avoided any arguable *res judicata* effect).

> the proceeding, without notice and opportunity for all parties to participate.

RCW 34.05.455(2) (emphasis added).

[19] In late April 2017, DLI agent Grondahl told GCA's counsel that she would get back to him about his request for a meeting inter alia with DLI Program Director Dave Johnson, in the event that DLI was "going a different direction about the definition of agreed wage." CP 1277. Grondahl's notes then show a May 4, 2017 meeting that she had *inter alia* with Dave Johnson. *Id.* The next entry discusses her 5/9/17 contact with the Employer's attorney, when she informed him that DLI was denying all of the Petitioners' complaints by issuing Determinations of Compliance ("DOC"), *i.e.*, "that the department is issuing DOC's on all the complaints." *Id*. DOC letters were not mailed to the Petitioners until between July 14, 2017 and August 4, 2017 - more than two months after DLI informed the employer's counsel of its decision.

Petitioners would have done what was best for them if they had received the same advance notice as the employer.[20] This would have included withdrawing their complaints prior to the DOC being issued.[21]

These actions by DLI violated due process under *Mathews* and *Hatfield*. Petitioners' "private interest" in being paid in accordance with the SeaTac Ordinance was significant, *i.e*., more than $5 an hour for many hours if their claim had been accepted. Furthermore, the risk of an erroneous deprivation through the procedures used, and the probable value of additional or substitute procedural safeguards, was extremely high. Telling GCA's attorney in early May 2017 that DLI was going to rule in favor of GCA, and not telling Petitioners they were going to lose until it was too late for them to withdraw and thus prevent the DOC from being issued, created a very high risk of an erroneous deprivation, which likely would not have happened if both sides had been informed at the same time. Finally, there would be no burden on DLI (which is the government) to have told both sides at the same time. Doing so would not have burdened DLI fiscally or

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20 CP 1738, 1741, 1743, 1745.

21 As stated at §4.2.04 of DLI's Operating Manual:

> Employees do not have the "opt out" right when a DOC is issued. They may withdraw their complaint at any time before a DOC is issued, ...

CP 1311 (underlining added).

administratively since that is what DLI testified is "usually" its practice. CP 1645 at 122:1 to 122:6.

DLI also violated the APA, which requires in situations such as this that DLI's presiding officer "not communicate, directly or indirectly …" with the attorney for an interested party "without notice and opportunity for all parties to participate."[22] RCW 34.05.455.

The Opinion's claim preclusion analysis and holdings are also inconsistent with *Weaver v. City of Everett*, 194 Wn.2d 464, 450 P.3d 177 (2919), upon which the Opinion relies at pp. 9-10. Similar to *Weaver* at p. 482, application of *res judicata* would work an injustice because it would contravene clear public policy. Claim preclusion here would not only be unjust, but inconsistent with the statute.

Res judicata applies in the administrative setting where the agency resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate. *Stevedoring*, 129 Wn.2d at 40 (citation omitted)." Opinion at 7 (underlining added). *Stevedoring* is authority for

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[22] Here, the DLI Agent, Ms. Grondahl, promised to communicate the DLI decision to GCA's attorney, Mr. O'Connell, and kept that promise after Mr. Johnson made the DLI decision. CP 1277. DLI knows agents do this. CP 1645 at 122:1 to 122:31. Moreover, when asked if agents who share advance notice of a decision with one side "should" share it with the other side, Mr. Johnson answered "[w]e usually do." CP 1645 at 122:4 to 122:6. That "usual" practice was not followed here, and the failure to do so was a serious procedural violation that was seriously prejudicial to Petitioners and undermined the integrity of the process.

applying *res judicata* in the administrative only to claims and issues properly before the agency. *Stevedoring* goes on to state:

> In Washington, other considerations are also relevant when the prior adjudication took place in an administrative setting including "(1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations."

Id. at 40 (citations omitted).

The wage complaints of 36 Petitioners identified only one wage payment requirement – "Minimum Wage Not Paid" – which the record before Judge Keenan and before this Court (including DLI's testimony) establishes only alleged violations of the SeaTac minimum wage. As such, DLI lacked statutory authority to adjudicate their claims pursuant to RCW 49.48, *et seq.*[23]

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[23] While 49.48.083(1) provides that "DLI shall investigate the wage complaint" the employee filed, here no "wage complaint[s]" were filed by those Petitioners. "Wage complaint" is defined at RCW 49.48.082(11) and (12) as a complaint "reduced to writing" asserting a violation of a "wage payment requirement," which is defined to be a violation of 5 specific RCW sections. The 36 Petitioners' written complaints failed to assert a violation of a wage payment requirement, so they never made a "wage complaint" under RCW 49.46.083, RCW 49.46.082(11) and RCW 49.46.082(12).

It also would make little sense for the wage complaint form drafted by DLI to ask claimants "what type of complaint are you filing?" if the claimant's choice made no difference to DLI's action. That interpretation would also mislead claimants who reasonably interpreted the form as it is written. Moreover, the Opinion is inconsistent with § 4.08.06(c) of the then applicable DLI Manual (CP 1313), requiring the agent's summary as to Alleged Violations to follow what the claimant originally marked or amended as the relevant claim.

Stevedoring, 129 Wn.2d at 40, requires analysis of agency areas of competence, procedural differences and policy considerations before giving *res judicata* effect to an agency decision. The WPA of 2006 created an agency *quasi-judicial* system for

F. CONCLUSION

For the foregoing reasons, this Petition should be granted.

Respectfully submitted this 23rd day of June, 2021

s/ William J. Rutzick
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enforcement of state wage laws, including RCW 49.52.050, which includes willful violations of "statute, ordinance or contract" (claims never asserted by 36 petitioners). DLI has no experience, expertise or mandate to resolve disputed ordinance or contract claims – claims which are within the expertise and competence of courts. *Stevedoring* refers to administrative expertise in "factual decision[s]", whereas here the agency's action was a legal interpretation of SeaTac's ordinance – an issue unique to the ordinance and unlike any state wage statute or regulation. In 2013, SeaTac voters expressly provided for enforcement of ordinance claims in King County Superior Court. SMC 7.45.100(A). Even apart from the reasons set forth above, the present case illustrates forcefully why WPA proceedings should not bar these Petitioners from seeking judicial relief for simple, *i.e.* non-willful, violations.

CERTIFICATE OF SERVICE

The undersigned certifies he is causing the foregoing to be served today by e-service and email, as per agreement of the parties, on counsel for Respondent, Timothy O'Connell of the Stoel Rives firm.

DATED June 23, 2021.

By: /s/ Beau C. Haynes

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Court of Appeals No. 80542-8

SUPREME COURT OF THE STATE OF WASHINGTON

ABDIKADIR HASSAN et al.,

Petitioners/Appellants,

v.

