

Uber: On the Road to Nowhere

Uber drivers are getting creative in their fight for basic workplace rights.

By Steven Greenhouse

This article will appear in the Winter 2016 issue of The American Prospect magazine. [Subscribe here.](#)

Last August 31, Takele Gobena, an Uber driver, stood alongside Seattle City Councilman Mike O'Brien at a news conference, complaining that his Uber earnings came to less than the federal minimum wage after factoring in gas, insurance, and other costs. At the press conference, Gobena, a 26-year-old immigrant from Ethiopia, hailed O'Brien's plan to introduce legislation that would allow Seattle's Uber and Lyft drivers to unionize and bargain collectively, even though those companies insist their drivers are independent contractors and not employees. A half-dozen drivers flanked O'Brien, holding signs saying, "Drivers need a voice."

Toward the end of **his remarks**, Gobena, a member of the App-Based Drivers Association, said, "I know Uber will probably deactivate me tomorrow, but I'm ready because this is worth fighting for."

It didn't take that long. **At 6:50 that evening**, a few hours after several websites posted stories about the news conference, Uber emailed Gobena to notify him that he had been deactivated as a driver. The reason Uber gave: His auto insurance had expired.

Gobena rushed to inform the news media and Councilman O'Brien about his being deactivated (Uber-ese for dismissed). Not only that, Gobena sent them iPhone photos of his insurance certificate, which wasn't to expire until December. Several reporters contacted Uber to ask about the sudden deactivation, and as if by magic, Uber re-activated Gobena around 9 p.m.

(Uber denied de-activating him, even though news websites later posted a screenshot of Uber’s deactivation message on Gobena’s phone.)

“We have made Uber become a very valuable company, but they are treating us in an inhuman way,” says Gobena, who is studying business at the University of Washington. “Some days, I spend 16 hours on the road. Most of the drivers do the same thing.”

Gobena jumped at the opportunity to become an Uber driver last year, after he saw advertisements saying Uber drivers earn at least \$25 an hour. He borrowed money to buy a used Nissan Sentra for \$14,000, and quit his \$9.47-an-hour job at Sea-Tac Airport, where he helped dispatch wheelchairs and electric carts for passengers with disabilities. However, Gobena said that driving at least 55 hours a week—full-time for UberX and part-time for Lyft—he earns considerably less per hour than in his previous job, after subtracting gasoline and other costs.

“It’s more than hard to live on this,” he tells me. “Working at Uber, I can’t support myself.”

AT ANY GIVEN MOMENT in recent American history, one corporation has stood out as the “it” company, the symbol of the new and the cool—think of IBM, then Microsoft, Apple, Google, Facebook, Amazon—now it seems to be Uber’s moment. In just six years, Uber has gone from start-up to upstart to juggernaut, pushing its way into 250 cities and 53 countries. Boasting 1.1 million drivers worldwide and 400,000 in the United States, Uber is one of the fastest growing start-ups in history, with an eye-popping valuation of \$50 billion, roughly equal to that of General Motors. Uber has probably done more to transform—its executives would say “disrupt”—urban transportation around the world than any other company in the last half-century. Its investors include such heavyweights as Goldman Sachs, Microsoft, and Jeff Bezos.

Uber has also become the foremost symbol of the on-demand economy, with a super-convenient app that consumers love because it often gets them a car faster than it takes to find a taxi. The company sees and depicts itself as offering a cool, new, flexible employment model that is being copied by other companies, including Lyft, Handy (housecleaning), Caviar (food delivery),

Postmates (on-demand delivery), Washio (dry cleaning), and Luxe (parking your car).

To many, however, Uber has become the foremost symbol of something else—something unlawful.

To many, however, Uber has become the foremost symbol of something else—something unlawful. Many labor advocates view Uber as the leading practitioner of illegal worker misclassification because it insists that its 400,000 U.S. drivers are independent contractors rather than employees. Uber says its drivers—it calls them “partners”—are their own bosses who have the flexibility to drive whatever hours they want and even drive for competitors like Lyft and Sidecar.

