

456 CMR: Department of Labor Relations

**456 CMR 24.00: Administration of the Transportation Network Driver  
Labor Relations Law, G.L. c 150F**

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**24.01 Definitions**

This section provides definitions for words and phrases used in 456 CMR 24.00 when used with reference to G.L. c. 150F.

Active Transportation Network Driver or Active TND – “Active transportation network driver” or “active TND” means a transportation network driver so designated pursuant to the following process: Upon request by the department, and at the completion of each calendar quarter thereafter, each transportation network company (“TNC”) shall provide the department with information that identifies all transportation network drivers (“TND”) who completed five or more rides that originated in the commonwealth of Massachusetts on the TNC’s platform in the previous six months. Each TNC shall provide this information within two weeks after the end of each calendar quarter (March 31st, June 30th, September 30th, December 31st). Such information shall include only the name of the TND, the TND driver’s license number, and the number of rides the TND completed through the TNC’s platform in the previous six months. The department shall combine the data provided by all TNCs to determine the distribution of the number of rides completed by all TNDs for which data has been submitted and then shall determine the median number of rides across TNDs for whom data has been submitted in the previous six months. Any TND who completed more than the median number of rides shall be considered an active transportation network driver in the rideshare industry, as set forth in G.L. c. 150F, § 2(A).

Appropriate Bargaining Unit – For purposes of these regulations, each TND shall be included in an industry-wide bargaining unit of all Transportation Network Drivers.

Board – For purposes of these regulations and the administration of chapter 150F only, all references to the Board in G.L. c. 150F shall refer to the Commonwealth Employment Relations Board (“CERB”) established pursuant to G.L. c. 23, § 9R, and its designees, and shall include the Department of Labor Relations, as defined in G.L. c. 23, §§ 9O, 9P, 9R and 9T. Both the CERB and the Department of Labor Relations shall be authorized to take any action that chapter 150F authorizes the Board to take unless these regulations clearly and explicitly limit authorization to take the action to the CERB alone.

Company Union – means any committee, employee representation plan, or association of workers or others that exists for the purpose, in whole or in part, of dealing with TNCs concerning grievances or terms and conditions of work for TNDs, which (1) a TNC has initiated or created or whose initiation or creation it has suggested, participated in or in the formulation of whose governing rules or policies or the conducting of whose management, operations or elections the TNC participates in or supervises; or (2) which the TNC maintains, finances, controls, dominates, or assists in maintaining or financing unless required to do so by this chapter or any regulations implementing this chapter, whether by compensating anyone for services performed in its behalf or by donating free services, equipment, materials, office or meeting space or anything else of value, or by any other means. A TND organization shall not be deemed a company union only because it has negotiated or been granted the right to designate workers to be released with pay for the purpose of providing representational services in labor-management affairs on behalf of workers represented by the TND organization, or where, in the course of providing representational services to workers for whom it is the exclusive bargaining representative, a TNC allows agents of the TND organization to meet with workers at the TNC's premises, as set forth in G.L. c. 150F, § 2(C).

Days – For purposes of calculation of dates pursuant to these regulations, Days shall mean calendar days, including Saturdays, Sundays, and legal holidays.

Department – The Department of Labor Relations established pursuant to G.L. c. 23, §§ 9O, 9P, 9R, and 9T.

Director – The Director of the Department of Labor Relations, as defined in G.L. c. 23, § 9T.

Exclusive Bargaining Representative – A Transportation Network Driver Organization certified by the Department in accordance with G.L. c. 150F and these regulations.

Hearing Officer – Any Board member or Department attorney designated by the Board to conduct a hearing pursuant to G.L. c. 150F and these regulations or a quorum of the Board acting together to conduct such a hearing.

Network Company – A TNC, except that a business entity that maintains an online enabled application or platform that meets all three of the following tests is not a network company: (1) it is used to facilitate primarily non-rideshare services within the commonwealth of Massachusetts,

(2) less than seven and one-half percent of service requests fulfilled through the platform on an annual basis are for rideshare services, and (3) fewer than ten thousand service requests fulfilled through the platform in any year are for rideshare services. For purposes of this paragraph, all applications or platforms used by corporate entities under common control shall be considered a single application or platform, as set forth in G.L. c. 150F, § 2(E).

Party – Consistent with the terms set forth in G.L. c. 150F, § 4(C), and for purposes of these regulations only, party shall mean the respondent to a charge, a charging party, or any other persons, labor organizations, or entities whose intervention in the proceedings has been permitted by the Department.

Secretary of Labor & Workforce Development – The Executive Branch Secretary of the Executive Office of Labor and Workforce Development.

Designation of Representative Evidence–

- (a) Authorization cards, petitions, or other evidence demonstrating that a TND Organization has been designated as the exclusive bargaining representative for purposes of collective bargaining, provided that any such evidence has been executed and dated by the TND within one year before the date that the TND Organization submits the evidence to the Department.
- (b) Authorization cards, petitions or other evidence demonstrating that the TNDs in the bargaining unit do not wish to be represented by any TND Organization, provided that any such evidence has been executed and dated by Active TNDs within one year before the date that evidence is submitted to the Department.

