NO. 102143-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES,

Petitioner,

v.

A PLACE FOR ROVER, INC.,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case does not present issues meriting review under RAP 13.4. The Department of Labor and Industries ("DLI") mischaracterizes the decisions below, ignores the unchallenged findings of the Board of Industrial Insurance Appeals ("Board"), and distorts the evidence, which at this point must be viewed in the light most favorable to Rover. This case has already been the subject of review before the Board, the Superior Court, and the Court of Appeals, *all of which agree* Rover does not owe premiums under the Industrial Insurance Act ("IIA") for pet service providers who use Rover's service. This Court should deny further review.

First, the Petition does not present a question of substantial public interest under RAP 13.4(b)(4), despite DLI's effort to portray the case as a pronouncement on the gig economy. Rover operates a website and mobile application that pet owners can use to find and communicate with people who offer neighborhood pet care for dogs and cats. The parties

presented detailed testimony and evidence at a six-day hearing that focused on how people actually use the platform. The Board's finding (and Division II's determination) that pet service providers are not covered "workers" under the IIA rests narrowly on "the specific facts of this case," Op. 20, coupled with the acknowledgment "that there is no exemption for internet platform work," *id*. at 16. This fact-specific resolution raises no issue as to gig economy workers generally.

Second, Division II's decision does not conflict with *Lyons Enterprises, Inc. v. Department of Labor and Industries*, 185 Wn.2d 721 (2016) ("*Lyons*"), or *Dana's Housekeeping, Inc.* v. *Department of Labor and Industries*, 76 Wn. App. 600 (1995) ("*Dana's*"), both of which (like the decision here) *affirm* Board decisions. Division II analyzed those cases, explained the material facts that distinguished them from this case, and properly applied those decisions to the facts here.

Third, DLI's attacks on the Board's resolution of disputed facts as to whether pet service providers perform

personal labor "under" their contract to use Rover's platform do not raise issues of substantial public interest.

II. STATEMENT OF THE ISSUES

Does the Board's fact-bound determination that pet service providers who use Rover's services are not Rover's "workers" under the IIA present an issue of substantial public interest that this Court should determine? RAP 13.4(b)(4).

Does Division II's decision conflict with *Lyons* and *Dana's*, both of which the decision discusses at length? RAP 13.4(b)(1, 2).

III. STATEMENT OF THE CASE

DLI devotes most of its Statement of the Case to quoting articles critical of "the gig economy" without citing *anything* in the record linking Rover's business to the issues discussed in those materials. *See* Pet. 5-9. The balance of DLI's Statement (Pet. 9-12) focuses on its reading of Rover's Terms of Service ("TOS"), AR 1326-40, without discussing the testimony explaining how the TOS functions in practice or mentioning the

Board's findings, which the Superior Court and Division II found supported by substantial evidence. DLI's Statement is untethered to the record.

Rover's Statement of the Case will open with a complete procedural history, emphasizing the findings below. It will then describe the evidence, most notably the testimony of the providers who are the subject of this case, which DLI almost entirely ignores. The Court must "view[] the evidence in the light most favorable to the party that prevailed before the BIIA," i.e., Rover. *Coaker v. Dep't of Lab. & Indus.*, 16 Wn. App. 2d 923, 931, *rev. denied*, 198 Wn.2d 1020 (2021).

A. Procedural Background

1. The 2017 Audit Finds Rover Liable.

In 2018, DLI audited Rover regarding 2017 industrial insurance taxes. It did not interview Rover management, pet service providers who advertised on Rover, or pet owners who found providers on Rover's platform. It simply sent out a standard questionnaire to 169 pet service providers, receiving

responses from 45. AR 957-58. Although the responses did not suggest providers worked for Rover, *see* AR 3:19-25, the auditor decided to characterize all pet service providers who used Rover's platform in 2017 as Rover's "workers" and determined Rover owed industrial insurance taxes, AR 421-22.