Indeed, with its clout, cachet, and big-name backers, Uber has sought to redefine what an employee is. No way, it says, should its drivers be considered employees, asserting that its relationship with them is attenuated—even though the company hires and fires the drivers, sets their fares, takes a 20 percent commission from fares, gives drivers weekly ratings, and orders them not to ask for tips. For Uber, there are manifold advantages to treating its drivers as independent contractors. Not only does it avoid being covered by minimum wage, overtime, and anti-discrimination laws, but it sidesteps having to make contributions for Social Security, Medicare, workers’ compensation, and unemployment insurance. It also escapes the employer obligations of the Affordable Care Act. By some estimates, all this cuts Uber’s compensation costs by more than 20 percent per driver.

Uber’s aggressive expansion and unusual employment model—almost all driver interactions with the “boss” are through Uber’s smartphone app—have raised questions about what a 21st-century company’s responsibilities are to workers in—whatever you want to call it—the gig economy, the on-demand economy, the crowdsourcing economy, the sharing economy, or perhaps the unsharing economy. (I’m flummoxed why anyone, except for public relations reasons, would call Uber and Lyft part of a sharing economy when they are in essence little different from a taxi or any other livery service that picks up riders and charges a fare.)

Uber’s critics say the company is shrewdly seeking to evade all of an

employer's traditional legal responsibilities and obligations, while enjoying all the benefits of being an employer—including taking a hefty percentage of what its workers earn. But many champions of Uber argue that the nation's employment laws have grown obsolete and need to be updated because, in their view, Uber's employment model is so different from, so much looser and less structured than, the models at traditional companies like General Motors and Procter & Gamble. In response, labor advocates often argue that the nation's employment laws are not outmoded and that the problem is that many people simply fail to recognize that Uber has a fairly traditional employer-employee relationship (with its newfangled app and boasts of being a master disrupter confusing matters).

The company has even become a hot subject in the presidential campaign. Republican after Republican attacked Hillary Clinton after she said, "This 'on demand' or so-called 'gig economy' is creating exciting opportunities and unleashing innovation, but it's also raising hard questions about workplace protections and what a good job will look like in the future." While any workplace expert would likely view her remarks as an anodyne truism, Rand Paul rushed to tweet: "Services like Uber, Airbnb, and Lyft stimulate our economy and work towards lower prices. How is this bad @HillaryClinton?" Jeb Bush and Marco Rubio were quick to boast about patronizing Uber, while Grover Norquist, the anti-tax crusader, said, "Did you notice what Hillary did? She just declared war on the future. She just declared war on Uber."

A number of drivers have sued Uber, asking the courts to declare that they're employees—a move that Uber asserts would hurt its business model and undercut the flexibility that so many drivers prize. If the drivers are declared employees, not only would they gain a raft of legal protections, but they would gain the right to unionize and bargain collectively. Taking another path to the same goal, the Seattle City Council, in an unusual move pushed by the Teamsters union, has voted preliminarily to give app-based drivers a right to unionize even if they're considered independent contractors.

FROM UBER'S INCEPTION—it was founded in San Francisco in 2009—it has been seen as bold and brazen. Its combative founder and chief executive officer is Travis Kalanick, 39, a UCLA dropout who founded and sold several companies before starting Uber.

“I’m a passionate entrepreneur,” Kalanick told *Vanity Fair*. “I’m like fire and brimstone sometimes.”

Kalanick and his company have been described as “creepy.” He once joked to *GQ* magazine that his company should be called “Boober” because it made it such a cinch for him to attract women. At a private dinner in November 2014, a senior Uber executive outlined a plan, **disclosed by *BuzzFeed***, to spend a million dollars to hire four top opposition researchers to investigate and expose private details about journalists “and give the media a taste of its own medicine.” The executive had a particular female journalist in mind, a frequent critic of the company.

Kalanick views the taxi industry as his nemesis, as a medieval-like cartel that stifles competition and innovation and plies politicians with money to get its way. This attitude helps explain why Uber has often barged into cities elbows out, sometimes hiring scores, even hundreds, of drivers, before it has legal permission (which could be hard for it to get considering the taxi industry’s muscle and influence). “You can either do what they say or you can fight for what you believe,” said Kalanick, who sometimes calls his adversary “the taxi medallion evil empire.”

The taxi industry is hardly the darling of consumers—it is widely derided for poor service, underpaying drivers, and blocking efforts to authorize more taxis as a way of improving service.