Transportation Network Company or “TNC” – A transportation network company as described by G.L. c. 159A½, § 1.

Transportation Network Driver or “TND” – a transportation network driver as described by G.L. c. 159A½, § 1. TND shall not include any individual who, with respect to the provision of services through a TNC’s online enabled application or platform, is an employee within the meaning of 29 U.S.C. § 152(3).

Transportation Network Driver Organization or “TND Organization”– Any organization in which TNDs participate, and which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with network companies concerning grievances, terms or conditions of work, or of other mutual aid or protection and which is not a company union as such term is defined in G.L. c. 150F, § 2G.

## **24.02 General Provisions**

The provisions of 456 CMR 12.00, *General Provisions*, except the final sentence of 456 CMR 12.12(5), are applicable to all proceedings conducted pursuant to 456 CMR 24.00, except that references to “employers,” “employees,” or “employee organizations,” in 456 CMR 12.03, shall be deemed references to TNCs, TNDs, and TND Organizations respectively, as such terms are defined in 456 CMR 24.01.

### **24.03 Conduct of Hearings**

The provisions of 456 CMR 13.00: *Conduct of Hearings*, except 456 CMR 13.01, are applicable only to hearings conducted by a Board member, or a Department attorney designated by the Board to conduct a hearing pursuant to G.L. c. 150F, § 4(C) or by a quorum of the Board acting together. Further for purposes of these regulations, references to G.L. c. 150E, § 10, shall be considered references to G.L. c. 150F, § 4 and all references to “prohibited practices,” shall be considered references to “unfair work practices.”

### **24.04 List of Active TNDs**

- (a) Each TNC shall have an obligation to provide to the Department on an ongoing basis information sufficient to identify all TNDs who have completed five (5) or more rides on its digital platform that originated in the Commonwealth. Information provided by the TNCs pursuant to this section 24.04 shall be submitted electronically, in the form and method designated by the Department. Such submissions shall be secure. Information provided pursuant to this section shall not be subject to disclosure under G.L. c. 66.
- (b) The Department shall make an initial request to each TNC, asking the TNC to provide information sufficient to identify all TNDs who in the previous six (6) months have completed five (5) or more rides that originated in the Commonwealth on the TNC’s digital platform. The Department’s request shall provide clear date parameters. Each TNC shall provide the information requested by the Department within fourteen (14) days of the request and in the secure manner designated by the Department.
- (c) Each TNC shall update its response to the Department’s request for information quarterly, providing information related to the previous calendar quarter (March 31, June 30, September 30, December 31). The TNCs’ updated response shall be made within fourteen (14) days after the end of each calendar quarter.
- (d) The Department shall combine data provided by the TNCs to determine the median number of rides provided in the previous six (6) months and the number of rides provided by each TND for whom data has been submitted. Any TND who has completed more than the median number of rides shall be considered an Active TND in the ride share industry for that six-month period.
- (e) On a quarterly basis and in a secure manner, the Department shall provide each TNC with the names and driver’s license numbers of the Active TNDs who have driven for that TNC within the previous six (6) months. The TNC shall then have thirty (30) days to submit to the Department, in an electronic format to be determined by the

Department, a phone number, mailing address, and email address for each such Active TNDs who drove for that TNC during the six-month period.

- (f) The Department shall maintain a list of Active TNDs. The list shall contain the name, phone number, mailing address, and email address of all Active TNDs in the bargaining unit. The Department shall provide this list, in a secure manner, to each TND Organization that has been designated as the bargaining representative of at least five percent (5%) of Active TNDs. The Department shall provide each such TND Organization with updates to the list of Active TNDs until the earlier of: (i) one year from the date that the Department first determined that the TND Organization has been designated as the bargaining representative of at least five percent (5%) of Active TNDs in the bargaining unit or (ii) a TND Organization is certified as the exclusive bargaining representative for the bargaining unit.
- (g) Once the Department has certified a TND Organization as the exclusive bargaining representative, whether by certification without election, or by election, the TNCs shall continue to securely provide the Department with a list of all Active TNDs and upon request the Department shall, on a quarterly basis, facilitate the secure transfer of such list to the TND Organization, together with phone numbers, mailing addresses and email addresses. During the period that the TND Organization retains its status as the exclusive representative, only that TND Organization shall be entitled to receive that information from the TNCs.