Rover requested a *de novo* hearing before the Board.

2. The Industrial Appeals Judge Concludes Providers Are Not Rover's Workers After A Six-Day Hearing.

Over a six-day hearing before Industrial Appeals Judge John Dalton, Rover presented testimony from five pet service providers who use Rover's services to support their business as well as Rover employees familiar with the platform. DLI conceded the testimony was similar to the information gleaned from the questionnaires. *See* AR 2-6. DLI called only two witnesses: (1) its auditor, who denied knowing how Rover's platform works or what pet service providers do, and (2) Alix

Campbell, DLI's litigation specialist, who testified as to her legal opinions and conclusions.[1]

Judge Dalton issued a Proposed Decision and Order (PD&O) sustaining Rover's appeal. AR 167-74. He concluded pet service providers are *users* of Rover's online platform, *not* "workers" for Rover under RCW 51.08.070 and .180. AR 172.

3. The Board of Industrial Insurance Appeals Affirms Judge Dalton.

DLI appealed to the Board, which issued a Corrected Decision and Order (CD&O) affirming the PD&O. AR 8:7-10. The Board rejected DLI's argument that pet service providers performed personal labor under a contract with Rover:

> [*T*]*he pet service providers are not working or providing their services for Rover under a contract with Rover*. The providers provide work under an agreement with the pet owners and provide the work for the pet owners. Rover is not involved in setting price, time,

[1] The Board found Campbell's opinions largely inadmissible, and DLI never assigned error to that ruling. AR 12:20-21; AR 173:35-37. Nevertheless, DLI continues to rely on her testimony. *See* Pet. 12 (citing AR 811); 12, 30 (citing AR 812); 9, 29 (citing AR 779).

> scope of service, or any other matter relating to the provider's and owner's agreement. The essence of the contract between Rover and the pet service provider is the use of Rover's online platform in exchange for a fee, not the personal labor of the pet service provider.

AR 6:21-28 (emphasis added). The Board made additional Findings of Fact and Conclusions of Law in favor of Rover's position. AR 7-8. It held Rover owed no tax under the IIA. *Id.*

4. Thurston County Superior Court Rejects DLI's Appeal.

DLI appealed again. On review, Thurston County Superior Court Judge Carol Murphy affirmed the Board:

> Based upon the factual findings that are supported by substantial evidence the court concludes that the board did not err in its conclusions of law. *The* [*Rover*] *terms of service document is not a contract for personal services or for personal labor*. ...
>
> Rover simply does not meet the definition of an employer under RCW 51.08.070 with respect to the pet service providers. It was not error for the board to conclude that the pet services providers were not workers within the definition of 51.08.180.

VRP 48:21-25; 49:11-19 (July 16, 2021) (emphasis added). After DLI sought reconsideration, Judge Murphy re-read the entire record—and reached the same conclusion. VRP 15-17 (Mar. 25, 2022).

5. Division II Affirms.

DLI appealed a third time, and Division II affirmed the Board. Division II affirmed the Board's finding that pet service providers do not meet the first requirement of the definition of "worker" under former RCW 51.08.180 because the pet service providers do not work under an independent contract for Rover:

> Rover did not assign particular jobs to pet service providers. In fact, there was no requirement [in the TOS] that pet service providers do any amount of work. Instead, the TOS set forth the terms under which pet service providers could use Rover's online platform to enter into, perform, and get paid for undertaking specific projects and doing something *for pet owners*. The pet service providers were "working under independent contracts" not with Rover, but with the pet owners.

Div. II Opinion ("Op.") 18 (emphasis in original).

B. Rover's Business.

Although DLI asks the Court to focus on "the realities of the situation," Pet. 2, 16, 18, 19, 27, DLI barely mentions the best way to understand those realities: the hearing testimony. As three levels of review have found, the testimony and other evidence fully support the Board's findings and conclusions.