The taxi industry is hardly the darling of consumers—it is widely derided for poor service, underpaying drivers, and blocking efforts to authorize more taxis as a way of improving service. Moreover, in many cities, it is lambasted for shunning or shortchanging poor and minority neighborhoods—Uber boasts that it does a far better job serving such neighborhoods. All this has made the taxi industry vulnerable to Uber’s attacks—and expansion efforts.

“We’re this political campaign and the candidate is Uber, and the opponent is an asshole named Taxi,” Kalanick **said at a conference** last year. “Nobody likes him, he’s not a

ADVERTISEMENT

nice character, but he's so woven into the political fabric and machinery that a lot of people owe him favors."

Much of Kalanick's wrath is directed at taxi owners, but his company's rapid growth is very much hurting struggling rank-and-file taxi drivers. Bhairavi Desai, president of the National Taxi Workers Alliance, says that as a result of Uber's expansion, "the total number of fares is coming down" per yellow cab, in New York and in many other cities. Moreover, Desai adds, "the amount per fare is coming down because UberX drivers are scooping up a lot of the bigger-ticket rides to and from airports.

Kalanick's "make no small plans" approach seems to be, you can't make the world's biggest and best omelet unless you're willing to break a whole lot of eggs. That's been his modus operandi in city after city.

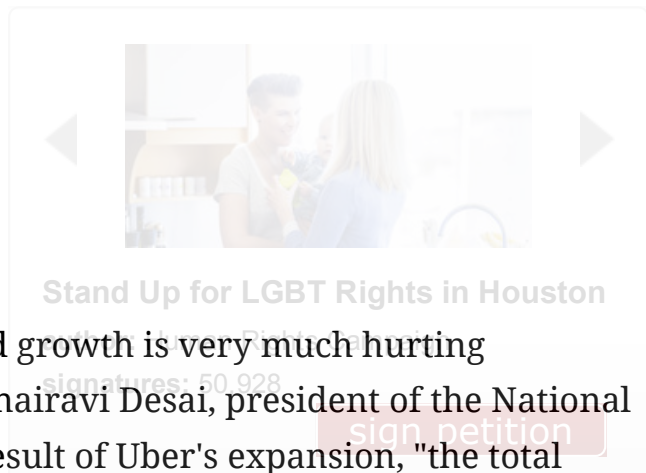
When New York Mayor Bill de Blasio sought to place a cap on Uber's growth, the company steamrolled him and the City Council with a blitz of robocalls, TV advertisements, and a clever addition to its app that enabled riders to swamp the council with emailed protests. De Blasio withdrew his proposal.

When Uber began service in Las Vegas in October 2014 without getting the proper licenses beforehand, city officials declared it illegal and obtained a temporary injunction, while the police quickly fined numerous Uber drivers.

In Portland, Oregon, Steve Novick, the city's transportation commissioner, was outraged that he didn't learn of Uber's plans to launch services at 5 p.m. on a Friday until a reporter texted him about it earlier that day. **Novick recalled** a top Uber official telling him, "We're providing a service and there is great demand in Oregon." Novick's response: "Announcing that you're going to break the law is not civil."

"Lyft seems like a respectable company, and Uber seems like a bunch of thugs," Novick told *The New York Times*.

In Paris, Uber continued to operate even as taxi drivers smashed windows and slashed tires of Uber drivers, and even after the French government had said



the company didn't have authority to operate. **Uber told its drivers**, "If you get fined, come to us and we'll support you." Uber finally suspended operations in France after Uber's top official there was arrested and charged with six criminal counts, including running an illegal taxi service and using deceptive practices. Italy and Spain have challenged Uber's legality, while **South Korea brought criminal charges** against Kalanick and 28 other Uber officials last March, accusing them of running an unlicensed taxi service.

"I think of them as robber barons," Barry Korngold, president of the San Francisco Cab Drivers Association, **told *Vanity Fair***. "They started off by operating illegally, without following any of the regulations and unfairly competing. And that's how they became big. They had enough money to ignore the rules."

JOHN BILLINGTON MADE a good living when he became an UberX driver in Los Angeles three years ago. "You used to make great money with these guys," he says.