#### **24.05 Designation of Bargaining Representative**

- (1) A TND Organization may use authorization cards, petitions, or other evidence to demonstrate that an active TND has designated the TND Organization as the TND's bargaining representative for the purpose of collective bargaining.
- (2) To be valid, TND's designation of bargaining representative must be executed and individually dated by the TND no more than one (1) year before evidence of the designation is submitted to the Department. The designation must include:
  - (i) a statement sufficient to show that the TND has authorized the TND Organization to act as the signer's exclusive bargaining representative and to negotiate on its behalf with respect to pay, hours, and other terms and conditions of employment;
  - (ii) the language in which the statement was presented to the TND;
  - (iii) an attestation from the TND Organization that the statement has been accurately translated into the signer's preferred language;
  - (iv) the TND's signature
  - (v) the TND's name;
  - (vi) the TND's email address;
  - (vii) the TND's telephone number;
  - (viii) the TND's driver's license number;
  - (ix) the date the Designation of Representative Evidence was executed by the TND;
  - (x) the name of each TNC platform the signer uses; and
  - (xi) any other evidence that the Department may require.

If filed electronically, all of the information described in this section shall be in separate and searchable fields.

#### **24.06 Determination of TND Organizations**

(1) A TND Organization may request that the Department determines it is the bargaining representative of at least five percent (5%) of Active TNDs in the bargaining unit.

(a) To request a determination as the bargaining representative of at least five percent (5%) of Active TNDs in the bargaining unit, a TND Organization must file a petition with the Department, using the format prescribed by the Director.

(b) The petition shall contain the following information at minimum:

- (i) The name, address, and affiliation of the TND Organization, if any, and the name and address of its representative designated for the purpose of collective bargaining;
- (ii) A statement that the TND Organization is seeking to represent the TNDs in an industry-wide bargaining unit of all TNDs for the purpose of initiating a bargaining process in order to establish working terms and conditions for the industry;
- (iii) The name of each TNC the TND Organization contends should be included within the industry-wide bargaining unit, and, if known, the TNCs' representative(s) for purposes of collective bargaining;
- (iv) A statement that the TND Organization believes it has been designated as the bargaining representative of at least five percent (5%) of Active TNDs in the bargaining unit;
- (v) The name(s) and address(es) of all TND Organizations known to represent or known to claim to represent the TNDs in the bargaining unit;
- (vi) The expiration date of the most recent final determination, if any, issued by the Secretary of Labor & Workforce Development pursuant to G.L. c. 150F, § 6(F) and these regulations;
- (vii) A statement that the TND Organization securely maintains all personal information that it receives from drivers, including drivers that are not residents of the Commonwealth, that complies with all applicable federal, state, and local legal requirements and standards to safeguard personal or confidential information, including but not limited to G.L. c. 93H.
- (viii) A copy of the TND Organization's data security policy
- (ix) Any other information that may be required by the Department.

(c) The TND Organization shall provide all TNCs with a copy of the petition.

(2) Upon receiving a complete petition, the Board will review the evidence submitted and issue a determination. The board shall promptly notify the TND Organization and the TNCs of its determination.

(3) For six (6) months from the date of the board's determination that a TND organization has met the five percent threshold in a bargaining unit, no other TND organization may be certified as the exclusive bargaining representative of those workers without an election.

(4) The Department shall prepare a notice stating that the TND Organization is seeking to represent TNDs for the purpose of initiating a bargaining process in order to establish terms and conditions for the industry, and that the Department has determined that the TND Organization has been designated as the bargaining representative of at least five percent (5%) of Active TNDs. The Department shall provide this notice to TNCs. Within seven (7) days after receiving such notice, each TNC shall provide a copy of the notice to all Active TNDs who have driven for that TNC within the previous six (6) months. The TNCs shall send the notice in the electronic or digital manner through which they customarily communicate with TNDs.

(5) A TND Organization that the Department has been determined as having been designated as the bargaining representative of at least five percent (5%) of all Active TNDs may later ask the Department to determine that the TND Organization has been designated as the bargaining representative of additional TNDs, for example, in order to request certification without election or in order to stop another TND Organization from being designated as the exclusive bargaining representative of all TNDs in the bargaining unit.

(a) To make such a request, the TND Organization must provide the Department with a spreadsheet detailing the Designation of Representative Evidence that the TND Organization relies upon to support its later request. The secure file must include all of the information detailed in 456 CMR 24.05 plus the date that the TND Organization originally submitted that Designation of Representative Evidence to the Department.

(b) A TND Organization that has been determined as the bargaining representative of at least five percent (5%) of Active TNDs in the bargaining unit may submit additional Designation of Representative Evidence no more than once in the year following the TND Organization's determination as the bargaining representative of at least five percent (5%) of Active TNDs in the bargaining unit.

(6) Absent a showing of good cause, the Department will not entertain a request for determination that a TND Organization has been designated as the bargaining representative of at least five percent (5%) of Active TNDs in the unit if: (i) that TND Organization has made and withdrawn a request for determination in the preceding six (6) months, or (ii) that TND Organization has disclaimed interest in continued representation of the bargaining unit within the preceding six (6) months.

#### **24.07 Requirements Applicable to Designated TND Organizations**

(1) Any TND Organization seeking designation from the Department as a bargaining representative must maintain a data security policy. Such policy must be provided to Active TNDs and must indicate that any information provided to the TND Organization may be securely

shared with the Department for purposes of administration of these regulations. The TND Organization shall file its policy with Department as part of its Designation Request.