1. Rover Operates an Online Referral and Booking Platform.

Rover offers an online software and marketing platform and mobile application where pet service providers can post a personal profile to attract inquiries from pet owners that may lead to an engagement between the pet service provider and a pet owner for the provider's services. AR 1326; Op. 2-3. Rover's platform facilitates direct communications between the provider and the owner so they can discuss pet care and, if *they* choose, agree on a booking. AR 497, 666, 678, 1281.

Pet service providers use Rover to advertise their business and meet clients. As one pet service provider put it: "[Rover] seemed the easiest way for us to get clients." AR 644.

Another responded to DLI's questionnaire: "[Rover] provide[s] contact with pet owners that search their site and if I contract with a pet owner, Rover receives a small portion of the price of service I provide." AR 1350. Other questionnaires gave similar responses. *See* AR 1435 ("Rover provides leads. I provide pet sitting."); 1464 (Rover does "nothing but provide a platform for meeting clients"); 1478 (Rover's "website helped [pet owners] find me and then I started talking with clients to provide services.").

Rover does not recommend or assign pet service providers to pet owners looking for services. AR 1326. Pet owners are solely responsible for assessing the suitability of pet service providers. AR 497-99, 587, 617, 645, 1326-27; *see* Op. 3. Pet owners can post reviews of the services they receive from providers. AR 583, 690. Rover, however, does *not* review or evaluate pet service providers' performance. AR 1286, 583; *see* Op. 3, 5.

Rover does not assign pet service providers to jobs, nor does it control the services they perform for pet owners. AR 647-49, 669 (provider testimony). Pet service providers or pet owners determine where providers do their work—at the provider's home, the pet owner's home, or another location. AR 579, 646, 667, 687-88 (provider testimony). Rover does not provide locations for performing services nor does it screen locations. AR 1326-27. Rover also does not furnish equipment or supplies, such as pet food, toys, or grooming tools. AR 646, 667, 686 (provider testimony).

Rover does not charge providers or owners to set up an account and does not impose an up-front charge for its services; instead, providers agree to compensate Rover for using its platform by paying Rover a fee when the platform produces a successful booking, based on a percentage of the amount on which the pet owner and the service provider agree for the booking. AR 503-04. When the pet owner pays, the owner transmits payment to the provider through the Rover platform.

AR 504; Op. 4. Rover retains its fee and passes the rest of the payment to the pet service provider. *Id*.

2. Pet Owners Use Rover to Find Pet Service Providers.

A pet owner joins Rover by creating a free account on the Rover platform and accepting the Terms of Service ("TOS"). AR 480; Op. 3. The pet owner can search for providers using search terms (such as address or neighborhood, availability, and pricing), read provider profiles and reviews, and reach out to discuss potential pet care (or set up a meeting) with providers the pet owner (not Rover) selects. AR 586-87, 666, 685.

Either the pet owner or the pet service provider can initiate a booking. AR 586-87, 615-18, 644. The booking is a separate transaction that occurs between the pet owner and the service provider; "Rover is not involved in the booking process." Op. 3; *see* AR 1327 (TOS ¶ 2.4), 1331-32 (TOS ¶ 9), 480. Rover does not negotiate and is not a party to the agreement between the owner and the provider. AR 498, 670.

Rover does not assign pet service providers to respond to a booking request, limit which providers a pet owner may consider, or involve itself in the decision-making between pet owners and service providers. AR 480, 496-99.

3. Pet Service Providers Use Rover to Connect with Pet Owners and Obtain Bookings for Their Services.

To be listed on Rover, a pet service provider also creates a free online account and accepts Rover's TOS. AR 576-77, 481, 479; Op. 3. Although Rover provides blank profile templates, pet service providers decide what to include on their profile, such as their experience and pet care philosophy, availability, services offered, what owners can expect if their pet stays with the provider, and photographs. AR 1536-73.

