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3400 Chestnut Street • Philadelphia, PA 19104 • (215) 573-9667 • ucp@law.upenn.edu
www.pennunemployment.com

February 11, 2011

Dennis G. Weldon Jr., General Counsel
Philadelphia Parking Authority (PPA)
3101 Market Street, 2nd Floor
Philadelphia, PA 19115

RE: Regulation ID# 126-1 (IRRC# 2885)- Comments to Proposed PPA Regulations

Dear Mr. Weldon:

On behalf of the Employment Advocacy Project (EAP) at the University of Pennsylvania Law School, we would like to thank the Philadelphia Parking Authority (PPA) for engaging in the Regulatory Review Act process.

EAP is interested in the regulatory review process because we are a student pro bono project group that analyzes employment law issues, including laws that affect the employment and livelihood of low-income workers like taxi drivers. Thus, we appreciate the opportunity to provide comments on four areas we have flagged: (1) appearance procedures before the PPA, (2) procedures for PPA fines, (3) credit card processing issues, and (4) GPS tracking issues.

I. **Representation Before the Authority**- §§ 1001.21 to 23

EAP is particularly interested in these regulations because we started a new Penn Law student-run pro bono subproject last year where current law students would accompany taxi drivers to PPA hearings to serve and appear as non-legal advocates before the Authority. We felt that such a project served both the hearing process and the taxi drivers and were shocked when we discovered that the new proposed regulations shut down that project. In particular, we are referring to **Subchapter C, §§ 1001.21 to 23** of the new proposed regulations on pages 13 and 14. These sections deal with "Representation Before the Authority," and taken together, no longer allow law students to represent taxi drivers at PPA hearings. Only lawyers can.

Thus, we urge the PPA to change the rule to explicitly allow law students to represent parties before the Authority as non-legal advocates because: (1) there is precedence in the PPA's old regulations and under the current Pennsylvania statutes for it, along with other similar agencies, (2) allowing non-legal advocates would improve the hearing process for the PPA and drivers, and (3) allowing law students to serve as non-legal advocates improves the legal education system and benefits the entire Philadelphia community, providing solid grounds for a potential partnership between EAP and the PPA.

First, under page 8 of the old PPA regulations, our group was allowed to send law students to represent taxi drivers as non-legal advocates because Section 3(f)(i) provided the discretion to do so. Please see the italicized language below:



3. ORGANIZATION

f. Appearances Before the Authority.

i. The Authority may establish rules and procedures related to who may appear before the Authority in various types of proceedings and in what capacity. *In the absence of such rules and procedures, the assigned Hearing Officer shall have such discretion.*

With this discretion, we contacted your office earlier and our group was ready to assist low-income taxi drivers in PPA administrative hearings similar to how our group and other student groups at Penn Law provide such assistance. Penn Law has a long history of providing supervised and accountable student legal services projects. For instance, for nearly a decade, the Employment Advocacy Project (EAP) has sent students to represent unemployment claimants appealing their denial of unemployment compensation with the Unemployment Compensation Service Center, a similar administrative agency akin to the PPA. Law students in the EAP interview clients, research applicable laws, and then represent clients in front of referees, conducting direct and cross examinations, and closing arguments. Under the close supervision of Philadelphia Legal Assistance (PLA) and several administrators at Penn Law, this project has proven extremely fruitful. Other similarly successful projects in which students represent clients as non-legal advocates in administrative hearings include the Custody and Support Assistance Clinic (CASAC), which provides in-court legal assistance to low-income residents regarding child support and custody, and the Guild Food Stamp Clinic, which provides legal representation to clients in food stamp hearings. As you can see, other government agencies in Philadelphia, like the Unemployment Compensation Service Center, allow law students and others to serve as non-legal advocates and we think the PPA should follow suit like its sister agencies.