(2) For purposes of these regulations, personal information shall include but not be limited to the TND's first and last name, or first initial and last name, in combination with any one or more of the following data elements; provided, however, that personal information shall not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public:

- (a) Social security number;
- (b) Driver's license number or state-issued identification number;
- (c) Personal cellular or home phone number;
- (d) Home address; and
- (e) Email address.

#### **24.08 Request for Election**

A TND Organization that has been designated as the bargaining representative of at least five percent (5%) of Active TNDs in the bargaining unit may petition the Department to conduct an election. The petition must be submitted to the Department within one year of the Department's determination that the TND Organization has been designated by at least five percent (5%) of Active TNDs. However, absent a showing of good cause, the Department shall not entertain a request for certification or direct an election from the same TND Organization if the Department has processed a request for certification or conducted a valid election in the preceding six (6) months.

#### **24.09 Certification As the Exclusive Bargaining Representative**

(1) A TND organization that has been designated as bargaining representative by twenty-five percent (25%) of active TNDs may request certification as the exclusive bargaining representative of all TNDs in the bargaining unit without election.

- (a) The requesting TND organization must submit sufficient and valid Designation of Representative Evidence pursuant to 456 CMR 24.05 showing which TNDs have designated it as their bargaining representative.
- (b) The Department will timely review the evidence provided and determine how many Active TNDs have designated the TND organization as their bargaining representative. The Department will promptly notify the TND Organization and the TNCs of its determination.

(2) If the Department determines that the requesting TND Organization has provided sufficient and valid Designation of Representative Evidence that it has been designated as the exclusive bargaining representative of more than fifty percent (50%) of active TNDs, the Department shall certify the requesting TND organization as the exclusive bargaining representative of all TNDs in the bargaining unit.

(3) If the Department determines that the requesting TND Organization has provided sufficient and valid Designation of Representative Evidence that it has been designated as the exclusive bargaining representative of fifty percent (50%) or less of the active TNDs, the Department shall wait seven (7) days before taking any action on the TND organization's



request. The seven-day period shall not start until the TND organization and the TNCs have been notified of the Department's determination.

(a) The Department shall grant the request for certification without election if, during the seven-day period:

(1) No other TND organization provides evidence that at least twenty-five percent (25%) of active TNDs in the bargaining unit have designated it as their bargaining representative, AND

(2) No TND provides evidence that at least twenty-five percent (25%) of active TNDs in the bargaining unit do not wish to be represented by any TND organization

(b) The Department shall deny the request for certification without election and order an election if, during the seven-day period:

(1) another TND organization provides evidence that at least twenty-five percent (25%) of active TNDs in the bargaining unit of active TNDs in the bargaining unit have designated it as their bargaining representative, or

(2) a TND provides evidence that at least twenty-five percent (25%) of active TNDs in the bargaining unit do not wish to be represented by any TND organization

(c) Once a request for certification without election has been made in accordance with 456 CMR 24.09, the Department will not accept additional evidence in connection with that request.

(4) A TND Organization or TNC may challenge the inclusion or exclusion of any TND on the list of Active TNDs by filing a challenge with the Department within seven (7) days after a TND Organization has requested certification without election. If the number of challenges is insufficient to potentially affect the results of a certification, the Department shall summarily dismiss the challenges. If the number of challenges is sufficient to potentially affect the results, the Department shall investigate and resolve the challenges. The challenging party shall bear the burden of proving the validity of a challenge.

(5) Once the Department has certified a TND Organization as the exclusive bargaining representative pursuant to G.L. c. 150F and these regulations, that TND Organization shall have the exclusive authority to represent the TNDs in the bargaining unit, without challenge by another TND Organization, for the greater of: (i) one year following certification; or (ii) the length of time that a final determination rendered by the Secretary of Labor and Workforce Development is in effect, provided that such period shall not be longer than three (3) years following the date of issuance of such final determination.

#### **24.10 Elections, Generally**

(1) If the Board orders an election, the election shall be conducted as expeditiously as possible.