GCA PRODUCTION SERVICES, INC.,

Respondent.

Appeal from the Superior Court of Washington
for King County
(Cause No. 18-2-11483-7 KNT)

APPENDIX A FOR PETITION FOR REVIEW

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State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ABDIKADIR HASSAN, ADEN YUSUF, AMAN ADAM, AMINA AHMED, ANAB ALI, ASHA ALI, ASHWANI BHARDWAJ, BINH LE, CHINDERPAL SINGH, FADUMO MOHAMED, FARDOUS HUSSEIN, FARHIA ADAM, FELIX GARCIA, GURMAIL SINGH, HAI PHAM, HAMZA ADEN, HANI OSMAN, HARINDER NAHAL, JASWINDER GREWAL, JASMINDER SINGH GILL, JOGGIT SINGH BHULLAR, MACARIO ESPINOZA, MALKIT SINGH, MURAYO GULED, RESHAM SINGH GILL, SALADO KHALIF ALI, SURINDER SINGH, THU THI NGUYEN, UBAH SHEIK, VALENTIN GALLETA, YASIN ABDULLAHI, ABDIHAKIM RASHID, ADEN JAMA, AHMED ADAM, ALI ALI, AYAAN NUUR, BASRA BASHIR, BURHAN FARAH, DALJINDER SINGH, FARHIO GURHAN, FARHIYO HUSSIEN, GURJIT SINGH, HARLIN KAUR, HASSAN ABDI, HUSSEIN ADEN MOLAMED, HUSSEIN ALI, ISHMAHAN MUSE, KULDIP SINGH, LARRY TULLIS, LAYLA YUUSUF, MINO YUSUF, MOHAMED WARE, MOHAMUD MOALIN, MUJHTAAR ALI, MUHUBO BARQADLE, MUHYADIIN ALI, MULKI ABDI, NAIMA AHMED and SADIA ADAN,

Appellants,

No. 80542-8-I

DIVISION ONE

PUBLISHED OPINION

v.

GCA PRODUCTION SERVICES, INC.,

Respondent.

SMITH, J. — This case revolves around the interpretation of SeaTac Municipal Code (SMC) 7.45.010(M)(2) (ordinance), which requires defined transportation employers, including those that provide or operate rental car services, to pay employees $15 per hour. In 2009, GCA Production Services Inc. (GCA) contracted with Avis Budget Car Rental LLC to shuttle Avis's rental cars to and from its Seattle-Tacoma International Airport (Sea-Tac Airport) location in SeaTac, Washington. In 2014, after SeaTac residents voted to raise the minimum wage for certain, but not all, employees, the city of SeaTac enacted SMC 7.45.050. When GCA failed to pay its employees $15 per hour, a number of employees filed a complaint in the United States District Court for the Western District of Washington, and others filed wage complaints with the Washington Department of Labor and Industries (DLI). The employees alleged—and allege here—that GCA is a transportation employer subject to the ordinance. The district court and DLI concluded that the ordinance did not apply to GCA.

Later, many of the same employees filed a complaint in superior court, which is the subject of this appeal. GCA moved to dismiss the lawsuit based on the doctrines of claim preclusion and collateral estoppel. On December 11, 2018, in its order on GCA's motion to dismiss (2018 Order), the court addressed the motion as a summary judgment motion and concluded that claim preclusion

barred 13 employee-plaintiffs who had filed complaints with DLI from relitigating their claim. GCA then moved for summary judgment, this time arguing that it was not subject to the ordinance. On September 4, 2019, the superior court granted GCA's motion and concluded that GCA was not a transportation employer under the ordinance (2019 Order).

The employees appeal both orders. First, we review the issue of claim preclusion and GCA's appeal of the 2018 Order. Because an additional 37 plaintiffs had filed wage complaints with DLI, claim preclusion also bars their claims. Therefore, we reverse the 2018 Order as to those 37 employees and dismiss their complaints. With regard to the 2019 Order and the remaining 9 employees, because the ordinary meaning of providing or operating rental car services does not include the services that GCA provided to Avis, the trial court did not err when it concluded that GCA was not subject to the ordinance. Therefore, we reverse in part the 2018 Order, but we affirm the 2019 Order. We thereby dismiss the complaint in its entirety.

FACTS

In September 2009, GCA and Avis entered into the "Master Supplier Agreement" (MSA). Pursuant to the MSA, GCA managed and operated "the on-airport shuttling and off-airport shuttling duties for" Avis as an independent contractor. Specifically, GCA transported Avis's rental cars between various Avis locations in Seattle, Everett, Tukwila, and Tacoma, Washington.

In 2013, by voter initiative, SeaTac voters passed Proposition 1, which required a $15 minimum hourly wage for defined transportation and hospitality

employers. Subsequently, SeaTac enacted the proposition as chapter 7.45 SMC, which took effect on January 1, 2014.

In 2016, a group of GCA employees filed a complaint against GCA Services Group Inc.[1] (GSG) in the District Court for the Western District of Washington.[2] The plaintiffs sought payment of wages from GCA in accordance with the ordinance. They argued that GSG was a transportation employer under SMC 7.45.010(M)(1),[3] because it provided baggage handling, ground transportation management, and customer service in SeaTac. GSG moved for summary judgment, which the court granted, finding that GSG was not a transportation employer under SMC 7.45.010(M)(1). After the court denied the plaintiffs' motion for reconsideration, the plaintiffs amended their complaint. However, the parties stipulated to dismissal with prejudice a few months later. The plaintiffs did not appeal.

In February 2017, DLI sent GCA a letter, asserting that it had received wage complaints from 93 GCA employees (complainants) and that it would begin an investigation into those claims. Some complainants filed "minimum wage not paid claims," while others asserted that GCA violated the ordinance, specifically. However, DLI's letter indicated that the "complaints focus on [GCA's] failure to pay minimum wage set forth in" SMC 7.45.050. GSG, on

[1] GCA Services Group Inc. is GCA's parent company.

[2] The plaintiffs included Abdikhadar Jama, Aneb Abdinor Hirey, Rogiya Digale, Abdisalam Mohamed, Jashir Grewal, Udham Singh, Sukdev Singh Basra, Khalif Mahamad, Jama Diria, Ahmed F. Gelle, and Lul Salad.

[3] SMC 7.45.010(M)(1)(a) provides one definition for transportation employer under the ordinance.

behalf of GCA, responded, contending that it had "already been held as a matter of law to not be covered under the relevant SeaTac ordinance."

On July 21, 2017, DLI issued a "Determination of Compliance." DLI concluded that GCA did "not meet the definition of a 'Transportation Employer' for the purpose of Ordinance SMC 7.45." Seven complainants appealed to the Office of Administrative Hearings (OAH), which affirmed DLI's order.