But no more. When Billington started, Uber's fares in L.A. were \$2.50 a mile and 35 cents a minute, he said, but Uber (which charges different rates in different cities) has since reduced fares there to \$1 a mile and 18 cents a minute—generally cheaper than taxi fares. "To go from the airport to downtown used to cost [passengers] \$50; now you make \$20 to downtown," Billington says. "They got this commercial on the radio saying you can make \$500 a day. That's mission impossible."

Billington, who says he has a 4.9 Uber rating out of a perfect 5, says he no longer provides bottles of water to passengers. "As soon as they dropped fares the first time, I stopped providing water," he says. "With these low fares, how can people be expecting water?"

In his first year, Billington grossed \$1,500 to \$2,000 a week, but now that has dwindled to \$700 to \$800 a week, he said. And that's before the \$120 he spends each week on gas, not to mention the cost of insurance, a weekly car wash, a monthly oil change, and depreciation on his Nissan Altima. The company's minimum fare in L.A. is \$4.65 for a two-mile ride, for instance—and out of that, Uber takes \$1.65 for its "Safe Rides Fee" (covering its expenses for driver background safety checks and other safety features) and a 20 percent

commission (60 cents) on the remaining \$3.

“So Uber gets \$2.25 for the ride, and the driver gets \$2.40,” Billington says.

“When you consider gas and other things I pay for, Uber is making more than me off the ride.” He scoffs at Uber’s assertion that its drivers are independent contractors, calling it “a load of nonsense.”

“They treat us like employees, but we get none of the benefits,” says Billington

“They treat us like employees, but we get none of the benefits,” says Billington, who has joined a lawsuit seeking to have Uber drivers declared employees.

“They’re telling us what rides we have to pick up. They dictate fares. We don’t get a say in what the fares will be. They keep close track on your ratings, and they threaten to deactivate you over various things.”

Billington, 47, isn’t covered by workers’ compensation or unemployment insurance and doesn’t receive paid vacation days or holidays. Nor does he have health insurance or paid sick days. “Hopefully I just don’t get sick,” he says.

THOUGH UBER HAS 48,000 drivers in Los Angeles, 35,000 in Chicago, 30,000 in New York, 27,000 in Washington, D.C., and lots more in other cities, the company vigorously asserts that it is not an employer. Rather, it insists it is merely a platform, much like Etsy or Ebay, that connects buyers and sellers—in its case, riders and drivers. Its drivers are their own bosses, it maintains; Uber bosses hardly enter the picture.

In a recent speech, David Plouffe, President Obama’s 2008 campaign manager and now Uber’s senior vice president for policy and strategy, called the e-hailing company a godsend for drivers. “Platforms like Uber are boosting the incomes of millions of American families,” he said. “They’re helping people who are struggling to pay the bills earn a little extra spending money or transitioning between jobs.”

Plouffe cited an internal Uber study that found that 87 percent of drivers say a major reason they chose Uber was that they wanted to be their own boss and

set their own schedule. In defending against a California class-action lawsuit that seeks to have Uber's drivers declared employees, the company submitted declarations from 400 drivers who said they love their flexible hours and therefore prefer being independent contractors.

"Uber is not my employer," said Jon Shehab, a driver in San Diego, in one of those declarations. "I can make a stronger argument that Uber is my employee than that I'm their employee. Uber books my business for me. Uber collects my money. Uber sends me statements about how much money I've made. Uber deposits money in my account. If anything, Uber is my employee."

Shehab added: "Having been an employee and an independent contractor in the past, I'm definitely an independent contractor with Uber. I don't have a supervisor, I don't have a manager, and I don't even have a telephone number for Uber."

In a second declaration, Carlos Oliva, an UberX driver in Los Angeles, said: "Even if Uber wanted to make me an employee, I wouldn't want to be one. I would quit before I would accept an offer to be an Uber employee. I value my freedom as an independent contractor too much, and I don't want Uber to tell me when or where I have to drive."

But Shannon Liss-Riordan, the plaintiffs' attorney in that class-action lawsuit, says one of her paralegals spoke to 50 of the drivers who had submitted declarations and explained to them that under California law (unlike the laws of most states), if the drivers are considered employees, Uber would have to pay for business-related expenses including gas, insurance, and auto maintenance. Liss-Riordan says all 50 drivers responded that they'd love that and would therefore prefer to be considered employees.