Pet service providers establish their own rates, determine their availability, specify what types of pets they are willing to work with (including size, breed, and age), decide where they will provide services, and determine what services they wish to offer. Op. 3; AR 610-13, 650, 669, 680. Providers also choose

their pet owner clients and, as the testimony made clear, often build a regular client base and develop relationships with their clients. AR 481, 612-13, 615, 650, 670, 683-84, 698.

4. The TOS Governs Use of The Platform.

The TOS describes the software and related marketing services Rover provides to both pet service providers and pet owners. AR 496-98, 1326-40. "[T]he terms of service apply to anyone who uses Rover." AR 1263. The TOS defines the "Rover Services" as Rover's "software applications, resources and services for pet owners and pet service providers to find each other, communicate with each other, and arrange for the provision of pet care services." TOS ¶ 1 (AR 1326). As the Board explained: "Rover is a 'neutral venue,' not a service provider; it merely brings the pet services providers and pet services customers together." AR 3:7-18.

The TOS has rules governing user conduct when accessing Rover's service, such as not transmitting viruses,

posting pornographic or harassing content, or engaging in fraud. Op. 5; AR 1329 (TOS ¶ 4.1). The provisions around safety, such as background checks for providers, promote security among pet service providers and pet owners alike, so users are comfortable meeting in person and entering into transactions with strangers online. Op. 19; AR 505, 1273-74.

5. Rover Does Not Restrict How Pet Service Providers Run Their Businesses.

Pet service providers own and run their own businesses.[2] Although Rover encourages providers to choose its platform to offer their services, "Rover does not require that pet service providers use only its platform to market their services" or impose any requirements for running their business. Op. 3; AR 643, 1278. Pet service providers have freedom to market simultaneously through Rover, other outlets (like Craigslist), or

[2] Sole proprietors or owners can elect workers compensation coverage for themselves. RCW 51.32.030.

more traditional avenues, like the bulletin board at their neighborhood cafe or grocery store. AR 607, 643.

Pet service providers communicate directly with pet owners to arrange for services. AR 586-87, 616, 644. They can do so securely through messaging on Rover's platform, or by exchanging contact information and communicating by phone. AR 629-30, 666. Rover does not dictate the method of communication, nor is it a party to discussions or meetings between pet owners and service providers. AR 615-16.

Pet service providers decide how much to charge, and they can change their prices any time. AR 610-11; 689.

IV. ARGUMENT

A. DLI's Petition Does Not Present Issues of Substantial Public Importance.

This case does not present "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). Both the Superior Court and Division II affirmed the Board after review under the Administrative Procedure Act ("APA"), RCW 34.05 *et seq*. DLI's Petition

does not challenge the Board's Findings of Fact as lacking evidentiary support, nor does it directly address the Board's Conclusions of Law. *See* RCW 34.05.570(3)(d), (e). DLI does nothing to suggest the Board's decision merits more review.

Rather than grapple with the evidence and the facts found by the Board, DLI contends "[t]he sheer scope of the effect of this decision on Washington gig workers warrants review" under RAP 13.4(b)(4). Pet. 18. DLI asserts—without record support—"that many platform businesses operate in the same way as Rover." *Id*. Based on that unsubstantiated (and inaccurate) assertion, DLI frets that Division II's "approach could encourage copy-cat employers to wrongly escape coverage for their workers." *Id*.

This argument is made out of whole cloth, with no basis in the record, the procedural history, or Division II's decision, which expressly limits its scope to avoid far-reaching effects. In Division II, DLI similarly argued that the Board had erroneously created "a general exemption under RCW

51.08.180 for work involving an internet platform." Op. 16. Division II rejected that argument, noting that Rover did not "argue that a general exemption should be applied" and that "the Board did not apply such an exemption," instead ruling "on the specific facts of the case." *Id*. And Division II emphasized its decision, like the Board's, rested on "the specific facts of this case," not on the nature of platform work generally, and reiterated that "there is no exemption for internet platform work." *Id*. at 16, 18. The case presents no broad issue about "gig workers."[3]