On May 7, 2018, 32 employees filed the complaint in this case. They alleged that GCA was a transportation employer under SMC 7.45.010(M)(2) because it provided rental car services. A week later, the employees amended the complaint, adding 28 plaintiffs but asserting the same claim.

GCA answered the complaint and asserted that the complaint was barred "in whole or in part" because of claim preclusion or collateral estoppel. It filed a motion to dismiss, arguing that among other lawsuits and complaints,[4] the DLI investigation constituted a final judgment on the merits for the purpose of claim preclusion and collateral estoppel. GCA provided the court with a letter from DLI, which certified that there were no records found for nine plaintiffs.

The court granted in part and denied in part GCA's motion to dismiss but "consider[ed] the motion as one for summary judgment." It concluded that the DLI order and the doctrine of issue preclusion barred 13 plaintiffs' claims. Thus, the court allowed the remaining 46 plaintiffs' claims to go forward.

[4] Specifically, below, GCA contended that the district court case, Jama v. GCA Servs. Grp., Inc., No. C16-0331 RSL, 2017 WL 1397692, at *1 (W.D. Wash. Jan. 4, 2017) (court order), and the OAH's initial order on summary judgment barred the plaintiffs' claims. However, GCA abandons these arguments on appeal.

Following the court's order, the plaintiffs moved for summary judgment, and GCA filed a cross motion for summary judgment. GCA asserted that it was not a transportation employer and again asserted that the appellants' claims were "barred under the doctrines of claim and issue preclusion." The trial court granted GCA's motion, concluding that GCA did not fall under the ordinance's definition of transportation employer. The remaining employees (appellants) appeal both trial court orders.

ANALYSIS

Under CR 56(c), "summary judgment is appropriate where there is 'no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.'" Elcon Constr., Inc. v. E. Wash. Univ., 174 Wn.2d 157, 164, 273 P.3d 965 (2012) (alteration in original). "We review rulings on summary judgment and issues of statutory interpretation de novo." Am. Legion Post No. 149 v. Dep't of Health, 164 Wn.2d 570, 584, 192 P.3d 306 (2008).

Claim Preclusion

GCA contends that the trial court erred in its 2018 Order because "[a]ll [a]ppellants' claims are barred on the basis of collateral estoppel" and "[a]ll [a]ppellants who participated in proceedings before DLI should have their claims dismissed on the basis of claim preclusion." With regard to collateral estoppel, we decline to address the issue because GCA failed to adequately brief its analysis thereof.[5] With regard to claim preclusion, 37 appellants sought relief

[5] For example, GCA does not discuss the standard that we must apply to discern whether an administrative hearing has preclusive effect. Similarly, GCA's briefing below lacked an adequate analysis regarding the preclusive effect of the

from DLI. Accordingly, claim preclusion bars those 37 appellants from relitigating their claim.

"'The doctrine of res judicata [or claim preclusion] rests upon the ground that a matter which has been litigated, or on which there has been an opportunity to litigate, in a former action in a court of competent jurisdiction, should not be permitted to be litigated again.'" Ensley v. Pitcher, 152 Wn. App. 891, 899, 222 P.3d 99 (2009) (italics omitted) (internal quotation marks omitted) (quoting Marino Prop. Co. v. Port Comm'rs of Port of Seattle, 97 Wn.2d 307, 312, 644 P.2d 1181 (1982)). Because it is a question of law, we review a determination that claim preclusion applies de novo. Weaver v. City of Everett, 194 Wn.2d 464, 473, 450 P.3d 177 (2019). "'The threshold requirement of [claim preclusion] is a valid and final judgment on the merits in a prior suit.'" In re Marriage of Weiser, 14 Wn. App. 2d 884, 903, 475 P.3d 237 (2020) (quoting Ensley, 152 Wn. App. at 899). And claim preclusion "applies in the administrative setting only where the administrative agency 'resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.'" Stevedoring Servs. of Am., Inc. v. Eggert, 129 Wn.2d 17, 40, 914 P.2d 737 (1996) (quoting Texas Emp'rs Ins. Ass'n v. Jackson, 862 F.2d 491, 501 (5th Cir. 1988)). Courts also consider "'(1) whether the agency[,] acting within its competence[,] made a factual decision; (2) agency and court procedural differences; and (3) policy

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OAH's or DLI's orders. And "[w]e will not consider arguments that a party fails to brief." Sprague v. Spokane Valley Fire Dep't, 189 Wn.2d 858, 876, 409 P.3d 160 (2018) (refusing to address the plaintiff's claims, because he did not adequately brief the claims and cited no law establishing them).

considerations.'" Eggert, 129 Wn.2d at 40 (quoting Shoemaker v. City of Bremerton, 109 Wn.2d 504, 508, 745 P.2d 858 (1987)).

Here, "[DLI] shall investigate . . . wage complaint[s]." RCW 49.48.083(1). A wage complaint is "a complaint from an employee to the department that asserts that an employer has violated one or more wage payment requirements." RCW 49.48.082(11). And a wage payment requirement includes statutory minimum wage requirements. See RCW 49.48.082(12) ("'Wage payment requirement' means a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department."). In particular, RCW 49.52.050(2) provides that an employer is guilty of a misdemeanor if it "[w]ilfully and with intent to deprive the employee of any part of [their] wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, *ordinance*, or contract." (Emphasis added.) More broadly, however, DLI is tasked with investigating wage complaints under the Washington Minimum Wage Act (MWA), chapter 49.46 RCW. The MWA establishes "minimum standards for wages, paid sick leave, and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance." RCW 49.46.120. In short, DLI has authority to investigate whether an employer meets the minimum wage requirements based on the MWA or local ordinance. Thus, when DLI determined that GCA did not violate the ordinance, it resolved disputed issues of fact properly before it, and claim preclusion applies to DLI's determination as final judgment on the merits.

Next, the "party seeking to apply [claim preclusion] must establish four elements as between a prior action and a subsequent challenged action: 'concurrence of identity . . . (1) of subject-matter; (2) of cause of action; (3) of persons and parties; and (4) in the quality of the persons for or against whom the claim is made.'" Weaver, 194 Wn.2d at 480 (alteration in original) (quoting N. Pac. Ry. Co. v. Snohomish County, 101 Wash. 686, 688, 172 P. 878 (1918)). The appellants do not challenge the third or fourth elements, so our focus is on concurrence of identity of subject matter and cause of action. With regard to subject matter, "[c]ourts generally focus on the asserted theory of recovery rather than simply the facts underlying the dispute." Marshall v. Thurston County, 165 Wn. App. 346, 353, 267 P.3d 491 (2011). And

> [t]o determine whether causes of action are identical, courts consider whether (1) prosecuting the second action would destroy rights or interests established in the first judgment, (2) the evidence presented in the two actions is substantially the same, (3) the two actions involve infringement of the same right, and (4) the two actions arise out of the same transactional nucleus of facts.