In fact, we were surprised to find that the PPA explicitly took out language in its new regulations that may have allowed law students to serve as non-legal advocates at PPA hearings. The PPA's new regulations for § 1001.23 was stated to be based off of 1 Pa. Code § 31.23 but for some reason, the PPA did not include the original 1 Pa. Code §31.23(2) language, which originally had permitted representation at hearings "as otherwise permitted by the agency in a specific case." This language is omitted in PPA's §1001.23 and if allowed back in, it would give the PPA the discretion to allow law students to serve as non-legal advocates. *The PPA should insure that § 1001.23 keeps similar language as 1 Pa. Code § 31.23(2) in addition to explicitly allowing law students to appear before the Authority as they do with other agencies.*

The reason such a change in the regulations would be beneficial is because this change helps: (1) the PPA hearing process, (2) the taxi drivers, and (3) law students and the larger community. First, the inclusion of student advocates would make the hearing process smoother and more efficient for the Authority. For instance, when our group first sat in on hearings earlier last year, we noticed that drivers were unfamiliar with the rules, did not know when to speak, or what information they should provide, which slowed down the hearings. Our group, EAP, is excited to work with the Authority to make the hearing process smoother and gain a better understanding of how the Authority would like hearings to run. However, that process starts by changing this regulation. By working with the drivers to prepare them for hearings, EAP can ensure that drivers will be ready to present their case in a well-structured and efficient manner, in accordance with the PPA's vision. Assisting the drivers with their hearings will help the court obtain the information necessary to make a fully-informed determination. In the past, referees at



unemployment compensation hearings have often praised our students for their work, and have found us to be tremendously helpful during hearings because we prepare our clients who are often initially lost in the system. This is the sort of commitment that EAP will bring if the regulations can allow for it.

Second, allowing non-legal representatives will greatly benefit taxi drivers. Student non-legal advocates are able to help drivers who may otherwise be unfamiliar with the process of administrative hearings. Drivers often have limited experience with legal proceedings, may lack English proficiency because of immigrant backgrounds, and may otherwise lack access to information on what to do if they are summoned for a hearing. Representatives can ensure that drivers are prepared for what will occur at hearings, and can ensure that the driver's evidence is appropriately presented. This representation will help guarantee that drivers are in the best possible position to avail themselves of the hearing system, especially the vast majority of low-income drivers who may not be able to afford an attorney and thus would have no ability to seek representation without a change to §1001.21 to 23. Thus, by only allowing attorneys to represent parties, *the proposed regulations will have a negative economic impact on taxi drivers and the industry.* Taxi drivers are already documented to make below minimum wage (see below).

Third, in addition to helping drivers and the hearing process, this new project would help law students by providing them the requisite skills and expertise needed to prepare them for the legal marketplace. The value of such hands-on legal studies explains the rise in clinical programs in law schools. Through this new project, students will gain experience in client interviewing and counseling, case planning, oral advocacy, witness examination, and effective legal research and writing. Most importantly, such a program would improve collaboration skills with colleagues and the greater Philadelphia community, such as the PPA and its constituents. For instance, just briefly meeting with Judge Marroletti last year when he shared insights from his long legal career was very helpful. Such institutional knowledge should be passed onto the next generation of law students and lawyers. As an attorney yourself, I am sure you can understand the importance of a strong legal education. Students at Penn Law can also attest to the great benefits of required pro bono hours for their legal education. Because of these great benefits to both parties, we would really like to create a solid partnership with the PPA. In sum, we urge you to allow law students, as non-legal advocates, to appear before the Authority.

II. PPA Fines

In addition to our main concern above, we have flagged some other issues that we think should be addressed in the proposed regulations. First, setting and enforcing fines has been an extremely important issue for drivers, as the projected fines for the current fiscal year are set to reach \$340,000. For drivers earning on average \$4.17 per hour, which is barely half of minimum wage (\$7.25),¹ a \$500 fine can be crippling. Given the close tie between fines and drivers' livelihood, we respectfully request that the dollar amount of all fines be promulgated in the Regulatory Review process and that its economic impact be analyzed. This will help guarantee that fines are set at levels that ensure drivers and passengers are safe without posing an undue burden on drivers. The economic impact of a lack of regulation here must be considered.