[3] And nothing suggests the "specific facts" that drove the decisions below can be extended to online platforms generally. Gig economy platforms typically involve a different model in which "companies ... do not merely create [a] marketplace," as Rover does; rather, "they also act as market participants who actively set prices and take into account user feedback." Alex Kirven, Comment, *Whose Gig Is It Anyway? Technological Change, Workplace Control and Supervision, and Workers' Rights in the Gig Economy*, 89 U. Colo. L. Rev. 249, 257-58 (2018) (referring to Uber and Lyft). These platforms "select, manage, and set minimum quality standards for their workforce," which the Board found *Rover does not*. Travis Clark, *The Gig is Up: An Analysis of the Gig-Economy and an*

Hoping to find a hook for review, DLI points to Division II's characterization of this dispute as "involv[ing] a 'grey area' between a person who clearly is a worker and a person who clearly is not," arguing that "gray areas" must be resolved in favor of IIA coverage. Pet. 15 (quoting Op. 17). But Division II's "grey area" reference suggests only an issue that cannot be resolved on a categorical basis, requiring a closer look at the facts. The Board (AR 6-8) and Division II (Op. 20) looked to "the specific facts of this case" and found for Rover. RAP 13.4 offers no basis to revisit the Board's ruling, as "[s]ubstitution of [this Court's] judgment for that of the administrative agency in factual matters is not authorized by the APA." *Franklin Cnty. Sheriff's Off. v. Sellers*, 97 Wn.2d 317, 325 (1982).

Nothing in the Board and Division II's fact-driven determinations undermines the principle that the IIA should be liberally construed, as DLI suggests. Division II recognized the

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Outdated Worker Classification System in Need of Reform, 19 Seattle J. Soc. Just. 769, 774 (2021).

statutory liberal construction requirement. Op. 10. But the principle of liberal construction cannot create IIA coverage for circumstances that do not fall within the statute; even under liberal construction, the "primary goal is to ... give meaningful effect to the language our legislature enacted." *Doty v. Town of S. Prairie*, 155 Wn.2d 527, 533 (2005) (no IIA coverage for volunteer firefighters). Here, as each level of review has determined, no construction of the IIA leads to coverage. *See* Super. Ct. VRP 48:21-25; 49:11-19 (July 16, 2021) ("Rover simply does not meet the definition of an employer under RCW 51.08.070 with respect to the pet services providers.").

This fact-driven case does not present an issue of substantial public interest as to protection of "workers in the gig economy." Pet. 14.

B. Division II's Decision Does Not Conflict with *Lyons* or *Dana's*.

DLI argues Division II's finding that pet service providers are not covered "workers" under the IIA conflicts

with *Lyons* and *Dana's*. *See* Pet. 19-21. But Division II carefully analyzed those cases, each of which (like this case) *affirmed the Board*. Op. 11-13, 16-19. There is no conflict.

First, those cases did not even address the dispositive issue here. In *Lyons* and *Dana's*, the parties agreed the workers were independent contractors, so "the only issue the court addressed [in each case] was whether the essence of the [contracts] was the [workers'] personal labor." Op. 13; *see Lyons*, 185 Wn.2d at 735; *Dana's*, 76 Wn. App. at 602. Division II, on the other hand, did not need to analyze the "essence of the agreement" because it affirmed the Board's decision "under the specific facts of this case that the pet service providers were not 'working under an independent contract' with Rover." Op. 20. Division II's ruling cannot depart from *Lyons* and *Dana's* because it affirms the Board on grounds those cases do not address.