Marshall, 165 Wn. App. at 354.

In Marshall, G. Eldon and Geraldine Marshall first filed suit against Thurston County, alleging negligence, trespass, and inverse condemnation for the flooding of their property caused by the county's installation of a storm water diversion device and failure to provide for adequate runoff. 165 Wn. App. at 349. The Marshalls settled the lawsuit and released the county from future liability. Marshall, 165 Wn. App. at 349. After their property flooded again, the Marshalls filed a new lawsuit against the county, again alleging negligence, trespass, and inverse condemnation. Marshall, 165 Wn. App. at 349-50. The trial court

granted the county's motion for summary judgment, and on appeal, the court concluded that claim preclusion barred the Marshall's claims. Marshall, 165 Wn. App. at 350, 352. The court held that there was subject matter concurrence because the underlying facts were identical in each lawsuit, i.e., the county's installation of a diversion device, and that there was cause of action concurrence because the evidence, rights, and transactional nucleus of facts were identical in both lawsuits. Marshall, 165 Wn. App. at 354-55. The court noted that "some differences in the legal theory asserted or in the facts alleged to support recovery do not necessarily rob a prior adjudication of preclusive effect." Marshall, 165 Wn. App. at 356.

Similarly, here, the appellants propose that they are entitled to a minimum wage of $15 per hour, and the facts for both the DLI investigation and the instant complaint are identical. Moreover, the appellants assert the same rights—the right to back pay for wages not paid in accordance with the ordinance. And the transactional nucleus of facts for both actions is the same—GCA's failure to pay the appellants $15 per hour. Cf. Weaver, 194 Wn.2d at 482 (holding that claim preclusion did not bar plaintiff's permanent disability claim because the claim did not exist at the time of his previous claim for temporary disability). And though 37 of the appellants did not allege that GCA violated the ordinance, specifically, parties are precluded from bringing "entire claims when those claims either were brought or could have been brought in a prior action." Weaver, 194 Wn.2d at 481. Therefore, the subject matter and cause of action for the appellants that filed wage complaints are the same. See Weaver, 194 Wn.2d at 480 (holding

that the causes of action were the same where the plaintiff's two cases involved "compensation for work-related illness or injury").

Given that DLI's judgment binds all 37 appellants who filed wage complaints with DLI, those appellants are barred from relitigating their claim that GCA violated the ordinance. However, because the remaining 9 appellants did not bring a complaint to DLI, their claims are not barred by claim preclusion. Thus, the trial court erred in concluding that claim preclusion did not bar those 37 plaintiffs' claims.

The appellants assert that the complainants who filed only a minimum wage not paid complaint are not barred because they did not claim that GCA violated the ordinance. We disagree for a number of reasons, but most importantly because the resolution of a minimum wage not paid complaint necessarily required DLI to determine whether GCA was subject to the ordinance. Thus, DLI had authority to investigate the ordinance's applicability as to GCA with regard to all complainants. The appellants' assertion is without merit. For these reasons, we reverse the 2018 order and grant summary judgment in favor of GCA on the basis of claim preclusion as to the 37 appellants who filed wage complaints with the DLI.

SMC 7.45.010(M)(2)

The appellants contend that the trial court erred when it concluded in its 2019 Order that GCA was not a transportation employer. Because GCA did not provide or operate rental car services under the ordinary meaning of the terms, we disagree.

"We . . . construe a municipal ordinance according to the rules of statutory interpretation." Seattle City Light v. Swanson, 193 Wn. App. 795, 810, 373 P.3d 342 (2016). In statutory interpretation, our main "'objective is to ascertain and carry out the Legislature's intent.'" Seattle Hous. Auth. v. City of Seattle, 3 Wn. App. 2d 532, 538, 416 P.3d 1280 (2018) (quoting Citizens All. for Prop. Rights Legal Fund v. San Juan County, 184 Wn.2d 428, 435, 359 P.3d 753 (2015)). "'[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.'" Seattle Hous. Auth., 3 Wn. App. 2d at 538 (alteration in original) (quoting Citizens All., 184 Wn.2d at 435). Statutory analysis "begins with the text and, for most purposes, should end there as well." Maylon v. Pierce County, 131 Wn.2d 779, 799, 935 P.2d 1272 (1997).

Similarly, "[i]nitiatives will be interpreted from their plain language, if possible. However, when an initiative is susceptible to multiple interpretations, we employ the standard tools of statutory construction to aid our interpretation." Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 149 Wn.2d 660, 670, 72 P.3d 151 (2003). And "[t]he words of an initiative will be read 'as the average informed lay voter would read [them].'" Parents Involved in Cmty. Sch., 149 Wn.2d at 671 (second alteration in original) (quoting W. Petrol. Imps., Inc. v. Friedt, 127 Wn.2d 420, 424, 899 P.2d 792 (1995)).

Under SMC 7.45.010(M)(2)(a)-(b), a "transportation employer" is "any person who: . . . [o]perates or provides rental car services utilizing or operating a fleet of more than one hundred (100) cars [and] . . . [e]mploys twenty-five (25) or

more nonmanagerial, nonsupervisory employees in the performance of that operation." The parties stipulated that GCA employed a workforce of 25 or more nonmanagerial, nonsupervisory employees and that Avis's fleet at Sea-Tac Airport included more than 100 rental cars. And the appellants do not appear to assert that GCA operated rental car services. Accordingly, the issue is whether GCA provided rental car services. But the ordinance does not define those terms. And when an ordinance does not define a term, we utilize the dictionary definition to inform the ordinance's plain meaning. See Lyft, Inc. v. City of Seattle, 190 Wn.2d 769, 781, 418 P.3d 102 (2018) (defining a term by "its usual and ordinary dictionary definition" where the statute provided no definition); Seattle Hous. Auth., 3 Wn. App. 2d at 539-40 (using the dictionary definition to define a term, which the at-issue ordinance did not define).

First, the dictionary defines (1) "rental" as "something rented," (2) "rent" as "a piece of property that the owner allows another to use in exchange for a payment in services, kind, or money," and (3) "services" as "to perform any of the business functions auxiliary to production or distribution of." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1923, 2075 (2002). The dictionary defines "provide" as "to fit out or fit up **:** EQUIP" or "to supply for use." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1827. The average informed lay voter likely understands "provides" to mean "to supply for use." And "our focus must be on reading the language of the ordinance in a commonsense manner." Faciszewski v. Brown, 187 Wn.2d 308, 320, 386 P.3d 711 (2016).