- (2) The election shall offer “no worker organization” as one of the choices available to TNDs.
- (3) A TND organization receiving a majority of the valid votes cast shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit. When two (2) or more TND organizations are on the ballot and no choice receives a majority of the valid votes cast, there shall be a run-off election between the two (2) choices receiving the largest and second largest number of votes. A TND organization receiving a majority of the valid votes cast in the run-off election shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit, and it shall owe a duty to fairly represent all such workers. If a majority of the valid votes cast are for “no worker organization,” then the board will not certify any worker organization as the exclusive bargaining representative.
- (4) In conducting elections, the operative list of active TNDs shall be based on the most recent quarterly list provided by the TNCs in accordance with section 5(A) of Chapter 150F.
- (5) When the Department determines that an election by secret ballot shall be conducted, it shall direct that such election be conducted upon such terms as it may specify, including an election conducted by mail, by electronic voting, or by any other means ordered by the Department.
- (6) Any party may challenge, for good cause shown, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded or otherwise securely stored by the Department. If the number of challenged ballots is sufficient to impact the outcome of the election, then within seven (7) days after the tally of ballot has been furnished, each party must file with the Department a short electronic statement of its position concerning the eligibility of each challenged voter. Such statement shall include a recitation of the facts, if any, alleged by the party to be determinative of the challenged voter’s eligibility. The Department may require the parties to submit further evidence or arguments to determine whether a hearing is warranted.
- (7) At the conclusion of the election, the Department shall furnish to the parties a tally of ballots. Within seven (7) days after the tally of the ballots has been furnished, any party may file with the Department objections to the conduct of the election or to conduct affecting the result of the election. Such filing shall specify with particularity the conduct alleged to be objectionable (including the identity of persons involved, and the date, place, time, and nature of the conduct). Failure to timely specify conduct alleged to be objectionable may be deemed a waiver of the objection. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the result of the election. Upon receipt of the statement of objections and any other submissions that the Department may permit, the Department shall determine whether any of the objections merit further proceedings and may dismiss some or all of the objections if the Department does not find probable cause to believe either that the alleged conduct occurred or that the alleged conduct materially interfered with the conduct or the results of the election. If the Department determines that probable cause exists to believe that conduct interfering with either the conduct or the results of the election occurred, the Department shall conduct such further investigation and/or hearing as it deems necessary and appropriate, or, if no material facts are disputed, it may issue a decision on the objections without any fact-finding proceedings.
- (8) If no timely objections are filed, and the challenged ballots are insufficient in number to affect the results of the election, and if no runoff election is to be held, the Department shall immediately certify the results of the election.

(9) Any runoff election or re-run election shall be conducted in accordance with procedures set forth in 456 CMR 14.13 (*Questions of Representation: Runoff Elections*) and 456 CMR 14.14 (*Questions of Representation: Re-run Elections*).

## **24.11 Unfair Work Practices**

The provisions of 456 CMR 15.00 *et seq.*: (*Investigations*), 16.04: *Petitions and Requests*, 16.05: *Compliance with G.L. c. 150E, §§ 13 and 14*, 16.06: *Advisory Rulings*, 16.08: *Compliance with Department Orders*, and 18.00: *Designation of Department Agents*, are applicable to all unfair work practice proceedings under G.L. c. 150F except that references to charges of prohibited practice as defined in G.L. c. 150E, §§10(a) and (b) shall be considered references to unfair work practices set forth in G.L. c. 150F, § 4(A) and (B) and all references generally to G.L. c. 150E shall be considered references to G.L. c. 150F.

(1) With respect to G.L. c. 150F, § 4(C)(7): *Prevention of unfair work practices; Injunctive relief*, the following procedures shall apply.

- (a) When a party that has filed an unfair work practice charge (Charging Party) petitions the Department to obtain injunctive relief pending a decision on the merits of the charge pursuant to G.L. c. 150F, § 4(C)(7), the Charging Party shall include in the petition the following information:
  - (1) The name, address and telephone number of the party or parties named as the respondent(s) in the unfair work practice charge;
  - (2) The name, address, email address, and telephone number of counsel for respondent, if known.
  - (3) A statement as to what facts cause the Charging Party to believe that:
    - (i) There is reasonable cause to believe that an unfair work practice has occurred, and
    - (ii) It appears that immediate and irreparable injury, loss, or damage will result thereby rendering a resulting decision on the merits ineffectual and necessitating the maintenance of, or return to, the status quo to provide meaningful relief. Such immediate and irreparable harm may include the chilling effect on workers in the exercise of rights provided by this chapter.
  - (4) The Charging Party shall serve a copy of the petition upon the respondent(s) or a representative of the respondent(s). The petition shall contain a statement by the Charging Party requesting an investigation by the Department and state that the respondent may contact the Department if they wish to present information pertinent to the investigation. The petition shall include an affidavit from the Charging Party specifying its compliance with this section.
  - (5) The Department may require the Charging Party to serve a notice of the time, date and place of an investigation to be conducted upon the respondent or the respondent's representative.
  - (6) The Department or Board in the first instance may investigate the petition and may, within ten (10) days after receiving the petition (or longer, if mutually agreed by both parties) determine whether the Charging Party has made a sufficient showing of the elements set forth in 456 CMR 24.11(1)(a)(3). In the

case of a TNC's failure to provide an accurate list of names and address of TNDs, immediate and irreparable injury, loss, or damage shall be presumed.

- (7) If based upon the investigation, the Board determines that the elements set forth in 456 CMR 24.11(1)(a)(3) have been met, it may issue orders setting requirements and may seek enforcement thereof in Superior Court in any county where the unfair work practice occurred upon notice to all parties in accordance with applicable court rules.

## **24.12 Bargaining and Impasse Procedures in the Rideshare Industry**

- (1) Any person acting as a mediator, including conciliators and interest arbitrators, shall not be required by any administrative, arbitration, or non-criminal judicial tribunal to disclose any files, records, documents, notes, or other papers or be required to testify with regard to any information obtained while functioning in a mediatory capacity.