¹ <http://www.dol.gov/whd/minwage/america.htm#Pennsylvania>



Additionally, the Authority should be precluded from using collected fines to fund its operations. The Authority is a regulator, and there is an obvious conflict of interest when the agency issuing violations and overseeing court proceedings is benefitting from the proceeds. In the interests of the administration of justice, a greater delineation needs to be made between the Authority's budget and the proceeds from issuing fines.

Finally, § 1011.7 should be altered, because it is outside the scope of the Authority to collect proceeds from moving violations. Act 94 grants the Authority the right to collect outstanding fines, penalties, and fees associated with operating a taxicab.² The Act does not grant the Authority the right to collect proceeds from moving violations, and it is therefore outside the Authority's scope. Furthermore, if there is going to be anything like Act 94 governing fines, it should be transparent and broadly disseminated. As of now, it is obscure.

III. **Credit Card Processing**- several sections, including i.e. § 1021.11(d)(2)

The Authority should allow vendors to compete for non-cash payment processing. The current payment processing system charges needlessly high rates and provides inferior services. Drivers have requested itemized receipts for non-cash payments and for those payments to be processed within 24 hours, rather than 4 days. In New York City, drivers are charged 3% for payment processing and receive the payments within 24 hours. The Authority has repeatedly argued for the importance of a non-cash payment option in Philadelphia taxis. If the Authority is committed to this initiative, then it should try to win support for this initiative by promising drivers the best rates and terms possible for payment processing. This should be directly addressed by the regulations or else drivers are incentivized not to prefer credit cards and then are unjustly fined under § 1021.11(d)(2). To prevent that, the PPA should ensure the best rates and terms for processing credit cards like other major cities in America.

IV. **GPS Tracking**- §1017.24(3)

Lastly, it is outside the Authority's scope to use the GPS to track drivers outside of passenger operations. Drivers are independent contractors and such an invasion of an independent contractor's privacy without cause is beyond the agency's authority. In addition, drivers should be able to use their own advanced GPS systems, not the clunky ones mandated by the Authority.

In sum, we request that you address all our concerns, in particular, changing proposed regulations §§ 1001.21 to 23 on pages 13 and 14 so that law students and others can represent parties before the Authority. We look forward to your response and request to be notified by the PPA when a final-form regulation is delivered. Thank you for your serious consideration.

Respectfully submitted,

/s/ Mushfique Shams Billah
Co-Director, Employment Advocacy Project
University of Pennsylvania Law School

² Pennsylvania House Legislative Journal June 15, 2004 (pages 1118, 1123, 1124)



The Employment Advocacy Project (EAP) is a group of law students at the University of Pennsylvania Law School (Penn Law) who volunteer their time to advocate for employment law issues. The views expressed in this letter are neither endorsed by nor submitted on behalf of Penn Law or the University of Pennsylvania.

Main Authors (in alphabetical order):
Mushfique Shams Billah, Michael Bolos, Rebecca Serbin

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Cooper, Kathy

From: msbillah@gmail.com on behalf of Employment Advocacy Project [ucp@law.upenn.edu]
Sent: Sunday, February 13, 2011 11:26 AM
To: prm101@philapark.org
Cc: IRRC; Totino, Michaele; Smith, James M.
Subject: Regulation ID# 126-1 (IRRC# 2885)- Comments to Proposed PPA Regulations
Attachments: EAP Comments Letter to PPA.pdf

Dear Mr. Wilson (PPA) and Mr. Lutkewitte (IRRC),

Please see attached for our comments. If you are having trouble viewing the PDF file, we can send you a Word document. Please confirm receipt of this email submitted before the deadline and please forward us the final regulations when they are delivered.

If you have any questions, please feel free to email us. Thank you.

Sincerely,
Employment Advocacy Project

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