Given the dictionary definitions, the ordinance's ordinary meaning is an

employer that supplies vehicles to renters in exchange for a payment or fee. More specifically, a transportation employer that provides rental car services is a business that supplies individuals with the possession and enjoyment of cars in exchange for payments. GCA does not receive a rental fee for its services to Avis, and it does not own the vehicles that Avis rents to individuals in exchange for payment. Indeed, GCA provides nothing in exchange for rent. Therefore, based on the plain meaning, we conclude that GCA is not a transportation employer for purposes of SMC 7.45.010(M)(2) and was not required to pay its employees $15 per hour.

This interpretation is supported by other sections of the ordinance. Specifically, when the ordinance intends to include subcontractors, like GCA, it does so expressly. That is, the definition of "hospitality employer" states that a hospitality employer "shall include . . . subcontractor[s]." SMC 7.45.010(D). The ordinance does not include similar language in the definition of transportation employer. And where a statute or ordinance explicitly omits a provision, the court must "give weight and significance to th[e] . . . vacancy." State v. Swanson, 116 Wn. App. 67, 76-77, 65 P.3d 343 (2003) (holding that where the statute does not include a particular requirement for the reinstatement of an individual's firearm rights, no requirement exists). In this context, this principle indicates that, because SMC 7.45.010(M)(2) does not include subcontractors in its definition of transportation employer, it does not apply to subcontractors. Thus, as a subcontractor to Avis, GCA is not subject to the ordinance.

The appellants disagree and contend that we must define "provides"

differently than "operates." While we agree, defining the terms differently does not affect our conclusion that the ordinance does not apply to GCA. Specifically, the average informed lay voter likely understands "operate" to mean to "put or keep in operation." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1581. And the definition of "operation" is "the quality or state of being functional." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1581. A common example is that someone "operated a grocery store." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1581 (italics omitted). Thus, given the ordinary meaning of "operates," a transportation employer who operates rental car services keeps a rental car business functioning. This is distinct from the ordinary definition of "provides" and therefore satisfies the statutory construction rule that "[w]hen the legislature employs different terms in a statute, we presume a different meaning for each term." Koenig v. City of Des Moines, 158 Wn.2d 173, 182, 142 P.3d 162 (2006).

Additionally, "or" is an inclusive disjunctive because it would lead to a strained result if "or" created an exclusive disjunctive. Specifically, the dictionary defines "'or' as a 'function word' indicating 'an *alternative* between different or unlike things.'" Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 528, 243 P.3d 1283 (2010) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1585). When used as an alternative, "or" is an "inclusive disjunctive—one or more of the unlike things can be true." Lake, 169 Wn.2d at 528 (emphasis omitted). However, "or" also can mean "a 'choice between alternative things,

states, or courses,'"[6] creating an "exclusive disjunctive—one or the other can be true, but not both." Lake, 169 Wn.2d at 528 (emphasis omitted). We look to "the surrounding context" to determine which meaning is intended. Lake, 169 Wn.2d at 528 ("Usually, the intended meaning is apparent from the surrounding context."). Here, if "or" was an exclusive disjunctive, it would mean that if a business provides rental car services, it cannot also operate a rental car services business. The court should "avoid an interpretation that results in unlikely or strained consequences." Swanson, 193 Wn. App. at 811. Therefore, we conclude that the "or" here connects two different verbs, either or both of which may be true.

The appellants also contend that, because SMC 7.45.010 is a remedial ordinance, we must construe it liberally. To this end, they contend that by concluding that employers like GCA are not subject to the ordinance, we would "eviscerate the ordinance." The ordinance's explanatory statement provides that the ordinance will require "certain hotels, restaurants, rental car businesses, shuttle transportation businesses, parking businesses, and various airport related businesses, including temporary agencies or subcontractors operating within the City," to provide employees a $15 per hour wage, "a living wage." But, as discussed, the ordinary definition of transportation employer does not apply to GCA as a matter of law. That is, a liberal construction does not change the commonsense understanding of rental car services, which do not include shuttle

[6] Lake, 169 Wn.2d at 528 (emphasis omitted) (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1585).

driving services like those offered by GCA. Therefore, the appellants' contention fails.

Next, the appellants assert that because Avis's new subcontractor, Fleet Logics, pays its employees $15 per hour, GCA was required to do so. Fleet Logics' decision to pay its employees $15 per hour does not control this court's decision. It also is not persuasive. Specifically, there is no basis to conclude that, because Fleet Logics pays its employees $15 per hour, either it or GCA is legally required to do so. Therefore, the appellants' assertion fails.

Finally, the appellants contend that the trial court erred because it failed to view the evidence in the light most favorable to them. To this end, they cite GCA's "admissions" that it provides rental car services.[7] However, any factual evidence does not affect our interpretation of the ordinance.[8] And the appellants do not dispute the services that GCA provided to Avis. Our analysis focuses on the undisputed factual evidence regarding those services, and GCA's characterization does not change our determination. In short, no inferences were drawn to conclude that GCA does not provide rental car services. Therefore, this contention is without merit.

We reverse in part the 2018 Order and affirm the 2019 Order, dismissing

[7] GCA's PowerPoint presentation states that it provides "rental car outsource services" and that a GCA employee is a "Rental Car Services Driver (a.k.a. Shuttler)."

[8] When discussing "reasonable inferences," courts generally refer to the evidence and the fact-finding process. See, e.g., State v. Kaiser, 161 Wn. App. 705, 723-24, 254 P.3d 850 (2011) (separating its discussion of substantial evidence from its discussion of questions of law). Thus, the logical conclusion is that a court does not draw inferences when it considers questions of law.

the complaint in its entirety.

WE CONCUR:

Court of Appeals No. 80542-8

SUPREME COURT OF THE STATE OF WASHINGTON

ABDIKADIR HASSAN et al.,

Petitioners/Appellants,

v.

GCA PRODUCTION SERVICES, INC.,

Respondent.

Appeal from the Superior Court of Washington
for King County
(Cause No. 18-2-11483-7 KNT)

APPENDIX B FOR PETITION FOR REVIEW

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ORDINANCE SETTING MINIMUM EMPLOYMENT STANDARDS FOR HOSPITALITY AND TRANSPORTATION INDUSTRY EMPLOYERS

Section 1. Findings. The following measures are necessary in order to ensure that, to the extent reasonably practicable, all people employed in the hospitality and transportation industries in SeaTac have good wages, job security and paid sick and safe time.