Under California law, the principal factor in determining whether a worker is an employee or independent contractor is whether the employer "to whom service is rendered has the right to control the manner and means of accomplishing the result desired." Other factors to be weighed include the amount of skill required, the length of time services are performed, whether the work is part of the company's regular business, and whether the parties believe they have an employer-employee relationship. Uber trumpets that last factor, but it certainly wasn't dispositive when California's Labor Commissioner ruled last July that an Uber driver in San Francisco was an

employee, not an independent contractor. That case involved just one driver, but Uber fears—and many drivers hope—that the commissioner’s ruling will be harbinger for a far broader decision.

Many states have slightly different tests than California’s, often weighing whether the worker’s role is entrepreneurial. Uber argues that its drivers are indeed entrepreneurial because they decide when and where they drive, but many drivers say there is virtually nothing entrepreneurial about Uber work—yes, they pick their hours, but that isn’t terribly entrepreneurial.

In a **similar lawsuit against Lyft**, Vince Chhabria, a federal district court judge in San Francisco, complained that the multi-factor test for classifying workers is from “the 20th Century” and “isn’t very helpful in addressing this 21st Century problem.” He wrote that the court was being “handed a square peg and asked to choose between two round holes.”

“Some factors,” Chhabria added, “point in one direction, some point in the other, and some are ambiguous,”

But some leading employment-law experts say the Uber situation isn’t ambiguous. Benjamin Sachs, a labor law professor at Harvard, says, “The more I learn about Uber, the clearer it becomes to me that it is a relatively typical employment relationship and ought to be treated as such.” In his view, if Uber’s drivers were truly independent contractors, Uber would give them more freedom, for instance, to do rides only to and from the airport or wouldn’t bar them from giving their phone numbers to passengers so they can give them rides outside the Uber system.

Under Prassl’s analysis, Uber is a fairly typical employer, performing all of an employer’s functions.

To Jeremias Prassl, a law professor at Oxford University, Uber also presents a clear-cut case. “In figuring out whether someone is an employee or an independent contractor, we can save a lot of hassle by asking ourselves, Who is the employer?” he says. Under Prassl’s analysis, Uber is a fairly typical employer, performing all of an employer’s functions. It exercises firm control over the employment relationship from hiring to termination. It sets the

wages (in this case, the fares). It provides the drivers with their work and pay (by funneling passengers to them through its app). It receives the fruit of the drivers' labor (through its 20 percent commission and fees). And it provides an essential tool that makes the drivers' work possible—the vaunted Uber app.

Wilma Liebman, former chair of the National Labor Relations Board, concurs: “There’s a strong case that Uber drivers are employees, given what I know about the nature of Uber’s control over its drivers and given that they are providing a service that is integral to the key business of Uber.” She points to two NLRB cases: The first involved Roadway Express, in which the drivers were found to be employees, largely because they were doing the work integral to the company’s delivery business. In the other case, drivers for Dial-a-Mattress were found to be independent contractors because their work was not integral to the company’s business of selling mattresses. The Uber drivers are like the Roadway Express drivers, Liebman says, in that their work is integral to Uber’s business.

Similarly, Sachs says it is clear that people who obtain, say, a snow-shoveling or painting job through Task Rabbit are not employees of Task Rabbit. He argues that Task Rabbit is much more like Ebay—a mere platform and intermediary—than Uber and Lyft are.

Federal District Court Judge Edward Chen has scheduled the Uber trial for June 20 in San Francisco. Efforts to have workers at “on-demand” companies classified as employees aren’t confined to Uber. Liss-Riordan has sued numerous other such companies, including Lyft, Postmates, Washio, and Caviar, seeking to have their workers declared employees. In addition, she has asked the National Labor Relations Board to declare that Uber’s ban on class-action arbitration claims is illegal. In weighing that case, the labor board will first have to decide whether Uber drivers are employees, and if it decides they are, that would open the door to app-based drivers unionizing.

Jessica Santillo, an Uber spokeswoman, has warned of grim consequences if the drivers are declared employees.