Second, the facts deemed material by the courts in *Lyons* and *Dana's* differ fundamentally from the facts here, as

Division II recognized. Op. 18 ("The facts here contrast with the facts in *Dana's Housekeeping* and *Lyons Enterprises*."). In *Lyons*, "Lyons enters into cleaning contracts with customers and offers the customers' accounts to one of its franchisees." 185 Wn.2d at 727. "Even after [the] franchisees accept a cleaning contract, the contract remains Lyons' property." *Id*. at 728. "Lyons also exercises significant control over both the methods utilized by franchisees and the cleaning contracts themselves since Lyons retains ownership over every contract." *Id*. at 739. Similarly, in *Dana's* the cleaners had no customers of their own: Dana's "assigns housecleaners to specific jobs, and makes all arrangements for the housecleaning." 76 Wn. App. at 602. Because the cleaners worked on Dana's contracts, it "intensely controlled scope, manner, quality, and by whom the work was performed." *Id*. at 609.[4]

[4] Division II accepted DLI's contention that the absence of "control" is not dispositive in assessing whether providers work "under" an independent contract with Rover. Op. 17. But both *Lyons* and *Dana's* discussed evidence of control at length

This case has none of these characteristics. Rover has no contracts to provide pet care services to pet owners, AR 7 (Findings 3, 4, 7), so pet service providers are not devoting their labor to satisfy Rover's contract obligation—unlike in *Lyons* and *Dana's*. Instead, providers negotiate all aspects of their contracts for services with pet owners, and they (not Rover) decide how, when, or where to perform their services. Rover functions only as a booking agent, handling "financial 'businessy' crap," while providers manage their work under contracts they negotiate. AR 619 (provider testimony). And mere booking agents do not meet the statutory definition of employers under RCW 51.08.070. *Cf. Cascade Nursing Services, Ltd. v. Empl. Sec. Dep't*, 71 Wn. App. 23, 34 (1993) (nursing referral service not liable for unemployment taxes for

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because it supported the inference that the cleaners were working for the entity that controlled them. No such inference is available here.

nurses for whom it acted as "scheduling and billing agent") (cited in Op. 13-14).

In asserting a conflict with *Lyons* and *Dana's*, DLI relies on a claim that Division II "missed two things": (1) Rover received its fee only after providers had a successful booking and (2) the law requires only that providers "work 'under an independent contract'" with Rover, without regard to whether Rover has a contract with pet owners for pet care services. Pet. 20-21.[5] But these amount to quibbles over inferences the Board (and Division II) drew from the facts—and at this point, all of these inferences must be drawn in *Rover's* favor. *Coaker*, 16 Wn. App. 2d at 931. In any event, nothing was "missed": the Board flatly rejected DLI's factual arguments, determining that

[5] DLI also argues that Division II's decision conflicts with *Lyons* and *Dana's* because here "the master contract [the TOS] governed the ambit of the subcontracts [with owners]." Pet. 20. The argument is not tied to *Lyons* or *Dana's*, and it contradicts settled facts: as every level of review has found, the contracts between owners and providers are negotiated and entered into independent of Rover, and they are not "governed" by or dependent on the TOS. *See* AR 6-7 (Board); Op. 3-4.

(a) Rover received its fee—no matter when it was paid—for "the use of Rover's online platform," not for pet care services, and (b) "service providers are not working or providing their services for Rover under a contract with Rover." AR 6.

On these facts, DLI has no basis for arguing that the decision below contradicts *Lyons* or *Dana's*.

C. Because the Board Found Providers Do Not Provide Services under Rover's TOS, the Case Does Not Present Any Policy Issues Concerning Work "Under an Independent Contract".

DLI argues Division II's ruling presents an issue of substantial public interest because it misinterprets the phrase "working under an independent contract." Pet. 22. DLI first suggests Division II held that an "independent contract under RCW 51.08.180 must 'assign specific work to the pet service providers'" and argues this approach improperly makes "control" part of the inquiry. Pet. 23-24.