### **(2) Initiation of Interest Mediation**

- (a) If individual TNCs or a TNC industry association and the TND Organization have negotiated for a one hundred eighty (180) day period from the date a TND Organization has been designated as the exclusive bargaining representative or from the expiration date of a prior determination by the Secretary of Labor and Workforce Development and an impasse exists over one or more issues arising out of the negotiations, any of the affected TNCs or the TNC industry association or the TND Organization, or the parties jointly, may file a Petition for Mediation with the Department, in accordance with 456 CMR 12.12: *Filing with the Department*.
- (b) A petitioning party proceeding unilaterally shall serve the petition on the principal representative of the other party in accordance with 456 CMR 12.02: *Service: When Required*. The petition shall state in the appropriate place that a copy of the petition has been served on the other party in accordance with the requirements of 456 CMR 12.02. Failure to so state shall suspend the processing of the petition.
- (c) At any time during bargaining, whether or not a Petition for Mediation has been filed, the TNCs or TNC industry association and the TND Organization may jointly request mediation assistance in resolving a collective bargaining dispute. The Department shall provide mediators for this purpose.

### **(3) Appointment of a Mediator**

- (a) Investigation. Upon receipt of the petition, the Department shall commence an investigation to determine if the parties have negotiated for a reasonable period of time and if an impasse exists. If the Department determines that the parties are not at impasse, it shall notify the parties of this determination within fourteen (14) days.

- (1) If an impasse is not deemed to exist, the Department shall appoint a conciliator to assist the parties in reducing the number of issues in dispute or bargaining to resolution.
  - (2) The conciliator will control the conciliation process and may limit the number of persons who may attend conciliation sessions.
  - (3) After assisting the parties with bargaining after a reasonable time, the conciliator may recommend an impasse determination to the Department.
- (b) Appointment. Upon determination of an impasse, the Department shall appoint a mediator from a list of qualified and available persons to help the parties resolve the impasse, unless within forty-eight (48) hours of receipt of the list, the parties notify the Department that they have selected a mediator satisfactory to them.
- (c) Disqualification or Withdrawal of the Mediator. Prior to accepting an appointment, the mediator shall disclose to the Department any circumstances likely to create a presumption of bias, or which the mediator believes might disqualify them as an impartial mediator.
- (d) Fees. The filing fee for a Petition for Mediation filed pursuant to 456 CMR 24.12(2) is the amount established by 801 CMR 4.02: *Fees of Licenses, Permits, and Services to Be Charged by State Agencies*. The cost of the filing fee shall be equally divided between the parties. The cost of an outside mediator, selected by the parties, shall be equally divided between the parties unless the parties agree otherwise.

(4) Mediator's Function

- (a) The function of a mediator is to assist employers and employee organizations in reaching a voluntary agreement. A mediator may hold separate or joint meetings for this purpose. The mediator shall consult with each party concerning the time, date, and place of each mediation session; however, the mediator shall make the final decision on scheduling.
- (b) The mediator may order the parties to provide specific representatives authorized to enter into a collective bargaining agreement to be present at meetings held for the purpose of resolving the impasse and negotiating such an agreement.

(5) Public Access

There shall be no public access to mediation sessions.

(6) Mediator's Report

After concluding mediation, the staff or outside mediator shall report in writing to the Department the results of the efforts to resolve the impasse. The report is confidential and shall contain the following information:

- (a) The names of the parties;
- (b) A statement of the dates of first contact with both the employer and the employee organization;
- (c) A brief description of the unresolved issues which existed at the beginning of the mediation effort;
- (d) A statement of the issues that have been resolved through the mediation effort; and
- (e) A statement of the issues that are still unresolved, if any.

(7) Petition for Interest Arbitration

- (a) Petition for Arbitration. If the mediator is unable to achieve agreement between the parties concerning an appropriate resolution within thirty (30) days after the Department has provided the parties with the list of mediators, any party may petition the Department to refer the dispute to arbitration. Mediation shall continue while the arbitration petition is pending. The arbitration shall be conducted by a tripartite panel comprised of one neutral arbitrator, and one representative selected by each of the parties to serve as a partisan arbitrator in accordance with the following procedures.

- (1) Prior to submitting the dispute to arbitration, the Department shall conduct an election among all TNDs in the industry who have completed at least one hundred (100) trips in the previous quarter. Upon request by the Department, the TNCs shall within fourteen (14) days from the date of the request provide the name, telephone number, driver's license number, email address, and mailing address for any TND who have completed five (5) or more rides that originated in the Commonwealth of Massachusetts in the previous quarter. The eligible TNDs will choose between submitting the dispute to arbitration or decertifying the exclusive bargaining representative. If the majority of eligible votes cast are for decertification, the exclusive bargaining representative shall be decertified and any existing recommendations shall remain in place until they expire as provided in G.L. c.150F, § 6F.
  - (2) Mediation will be held in abeyance when the Department issues the notice of an election to determine whether the dispute will be submitted to arbitration or decertification. Mediation shall be removed from abeyance upon certification of the results of the election. Mediation shall resume if the TNDs determine by election that the dispute will be submitted to arbitration. Mediation shall cease upon decertification of the exclusive bargaining representative.
  - (3) If a majority of TNDs who vote choose to have the dispute submitted to arbitration, the exclusive bargaining representative shall notify the Department of the need to appoint a neutral arbitrator, and the Department shall notify the TNCs of this request.
  - (4) Each of the two groups of affected parties (affected TNCs being one group, and the exclusive bargaining representative being the other group) shall have an

equal say in the selection of the neutral arbitrator and each of the two groups shall share equally the cost of the arbitrator.