Section 2. That a new Chapter, 7.45, be added to the SeaTac Municipal Code to read as follows:

7.45 MINIMUM EMPLOYMENT STANDARDS FOR HOSPITALITY AND TRANSPORTATION INDUSTRY EMPLOYERS

7.45.010 Definitions

As used in this Chapter, the following terms shall have the following meaning:

A. "*City*" means the City of SeaTac.

B. "*Compensation*" includes any wages, tips, bonuses, and other payments reported as taxable income from the employment by or for a Covered Worker.

C. "*Covered Worker*" means any individual who is either a Hospitality Worker or a Transportation Worker.

D. "*Hospitality Employer*" means a person who operates within the City any Hotel that has one hundred (100) or more guest rooms and thirty (30) or more workers or who operates any institutional foodservice or retail operation employing ten (10) or more nonmanagerial, nonsupervisory employees. This shall include any person who employs others providing services for customers on the aforementioned premises, such as a temporary agency or subcontractor.

E. "*Hospitality Worker*" means any nonmanagerial, nonsupervisory individual employed by a Hospitality Employer.

F. "*Hotel*" means a building that is used for temporary lodging and other related services for the public, and also includes any contracted, leased, or sublet premises connected to or operated in conjunction with such building's purpose (such as a restaurant, bar or spa) or providing services at such building.

G. "*Institutional foodservice or retail*" is defined as foodservice or retail provided in public facilities, corporate cafeterias, conference centers and meeting facilities, but does not include preparation of food or beverage to be served in-flight by an airline. Restaurants or retail

operations that are not located within a hotel, public facility, corporate cafeteria, conference facility or meeting facility are not considered a hospitality employer for the purpose of this Chapter.

H. "*Person*" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, or any other legal or commercial entity, whether domestic or foreign, other than a government agency.

I. "*Predecessor Employer*" means the Hospitality or Transportation Employer that provided substantially similar services within the City prior to the Successor Employer.

J. "*Retention Employee*" means any Covered Worker who:

1) was employed by a Predecessor Employer for at least 30 workdays; and

2) was either:

a) laid off or discharged for lack of work due to the closure or reduction of a Hospitality or Transportation Employer's operation during the preceding two years; or

b) is reasonably identifiable as a worker who is going to lose his/her job due to the closure or reduction of the Hospitality or Transportation Employer's operation within the next 6 months.

K. "*Service charge*" is defined as set forth in RCW 49.46.160(2)(c).

L. "*Successor Employer*" means the new Hospitality or Transportation Employer that succeeds the Predecessor Employer in the provision of substantially similar services within the City.

M. "*Transportation Employer*" means:

1) A person, excluding a certificated air carrier performing services for itself, who:

a) operates or provides within the City any of the following: any curbside passenger check-in services; baggage check services; wheelchair escort services; baggage handling; cargo handling; rental luggage cart services; aircraft interior cleaning; aircraft carpet cleaning; aircraft washing and cleaning; aviation ground support equipment washing and cleaning; aircraft water or lavatory services; aircraft fueling; ground transportation management; or any janitorial and custodial services, facility maintenance services, security services, or customer service

performed in any facility where any of the services listed in this paragraph are also performed; and

b) employs twenty-five (25) or more nonmanagerial, nonsupervisory employees in the performance of that service.

2) A transportation employer also includes any person who:

a) operates or provides rental car services utilizing or operating a fleet of more than one hundred (100) cars; shuttle transportation utilizing or operating a fleet of more than ten (10) vans or buses; or parking lot management controlling more than one hundred (100) parking spaces; and

b) employs twenty-five (25) or more nonmanagerial, nonsupervisory employees in the performance of that operation.

N. "*Transportation Worker*" means any nonmanagerial, nonsupervisory individual employed by a Transportation Employer.

O. "*Tips*" mean any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for a Covered Worker by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

7.45.020 Paid Leave For Sick and Safe Time

Each Hospitality or Transportation Employer shall pay every Covered Worker paid leave for sick and safe time out of the employer's general assets as follows:

A. A Covered Worker shall accrue at least one hour of paid sick and safe time for every 40 hours worked as an employee of a Hospitality Employer or Transportation Employer. The Covered Worker is entitled to use any accrued hours of compensated time as soon as those hours have accrued.

B. The Covered Worker need not present certification of illness to claim compensated sick and safe time, provided that such Covered Worker has accrued the requested hours of compensated time at the time of the request. A Covered Worker shall be paid his or her normal hourly compensation for each compensated hour off.

C. The Covered Worker shall not be disciplined or retaliated against for use of accrued paid sick and safe time. This includes a prohibition on any absence control policy that counts earned sick and safe time as an absence that may lead to or result in discipline against the Covered Worker.

D. If any Covered Worker has not utilized all of his or her accrued compensated time by the end of any calendar year, the Hospitality Employer or Transportation Employer shall pay this worker a lump sum payment at the end of the calendar year equivalent to the compensation due for any unused compensated time.

E. Accrued paid sick time shall be provided to a Covered Worker by a Hospitality Employer or Transportation Employer for the following reasons:

1) An absence resulting from a Covered Worker's mental or physical illness, injury or health condition; to accommodate the Covered Worker's need for medical diagnosis care, or treatment of a mental or physical illness, injury or health condition; or a Covered Worker's need for preventive medical care;

2) To allow the Covered Worker to provide care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

F. Accrued paid safe time shall be provided to a Covered Worker by a Hospitality Employer or Transportation Employer for the following reasons:

1) When the Covered Worker's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material;

2) To accommodate the Covered Worker's need to care for a child whose school or place of care has been closed by order of a public official for such a reason;

3) For any of the following reasons related to domestic violence, sexual assault, or stalking, as set forth in RCW 49.76.030:

a) To enable the Covered Worker to seek legal or law enforcement assistance or remedies to ensure the health and safety of the Covered Worker or the Covered Worker's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

b) To enable the Covered Worker to seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the Covered Worker's family member;

c) To enable the Covered Worker to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

d) To enable the Covered Worker to obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the Covered Worker or the Covered Worker's family member was a victim of domestic violence, sexual assault, or stalking; or

e) To enable the Covered Worker to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the Covered Worker or Covered Worker's family members from future domestic violence, sexual assault, or stalking.

7.45.030 Promoting Full-Time Employment

If a Hospitality or Transportation Employer has additional hours of work to provide in job positions held by Covered Workers, then it shall offer those hours of work first to existing qualified part-time employees before hiring additional part-time employees or subcontractors.

7.45.040 Require That Service Charges and Tips Go To Those Performing The Service

A. Any service charge imposed on customers of, or tips received by employees of, a Hospitality Employer shall be retained by or paid to the nonmanagerial, nonsupervisory Hospitality or Transportation Workers who perform services for the customers from whom the tips are received or the service charges are collected.