Jessica Santillo, an Uber spokeswoman, has warned of grim consequences if the drivers are declared employees. Such a ruling, she said, would mean the

drivers “would drive set shifts, earn a fixed hourly wage and lose the ability to drive using other ridesharing apps as well as the personal flexibility they most value.” She added, “Drivers would have to drive when assigned to drive—in shifts pre-arranged by Uber, resulting in a loss of flexibility.” Drivers, she continued, would have “no ability to control earnings,” and that given their “fixed schedules, drivers would lose the ability to be entrepreneurial and maximize earnings based on when and where they drive.”

Disagreeing, Sachs says Uber would not be forced to adopt pre-arranged shifts for its drivers if they are deemed employees. Many drivers fear that if a court rules that they are employees, Uber would bar them from working more than 40 hours a week to avoid paying overtime, although Uber wouldn't be required to set a 40-hour ceiling. Indeed, if Uber took moves its drivers disliked—adopting pre-arranged shifts and a ceiling of 40 hours—a smart competitor might seek to woo away drivers by promising them flexibility much like what exists now, with no pre-arranged shifts and limit of 40 hours.

“A finding of employee status doesn't require that Uber do anything differently [in terms of scheduling] from what it's doing now,” Sachs says—other than one minor burden: requiring Uber to comply with California's rest break laws.

Liss-Riordan notes that many Uber fans complain that her lawsuit is seeking to bring down their beloved company. “We're not trying to bring Uber down,” she says. “We're just trying to get them to comply with the law. Obviously a lot of people like the service that Uber has brought to the world. We're just trying to make sure the drivers get what they're entitled to under the wage and hour laws.”

FOR INDER PARMAR, an UberX driver for nearly three years in New York City, the job has grown worse as Uber has pushed to expand.

“If Uber brings in 1,000 more drivers this week, they will tell everyone to welcome them, but the business is being depleted,” Parmar says. “There's one pie. Last year, the pie was shared by 20,000 Uber drivers. Now it's being shared by almost 30,000. I am making less money. I don't know about other drivers, but I don't see how they can say they're making more money.”

Parmar is upset that Uber is continuing to charge ahead in its effort to add more drivers in New York—part of its global strategy to increase market share and revenues. In late November, Uber ran advertisements on New York City buses, saying anyone who signed up to drive would earn a minimum of \$7,000 in December.

Parmar, 53, who immigrated from India at age 16, receives no benefits through Uber, but he says he is fortunate because his family gets health insurance thanks to his wife's job at a bank.

He, too, did well in first year with Uber, but then the company dropped its New York prices by 30 percent. His pay receipts show that he used to average around \$2,000 a week, driving 2 p.m. to 2 a.m. six days a week—but by last summer, his weekly gross fell to about \$1,500 a week. From that he had to subtract around \$100 a week for gas, around \$100 a week for tolls, and \$400 a week to rent a Toyota Camry with insurance.

ADVERTISEMENT

For Parmar, grossing \$1,500 a week for 70 hours of driving comes to around \$21.50 an hour, before factoring in his many expenses. That was substantially less than the \$28 an hour that two researchers—Alan Krueger, a Princeton economist, and Jonathan Hall, Uber's director of policy research—found to be the median gross pay for Uber drivers in New York in **an analysis of October 2014 data**. (The \$28 an hour they found comes to \$58,000 a year for a 40-hour-a-week driver, and is far below the \$90,000 a year that Uber was boasting its drivers in New York averaged last year.) According to Krueger and Hall's Uber-backed study, the median gross pay for Uber drivers in 20 cities was around \$17.50 an hour—including \$16 in Chicago, just under \$17 in Los Angeles—and that was before subtracting the drivers' costs and before Uber **further reduced fares** in 48 cities in January 2015.

“I went personally to Uber's office in Queens and I said, ‘How do you justify this 30 percent cut in fares?’” says Parmar, who recently cut back his Uber hours to part-time so he could also drive for a friend's black-car service. “They

said, ‘Since we’ve dropped the price, we’re going to have more customers.’

“I told them, ‘I’m not selling apples, I’m not selling donuts. I’m driving a car. I can do 15 or 16 rides a night. If the price is 30 percent less, I get paid 30 percent less.’