- (5) If the parties are unable to agree upon the neutral arbitrator within seven (7) days after the Department notifies the TNCs of the need to appoint a neutral arbitrator, the Department shall submit to the parties a list of qualified, disinterested persons for the selection of a neutral arbitrator. A representative of each of the two groups shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as the neutral arbitrator. Each group shall select its representative for this purpose, as it sees fit. A group's failure to agree upon the designation of its representative shall result in the failure of the striking procedure but shall not impede the Department's appointment of the neutral arbitrator upon such failure. The striking process shall be completed within five (5) days after receipt of the Department's list. The representatives who undertake the striking shall notify the Department of the designated neutral arbitrator. In the event the parties are unable to select the neutral arbitrator within five days following receipt of this list, the Department shall appoint the neutral arbitrator.
- (6) Each group shall also select a representative to serve as a partisan arbitrator on the tripartite arbitration panel and shall inform the Department of its selection.
- (b) Letter of Appointment. After a neutral arbitrator has been selected or appointed, the Department shall promptly send a letter of appointment and a copy of the petition to the neutral arbitrator, and a copy of the letter to both parties. The neutral arbitrator shall promptly notify the Department whether the neutral arbitrator accepts the appointment.
- (c) Disqualification or Withdrawal of the Neutral Arbitrator. If the neutral arbitrator has represented a TNC or the TND Organization within the last twelve (12) months, the appointment shall be revoked by the Department. The neutral arbitrator is required to disclose to the Department and the parties any circumstances likely to create a presumption of bias, or which the neutral arbitrator believes might be disqualifying as an impartial neutral arbitrator. Following such a disclosure, the Department shall revoke the neutral arbitrator's appointment unless both parties waive this presumptive disqualification. If a neutral arbitrator is disqualified, resigns, withdraws, or otherwise becomes unavailable from the arbitration duties, the Department shall appoint another neutral arbitrator in accordance with this section.

(8) Withdrawal of Arbitration Petition

An arbitration petition may be withdrawn by the petitioning party in the case of a unilateral filing, or by agreement of both parties in the case of a joint filing, at any time prior to the appointment of a neutral arbitrator. After the appointment of a neutral arbitrator, an arbitration petition may be withdrawn only by joint agreement of the parties. The parties shall compensate the neutral arbitrator for services performed in accordance with 456 CMR

24.12(13).

(9) Neutral Arbitrator's Responsibilities

- (a) Authority. The appointed neutral arbitrator shall have the authority and responsibility for the conduct of the arbitration proceedings and shall have sole discretion in deciding any issues of procedure.
- (b) Scheduling of Conferences and Hearings. The neutral arbitrator shall consult with each party concerning the time, date, and place of each meeting or hearing.

(10) Mediation During Arbitration

- (a) Authority. The neutral arbitrator or mediator has the authority to mediate the dispute.
- (b) Report to the Department. If the dispute is settled through mediation by the neutral arbitrator, the neutral arbitrator shall promptly notify the Department of the date and terms of the settlement and the parties shall otherwise proceed with submission of the recommendation to the Secretary of Labor & Workforce Development in accordance with G.L. c. 150F, § 6F.

(11) Hearing Before the Arbitration Panel, Subpoenas

- (a) Hearing Before the Arbitration Panel. The arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The neutral arbitrator shall determine the order of presentation by the parties and shall have discretion and authority to decide all procedural issues that may be raised.
- (b) Third Party Intervention. The neutral arbitrator has authority to decide, in consultation with the parties, whether to permit third party intervenors to file any statements, memoranda, or briefs.
- (c) Order of Proceedings. The parties, including all TNCs engaging at least fifty (50) TNDs in the bargaining unit and the exclusive bargaining representative affected, may present oral and/or written statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The arbitrator shall have authority to require the production of such additional evidence, either oral or written, from the parties and shall provide at the request of either party a full and complete record of any such hearings, the cost of such record to be borne by the requesting party. If such record is created, it shall be shared with all parties regardless of



which party paid for it.