B. The amounts received from tips or service charges shall be allocated among the workers who performed these services equitably; and specifically:

1) Amounts collected for banquets or catered meetings shall be paid to the worker(s) who actually work with the guests at the banquet or catered meeting; and

2) Amounts collected for room service shall be paid to the worker(s) who actually deliver food and beverage associated with the charge; and

3) Amounts collected for porterage service shall be paid to the worker(s) who actually carry the baggage associated with the charge.

7.45.050 Establishing A Living Wage For Hospitality Workers and Transportation Workers

A. Each Hospitality Employer and Transportation Employer shall pay Covered Workers a living wage of not less than the hourly rates set forth in this section. The rate upon enactment shall be fifteen dollars ($15.00) per hour worked.

B. On January 1, 2015, and on each following January 1, this living wage shall be adjusted to maintain employee purchasing power by increasing the current year's wage rate by the rate of inflation. The increase in the living wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. The declaration of the Washington State Department of Labor and Industries each September 30 regarding the rate by which Washington State's minimum wage rate is to be increased effective the following January 1, pursuant to RCW 49.46.020(4)(b), shall be the authoritative determination of the rate of increase to be applied for purposes of this provision.

C. The City Manager shall publish a bulletin by October 15 of each year announcing the adjusted rates. Such bulletin will be made available to all Hospitality Employers and Transportation Employers and to any other person who has filed with the City Manager a request to receive such notice but lack of notice shall not excuse noncompliance with this section.

D. Each Hospitality Employer and Transportation Employer shall provide written notification of the rate adjustments to each of its workers and make the necessary payroll adjustments by January 1 following the publication of the bulletin. Tips, gratuities, service charges and commissions shall not be credited as being any part of or be offset against the wage rates required by this Chapter.

7.45.060 Setting Additional Labor Standards for City Hospitality Workers and Transportation Workers

A. Notice to Employees. No less than 60 days prior to the termination of a Predecessor Employer's contract, the Predecessor Employer shall notify all Retention Employees in writing that they have been placed on a qualified displaced worker list and that the Successor Employer may be required to offer him/her continued employment. The notice shall include, if known, the name, address, and contact information of the Successor Employer. A copy of this notice, along with a copy of the qualified displaced worker list, shall also be sent to the City Manager.

B. Retention Offer. Except as otherwise provided herein, the Successor Employer shall offer employment to all qualified Retention Employees. A Successor Employer who is a Hospitality Employer shall, before hiring off the street or transferring workers from elsewhere, offer employment to all qualified retention employees of any predecessor employer that has

provided similar services at the same facility. If the Successor Employer does not have enough positions available for all qualified Retention Employees, the Successor Employer shall hire the Retention Employees by seniority within each job classification. For any additional positions which become available during the initial ninety-day period of the new contract, the Successor Employer will hire qualified Retention Employees by seniority within each job classification.

C. Retention Period. A Successor Employer shall not discharge a Retention Employee without just cause during the initial ninety-day period of his/her employment.

D. An employee is "qualified" within the meaning of this Section if he/she has performed similar work in the past (and was not discharged for incompetence) or can reasonably be trained for the duties of a position through an amount of training not in excess of the training that has been provided by the employer to workers hired off the street.

E. The requirements of this Chapter shall not be construed to require any Hospitality Employer or Transportation Employer to offer overtime work paid at a premium rate nor to constrain any Hospitality Employer or Transportation Employer from offering such work.

7.45.070 Employee Work Environment Reporting Requirement

A. Hospitality Employers and Transportation Employers shall retain records documenting hours worked, paid sick and safe time taken by Covered Workers, and wages and benefits provided to each such employee, for a period of two years, and shall allow the City Manager or designee access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this Chapter.

B. Hospitality Employers and Transportation Employers shall not be required to modify their recordkeeping policies to comply with this Chapter, as long as records reasonably indicate the hours worked by Covered Workers, accrued paid sick and safe time, paid sick and safe time taken, and the wages and benefits provided to each such Covered Worker. When an issue arises as to the amount of accrued paid sick time and/or paid safe time available to a Covered Worker under this chapter, if the Hospitality Employers and Transportation Employers does not maintain or retain adequate records documenting hours worked by the Covered Worker and paid sick and safe time taken by the Covered Worker, it shall be presumed that the Hospitality Employers and Transportation Employers has violated this chapter.

C. Records and documents relating to medical certifications, re-certifications or medical histories of Covered Worker or Covered Workers' family members, created for purposes of this chapter, are required to be maintained as confidential medical records in separate files/records from the usual personnel files. If the Americans with Disabilities Act (ADA) and/or the Washington Law Against Discrimination (WLAD) apply, then these records must comply with the ADA and WLAD confidentiality requirements.

7.45.080 Waivers

The provisions of this Chapter may not be waived by agreement between an individual Covered Worker and a Hospitality or Transportation Employer. All of the provisions of this Chapter, or any part hereof, including the employee work environment reporting requirement set forth herein, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this chapter.

7.45.090 Prohibiting Retaliation Against Covered Workers For Exercising Their Lawful Rights

A. It shall be a violation for a Hospitality Employer or Transportation Employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

B. It shall be a violation for a Hospitality Employer or Transportation Employer to take adverse action or to discriminate against a Covered Worker because the Covered Worker has exercised in good faith the rights protected under this Chapter. Such rights include but are not limited to the right to file a complaint with any entity or agency about any Hospitality Employer's or Transportation Employer's alleged violation of this chapter; the right to inform his or her employer, union or other organization and/or legal counsel about a Hospitality Employer's or Transportation Employer's alleged violation of this section; the right to cooperate in any investigation of alleged violations of this chapter; the right to oppose any policy, practice, or act that is unlawful under this section; and the right to inform other Covered Workers of their rights under this section. No Covered Worker's compensation or benefits may be reduced in response to this Chapter or the pendency thereof.

C. The protections afforded under subsection B shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

7.45.100 Enforcement of Chapter

A. Any person claiming violation of this chapter may bring an action against the employer in King County Superior Court to enforce the provisions of this Chapter and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this chapter, including but not limited to lost compensation for all Covered Workers impacted by the violation(s), damages, reinstatement and injunctive relief. A plaintiff who prevails in any action to enforce this Chapter shall be awarded his or her reasonable attorney's fees and expenses.

B. The City shall adopt auditing procedures sufficient to monitor and ensure compliance by Hospitality Employers and Transportation Employers with the requirements of this Chapter. Complaints that any provision of this Chapter has been violated may also be presented to the City Attorney, who is hereby authorized to investigate and, if it deems appropriate, initiate legal or other action to remedy any violation of this chapter; however, the City Attorney is not obligated to expend any funds or resources in the pursuit of such a remedy.