“They said the cheaper the price, the more customers you’ll have. I can’t drive 100 customers a night. I’m not a machine. I cannot work 18 hours a day.”

WHEN DAVID PLOUFFE, the master strategist, gave a major speech in Washington in November, it contained a big surprise. While many in the audience expected him to defend Uber by saying its drivers make a good living, he took a sharply different tack, emphasizing that driving for Uber can mean a welcome, supplemental part-time income. Plouffe told of a special-education teacher in Denver, who decided to drive an hour or two a week in her spare time so she could save money for a vacation to Ft. Lauderdale.

In his speech, titled “**Uber and the American Worker**,” Plouffe noted that half of all Uber drivers in the U.S. drive fewer than 10 hours a week, and that 61 percent have full-time or part-time jobs outside of Uber. “For most people, driving on Uber is not even a part-time job,” he said. “It’s just driving an hour or two a day, here or there, to help pay the bills.”

Plouffe left unanswered why he took such a surprising tack. Was he signaling that Uber desperately needs more drivers and is targeting financially squeezed Americans who might want to supplement their income by ferrying riders around town a few hours a week? (One big problem Plouffe acknowledged is that just 40 percent of Uber drivers remain active a year after taking their first trip.) Or perhaps Plouffe was deliberately downplaying any notion that Uber work is a real job, to help convince judges and critics that Uber’s drivers aren’t real employees—hey, these are just minor, independent gigs. Indeed, Judge Chhabria, in the Lyft case, voiced uncertainty about this very issue, asking whether “drivers who work more than a certain number of hours should be employees while the others should be independent contractors.”

What is clear is that labor advocates and even a growing number of companies are worried that many on-demand workers, especially the full-time

ones, receive no benefits— neither health insurance, nor paid sick days, nor unemployment insurance.

“We need to provide basic protections to people so they’ll be taken care of when they’re sick or when they want to retire,” says Shelby Clark, chief executive of Peers, a nonprofit that assists on-demand workers and companies. He acknowledges that some companies hesitate to give benefits to on-demand workers for fear that this will make it more likely that their workers will be ruled to be employees. He says the fear that workers might be declared employees has nothing to do with companies’ fear that their workers will unionize: “Unionization hasn’t even entered the conversation.”

“The reason they don’t want these workers to be employees is they want to stop a union,” she says.

But Katherine Stone, an employment law professor at UCLA, has the opposite view. “The reason they don’t want these workers to be employees is they want to stop a union,” she says.

In a somewhat surprising move, 39 business leaders, labor advocates, academics, and foundation heads joined together to sign a [statement](#), posted November 10, that called for creating an elaborate system of portable benefits to help provide protections to on-demand workers. “As our country has at prior moments of workplace change,” the statement said, “we must find a path forward that encourages innovation ... creates certainty for workers, business and government and ensures that workers and their families can lead sustainable lives and realize their dreams.” Its signers included Logan Green and John Zimmer, the co-founders of Lyft; Andy Stern, former president of the Service Employees International Union; Apoorva Mehta, Instacart’s chief executive; and Anne-Marie Slaughter, president of New America.

The statement, called Common Ground for Independent Workers, went on to say, “We are in agreement that flexible work should not come at the expense of desired economic security. We need a portable vehicle for worker protections and benefits.”

The statement didn’t go beyond generalities, proposing vague “portable,” “pro-rata” and “universal” benefits. It stopped short of saying what benefits

workers should have. The idea is that pro-rata payments, perhaps for each hour worked, would go into a fund or funds that help finance benefits—perhaps health insurance, parental leave, workers’ compensation, or all of the above.

The Common Ground statement contained more questions than answers. “Who should contribute financially (and how much)?” it asked, meaning, should the employer, the worker, or the customer contribute? (One can easily imagine that many companies will want the worker or customer—not the company—to pay the contributions toward the portable benefits.) The statement also asked, “What type of organization (or organizations) should administer these benefits and protections?”

David Rolf, a signatory of the statement and president of a large service employees’ union local in Seattle, acknowledges that some from the left and labor criticized the statement on the grounds that it might encourage employers to use more on-demand workers and jettison traditional benefits in favor of these newfangled, perhaps cheaper, portable benefits. Some also criticized the statement for not stressing the advantages of full-time work and for doing little to define who is an employee and who isn’t.