- (d) Written Submissions. Any TNC engaging less than fifty (50) TNDs in the bargaining unit shall have the opportunity to make a written submission to the arbitrator.
- (e) Neutral Arbitrator's Authority to Issue Subpoenas and Administer Oaths. The neutral arbitrator shall have the authority, upon delegation of the Department, to administer oaths, take the testimony of any person under oath, and issue subpoenas to compel the attendance of witnesses or the production of documents. A request for a subpoena shall be allowed unless it is overbroad, oppressive, or otherwise legally defective.
- (f) Briefs. Upon the close of the hearing, each party has the right to make an oral argument or to file a brief. The time limits on submission of briefs shall be established by the neutral arbitrator after consultation with the parties. Should the parties wish to make oral arguments, the order of proceeding shall be at the discretion of the neutral arbitrator.

(12) Arbitration Panel Recommendation

- (a) The arbitration panel shall make a just and reasonable determination of the matters in dispute and shall issue a determination that shall apply to all TNCs and the exclusive bargaining representative. In arriving at such determination, the arbitration panel shall specify the basis for their findings, taking into consideration, in addition to any factors recommended by the parties that the arbitration panel finds to be consistent with this chapter, including the following:
  - (1) whether the wages, benefits, hours, and conditions of work of the TNDs achieve the policy goals set forth G.L. c. 150F, § 1(A) *Findings and Policy*. This amount must take into account the real cost of living, it may substantially exceed any statutory minimum wage, and should be a sufficient amount such that the TNDs do not need to rely upon any public benefits;
  - (2) whether the most efficient way to provide benefits is through a portable benefits fund, and if so, how to best assess each TNC a portion of the costs of providing those benefits;
  - (3) the financial ability of the affected TNCs to pay for the compensation and benefits in question and the impact on the delivery of services provided by the companies;
  - (4) the establishment of reasonable dispute resolution mechanisms that will allow TNDs a reasonable expectation of uninterrupted work and permit TNCs to alter or terminate their relationships with workers if there is just cause for such; and
  - (5) comparison of peculiarities in regard to other trades or professions, including specifically,
    - (i) hazards of work;

- (ii) physical qualifications;
- (iii) educational qualifications;
- (iv) mental qualifications; and
- (v) job training and skills.

- (b) Service of the Recommendation. The neutral arbitrator shall send a copy of the Arbitration Panel Recommendation to the Department and to each party to the dispute. The neutral arbitrator shall send the report in accordance with 456 CMR 12.12: *Filing with the Department*.
- (c) Any recommendations agreed upon between TNCs and a TND Organization acting as exclusive bargaining representative of TNDs in the bargaining unit and/or any determination reached by an arbitration panel under this chapter shall be subject to review and approval by the Secretary of Labor and Workforce Development in accordance with G.L. c. 150F, § 6F.

(13) Compensation of Neutral Arbitrator

- (a) The neutral arbitrator shall be entitled to the compensation rate contained in the resume on file with the Department for each day or portion thereof spent on mediation, hearing, preparation, or issuance of the arbitration panel's report, including clarification, if any. The neutral arbitrator shall also be entitled to reimbursement for necessary and ordinary expenses. The costs for arbitration shall be equally divided between the parties unless they agree otherwise and provide evidence of such agreement to the Department.
- (b) The neutral arbitrator's bill showing the amount payable by each party must accompany the arbitration panel's report. The neutral arbitrator may submit interim bills to the parties in the course of the proceedings, copies of which shall be sent to the Department. The parties shall make payment directly to the neutral arbitrator.

**24.13 Grievance Mediation and Arbitration**

- (1) If at any time after the Secretary of Labor makes a final determination as set forth in G.L. c. 150F, § 6, the TND organization and the TNCs request mediation assistance from the Department for problems arising from the interpretation or application of the terms of the final determination, the Department shall process the request in accordance with the grievance mediation procedures set forth in 456 CMR 22.00, *Grievance Mediation in the Public and Private Sectors*.
- (2) If at any time after the Secretary of Labor makes a final determination as set forth in G.L. c. 150F, § 6, the TND organization, the TNCs, or both, request the Department to initiate grievance arbitration as provided for in the final determination or other agreement

between them, the Department shall process the request in accordance with the grievance arbitration procedures set forth in 456 CMR 23.00, *Conduct of Grievance Arbitration Proceedings*.

#### **24.14 Designation of Agents of the Department**

The provisions of 456 CMR 18.00: *Designation of Department Agents*, are applicable to all proceedings under 456 CMR 24.00, except that all references to G.L. c. 150E shall be considered references to G.L. c. 150F.

#### **24.15 Data Confidentiality and Safeguards**

Personal or confidential information received by the Board or the Department for purposes of the administration of G.L. c. 150F shall be kept confidential and safeguarded in accordance with applicable laws.

#### **24.16 Construction of Rules and Amendments, Severability.**

456 CMR 24.00 shall be liberally construed to effectuate the purposes and provisions of G.L. c. 150F as enacted. The provisions of 456 CMR 24.00 *et seq.*, shall be severable and if any provision herein is deemed unconstitutional or invalid, the validity of the remaining portions shall not be affected.

REGULATORY AUTHORITY, 456 CMR 2.00; G.L. c. 23, §§90, 9P, 9R; G.L. c. 150F, §§ 1, 2, 3, 4, 5, 6, and 10.