C. Nothing herein shall be construed to preclude existing remedies for enforcement of Municipal Code Chapters.

7.45.110 Exceptions

The requirements of this Chapter shall not apply where and to the extent that state or federal law or regulations preclude their applicability. To the extent that state or federal law or regulations require the consent of another legal entity, such as a municipality, port district, or county, prior to becoming effective, the City Manager is directed to formally and publicly request that such consent be given.

Section 3. That the effective date of this Ordinance shall be January 1, 2014.

Section 4. The Code Reviser is authorized to change the numbering and formatting this Ordinance to conform with the SeaTac Municipal Code codification in a manner that is consistent with the intent and language of this Ordinance.

Section 5. Severability. If any provision of this Ordinance is declared illegal, invalid or inoperative, in whole or in part, or as applied to any particular Hospitality or Transportation Employer and/or in any particular circumstance, by the final decision of any court of competent jurisdiction, then all portions and applications of this Ordinance not declared illegal, invalid or inoperative, shall remain in full force or effect to the maximum extent permissible under law.

Court of Appeals No. 80542-8

SUPREME COURT OF THE STATE OF WASHINGTON

ABDIKADIR HASSAN et al.,

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Counsel for Petitioners/Appellants

November 5, 2013 General and Special Election

King County
Official Local Voters' Pamphlet

vote by mail

For more information call
206-296-VOTE (8683) or visit
www.kingcounty.gov/elections

King County
Department of Elections

Proposition No. 1

Proposition No. 1 concerns labor standards for certain employers.

This Ordinance requires certain hospitality and transportation employers to pay specified employees a $15.00 hourly minimum wage, adjusted annually for inflation, and pay sick and safe time of 1 hour per 40 hours worked. Tips shall be retained by workers who performed the services. Employers must offer additional hours to existing part-time employees before hiring from the outside. SeaTac must establish auditing procedures to monitor and ensure compliance. Other labor standards are established.

Should this Ordinance be enacted into law?

Yes

No

Explanatory statement

This measure, proposed by initiative petition by the people, adds a new chapter to the SeaTac Municipal Code requiring certain hotels, restaurants, rental car businesses, shuttle transportation businesses, parking businesses, and various airport related businesses, including temporary agencies or subcontractors operating within the City, to:

- Pay covered employees an hourly minimum wage of $15.00, excluding tips, adjusted annually for inflation.
- Pay covered employees paid leave for sick and safe time of at least 1 hour per every 40 hours worked.
- Ensure tips and service charges are retained by the covered employees who performed the services.
- Offer additional hours to existing qualified part-time covered employees before hiring additional part-time employees or subcontractors.
- Offer employment to qualified covered employees of a previous contractor before being able to hire off the street or transfer workers from elsewhere.
- Successor employers shall not discharge covered employees without just cause during initial 90 days.

Covered employees are non-managerial, non-supervisory employees of these certain businesses who work within the City. Employees not subject to a collective bargaining agreement cannot waive any provisions of this chapter. Employees subject to a collective bargaining agreement may waive all or portions of this chapter, but only if set forth in clear and unambiguous terms.

The City is required to monitor compliance. Violations may be investigated by the City Attorney who may initiate legal or other action, if deemed appropriate. Any person claiming a violation may also file suit against the employer in Superior Court.

The complete text of this measure is available at the Elections Office or online at www.kingcounty.gov/elections.

For additional questions regarding this measure contact:
Kristina Gregg - City Clerk
206-973-4660 • cityclerk@ci.seatac.wa.us

Statement in favor

Proposition 1 is a ***common sense*** proposal that has helped other communities across the West Coast thrive. It puts our health and safety first by providing paid sick leave, encourages the creation of more full-time jobs, and ensures tips go to the hard working employees who actually perform the services.

Since the start of the recession, millions of dollars have been cut from our vital community services and local families are struggling. Meanwhile, big overseas and multinational corporations doing business at the airport racked up ***hundreds of millions in profits*** last year -- yet continue to use the recession as an excuse to cut wages, hours, and benefits. This hurts all of SeaTac.

Proposition 1 requires airport-related employers ***do the right thing*** and give our community an opportunity to succeed. By putting the public good ahead of corporate greed, it will create middle class jobs, enabling families to ***buy more in local stores*** and restaurants—***boosting SeaTac's economy.***

That's why Proposition 1 is endorsed by small business owners, teachers, nurses, firefighters, and faith leaders across SeaTac, and the Washington State Democratic Party, Congressman Adam Smith, King County Executive Dow Constantine and Councilmember Julia Patterson. ***Vote YES for SeaTac.***

Statement in opposition

Proposition 1 is unfair. SeaTac taxpayers and small businesses will bear the burden, while fewer than one in ten workers who will benefit (less than 600) actually live in SeaTac. Proposition 1 gives higher wages and benefits to some workers, but not to others doing exactly the same work. Only unions--not our city, taxpayers or non-union employees--can change this law.

Proposition 1 takes taxpayer money from community priorities such as public safety, parks, and street improvements, and spends it on enforcing this law to benefit thousands who don't live in SeaTac. Our small businesses will suffer if they have to compete with wages 63% higher, and SeaTac will lose business to neighboring cities and lose tax revenues. It will be harder for SeaTac residents to get local jobs and will take away the first rung of the ladder for young people starting out.

Proposition 1 is more than a huge pay raise, it's virtually a union contract, including benefits, hiring rules, and grievance procedures. These private-sector issues should be negotiated between employers and employees, not imposed by our small city. This misguided proposal just goes too far. Please Vote No on Proposition 1!

Rebuttal of statement in opposition

Airport-related corporations make ***record profits*** yet provide jobs our neighbors can't live on, which hurts our entire community. To protect their ***rigged system***, they're spreading misinformation.

The truth… airport communities with similar laws are doing well: 1) SFO had a $56 million ***economic boost*** because more families could ***buy local***; 2) At LAX Alaska Airlines built a ***new terminal***, and dozens of small and large businesses competed for ***new stores***, after the minimum wage increased

Statement submitted by: Jan Bolerjack, Judy Volkers, and Sili Savusa
www.yesforseatac.com

Rebuttal of statement in favor

Prop 1 makes no sense for SeaTac. More than a 63% pay raise atop the highest state minimum wage in the country, Prop 1 imposes a virtual union contract onto SeaTac's economy and forces the City to administer and investigate. Prop 1 takes away from our priorities and makes SeaTac less affordable to live and do business. More than 90% of Prop 1 beneficiaries don't live here. Common Sense SeaTac says NO on Prop 1.

Statement submitted by: Mike West, Erin Sitterley and LeeAnn Subelbia
www.commonsenseseatac.com

WASHINGTON WAGE CLAIM PROJECT

June 23, 2021 - 1:10 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	GCA Production Services, Inc., Respondent v. Abdik Adir Hassan, Appellants (805428)

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