The statement was inspired in part by an article that Rolf and Nick Hanauer, a Seattle-based investor and co-founder of Second Avenue Partners, wrote for last summer’s issue of the journal *Democracy*. In the [article](#), “**Shared Security, Shared Growth**,” they proposed a system of robust, well-funded portable benefits—called Shared Security Accounts—that would cover a panoply of things, from health insurance to pensions to parental leave. Every employer would in theory pay into workers’ accounts, and because these accounts would be portable and universal, workers could tap into them, even when they change jobs.

Rolf would love to see dozens of companies lining up tomorrow to finance a smart system of portable, pro-rata benefits. He says he sees some interest in the idea, adding that things are moving forward, albeit slowly. His more immediate hope is that in a deep-blue city or state, like Seattle or San Francisco or California or New York, “workers would demand enactment of a citywide or statewide mandate requiring all employers” to make pro-rata payments for portable benefits—“X percent into a health-care fund, Y percent into a pension fund, Z percent into a paid-time-off fund, another percent for

income replacement in case of loss of employment.” Such a law, Rolf says, would be a boon for workers in an era when more and more companies are moving away from traditional employer-employee relationships and from providing benefits.

In Rolf’s home city, however, some on-demand workers—namely, the Uber and Lyft drivers—are not waiting for such an idealistic scheme to be enacted. They’re pursuing a theoretically quicker strategy to win benefits and higher pay: unionization. Working with the International Brotherhood of Teamsters, hundreds of app-based drivers have helped persuade the Seattle City Council to vote initial approval—7 to 0—of a bill that would allow them to unionize. It would be the nation’s first law allowing app-based “independent contractor” drivers to unionize. A final vote is tentatively scheduled for December 14. (Rolf and his powerful union local are backing the effort, advancing several different strategies to improve the lot of workers in the on-demand economy)

Uber argues that the Seattle legislation has two big legal flaws—first, that cities can’t enact laws on unionization for private-sector workers because that subject is preempted by federal law, specifically by the National Labor Relations Act. Second, that when independent contractors cooperate to set prices, that constitutes an antitrust violation. The legislation, Uber asserts, would create a conspiracy to artificially drive up transportation costs paid by the people of Seattle.

But Leonard Smith, a Teamsters organizer in Seattle, argues that since the National Labor Relations Act covers only employees—and not independent contractors—preemption doesn’t apply to such contractors. Smith maintains that cities and states are free to enact laws to help independent contractors unionize, as is the case with farm workers and government employees (also not covered by the NLRA). Elizabeth J. Kennedy, a law professor at Loyola University in Baltimore who is advising the Teamsters, adds that the City of Seattle would be creating a framework for the drivers’ cooperation that would in turn create a so-called state action immunity defense to help make the drivers’ cooperation legal under antitrust laws.

If Seattle enacts the law, however, Uber and Lyft will undoubtedly file lawsuits to block it. More than 300 Uber and Lyft drivers have attended pro-union meetings in Seattle. Not only do they want benefits like paid sick leave and workers’ compensation, but most Uber drivers are unhappy that the company

slashed the per-mile fare to \$1.35 a mile from \$2.35.

Many echo Takele Gobena in saying they earn too little and work too many hours. “We’re for a union,” Gobena said. “The union will give us a chance to negotiate with the man. Uber doesn’t see us. They tell us what to do. They don’t hear our concerns. When we have a union, we’ll have the power to negotiate. Right now we have no way to solve our problems.”

When one cuts through all this maneuvering and friction, it becomes clear that Uber drivers and their various allies are pursuing three strategies at once to make the company treat them better—have courts and the NLRB rule that the drivers are employees, have states and cities give them collective bargaining rights as independent contractors, and create a pro-rata benefits pool for app-based drivers and other gig-economy workers. While these efforts could pose a major challenge to Uber’s business model and bottom line, it could finally give Takele Gobena and tens of thousands of other drivers, as he put it, a “way to solve our problems.”

TIM SMART CASA

ADSL FINO A 20 MEGA, CHIAMATE ILLIMITATE E TIMVISION



[Order Now](#)

[Sign Up](#)