In fact, Division II simply followed the approach DLI advocated in ascertaining whether work is performed under an

"independent contract." DLI's brief to Division II argued that an independent contractor within the meaning of the statute is someone "entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it." DLI Br., *Dept. of Labor & Inds. v. A Place for Rover Inc.*, No. 56929-9-II (Oct. 26, 2022) at 36 (quoting Black's Law Dict. (11th ed. 2019) at 920). Division II thus responded *directly* to DLI's characterization of the test in recognizing that "Rover did not assign particular jobs to pet service providers" and "there was no requirement [in the Rover TOS] that pet service providers do any amount of work." Op. 18 (citing *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 119 (2002)). Division II also *agreed* with DLI that "control" played no role assessing whether providers worked under an independent contract with Rover. Op. 17. Division II's analysis of the independent contract issue raises no reviewable issue because it followed the approach DLI advocated.

DLI then shifts to challenging the factual predicate to Division II's ruling, arguing that pet service providers *must* "do something" for Rover under the TOS because the TOS expressly contracts for "the provision of pet care services." Pet. 25 (citing Op. 18, AR 1326). But DLI's fragmentary quotation mischaracterizes the TOS.[6] In the sentence DLI quotes, the TOS defines the "Rover Services" as its "software applications, resources and services for pet owners and pet service providers to find each other, communicate with each other, *and arrange for the provision of pet care services*." TOS ¶ 1 (AR 1326) (emphasis added). Thus, Rover provides *support* to businesses engaged in the "provision of pet care services," just as another company might provide support to law firms. But Rover does *not* contract to provide pet care services any more than a legal support company contracts to provide legal services. As Division II concluded in affirming the Board, "Rover did not

[6] DLI repeats its inexcusable misquotation eight times. Pet. 1, 2, 5, 11 & n.8, 12, 25, 27, 28.

agree to perform any pet care services for [owners]"; instead, providers worked "'under an independent contract' not with Rover, but with the pet owner." Op. 19.

DLI's challenge to these determinations does not raise any issue of substantial public interest. Instead, it reargues facts to support its thrice-rejected argument that "the providers were working under an independent contract with Rover." Pet. 27; *see id*. at 27-30. But RAP 13.4 does not provide for Supreme Court review to reassess factual disputes, much less disputes that have been resolved and reviewed three times.[7] *See* AR 6-7; VRP 48:21-25; 49:11-19 (July 16, 2021); Op. 19-20.

Finally, DLI claims *Lunday v. Department of Labor & Industries*, 200 Wn. 620 (1939), conflicts with Division II's

[7] DLI's factual arguments consist of its interpretation of various TOS provisions, Pet. 27-30, ignoring testimony about the realities of how the platform works. But DLI's preferred reading of the TOS no longer matters: all evidence, including the TOS, must be viewed "in the light most favorable to the party that prevailed before the [Board]," i.e., Rover. *Coaker*, 16 Wn. App. 2d at 931.

decision because it shows a worker *can* have simultaneous contracts with two employers. Pet. 26-27. There, a man was killed delivering meat and groceries for a grocery store. Although he was the grocery store's employee, he was delivering meat for a company that leased the meat department. In allowing the man's widow to recover under the IIA, the Court found he was *also* the meat company's employee[8]: a worker may have "the relationship of employee to two employers: a general employer who pays his wages and a special employer to whom he may be loaned and for whom he may be performing services." *Id*. at 624.

Lunday has no significance here—and certainly raises no reviewable issue. Division II did not question that a worker *could*, on the right facts, have two employers—as in *Lunday*. But those facts do not exist here: as the Board determined (and Division II affirmed), pet service providers do not perform

[8] The IIA then covered only extrahazardous industries. Grocery stores were not extrahazardous; meat companies were.

personal labor under a contract with Rover. AR 6; Op. 20. That case-specific determination does not conflict with *Lunday*.

V. CONCLUSION

DLI's Petition does not present a question of substantial public interest warranting this Court's review. DLI also has not shown that Division II's decision conflicts with precedent. The Court should deny review.

This document contains 4,971 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 28th day of July, 2023.

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