

BRIAN SANDOVAL
Governor

BRUCE BRESLOW
Director



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
TAXICAB AUTHORITY
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RONALD GROGAN
Administrator

JENNIFER DeROSE
Deputy Administrator

STAN OLSEN
Chairman

Members
DEAN COLLINS
BRUCE AGUILERA, ESQ.
JAMES E. CAMPOS
ROGER C. THOMPSON, Ph.D

MINUTES OF THE SEPTEMBER 22, 2016 BOARD MEETING AND HEARING

1. Call to Order

Chairman Stan Olsen called the meeting to order at 9:06 a.m. at the location of 2080 E. Flamingo Road, Suite 114, Las Vegas, Nevada 89119.

Present from the Nevada Taxicab Authority Board

*Chairman Stan Olsen
Member Dean Collins
Member Bruce Aguilera
Member James Campos
Member Roger Thompson*

Present from the Nevada Taxicab Authority

*Administrator Ronald Grogan
Deputy Administrator Jennifer DeRose
Chief Ruben Aquino
Attorney Janette Reyes-Speer
Supervisory Compliance Enforcement Investigator Chris Rivers
Compliance Enforcement Investigator Randolph Stefan
Compliance Enforcement Investigator Rylan Pangilinan
Compliance Enforcement Investigator Ferdinand Dela Rosa
Management Analyst II Annette Watson
TAC Coordinator Linda Holtan
Public Safety Dispatcher I – Adriana Lopez
Legal Secretary Amy McMahan*

Present from the Attorney General's Office

Deputy Attorney General Gary Mathews

Present from the Public

*Marilyn Moran, Western
Mia Moore, Western
Steve Gekace, Lucky
Marc Gordon, YCS
Michael Bailin, YCS
Johnny Lais, L3 Insurance Advisors
George Balaban, Desert*

Rich Frakes, Desert
Bob Winner, Desert
A.J. Schwartz, YCS
Cheryl Knapp, Bell
Jeff White, Sands Expo
John Mowbray, Frias
Dan Wade, Frias
John Marushok, Frias
Joel Willden, YCS
Kevin Aivaz
Andone Kahsay, ITPEU
T. Ruthie Jones, ITPEU

2. Pledge of Allegiance to the Flag

Chairman Stan Olsen led the Pledge of Allegiance to the Flag.

3. Compliance with Open Meeting Law

Administrator Ronald Grogan stated the meeting is in compliance with Open Meeting Law.

4. Public Comment

John Mowbray introduced Frias' new General Manager Dan Wade. Mr. Wade is an UNLV graduate and has a long history in Southern Nevada and in the hospitality industry.

5. Approval of the July 21, 2016 Board Meeting Minutes

All in favor – motion passes.

6. Discussion with Maria Soto, Traffic Manager for LVCVA, Regarding Recent Taxicab Service

Maria Soto reported excellent service with minimal wait times. She introduced Tom Gattuso who was present on behalf of SEMA.

Tom Gattuso, Trade Show Director for SEMA, stated they are projecting 170,000 registrants for the show. Mr. Gattuso explained SEMA is the largest annual event for small businesses in America. Mr. Gattuso stated they are most concerned about safety. They are closing Silver Drive to allow people to walk freely outside. They are sponsoring a lunch before the show to explain where pick up and drop off points will be during the show. Mr. Gattuso expressed appreciation to the Taxicab Authority for the service they provide.

Maria Soto stated they are keeping in contact with the industry leaders and with Metro regarding the SEMA event.

7. Discussion with Freddie Kirtley, Assistant Director, Landside Operations, McCarran International Airport, Regarding Recent Taxicab Service.

Freddie Kirtley was not present.

8. Discussion with Jeff White, Security Manager, Sands Expo, Regarding Recent Taxicab Service



Jeff White stated they always have a great response from the taxicab community with waiting times ranging from no time to five minutes.

9. Staff Report

a. Administrator's Report

Administrator Grogan stated that the loss of revenue to the Taxicab Authority, due to the loss of revenue to the industry, has resulted in the Taxicab Authority adjusting its budget by not filling open positions and reducing spending in just about every category of the budget by approximately 13%. It is estimated there will be about \$900,000 less revenue to the Taxicab Authority this year.

Administrator Grogan stated that since about June of this year the Taxicab Authority has seen an increase in the level of aggressiveness from taxicab drivers. Administrator Grogan stated there have been situations where the drivers are putting their hands on the officers and directing their aggression toward the passengers as well. Administrator Grogan also addressed an increase in long hauling. Administrator Grogan asked the industry to help in these matters.

Administrator Grogan addressed the rising number of applicants who cannot pass the background process to become permitted drivers, and acknowledged the industry's difficulty in staffing drivers.

b. Chief Investigator's Report

Chief Aquino stated for the month of August dispatch logged 1658 events. Enforcement wrote over 392 violations. The court resolved 317 citations. The vehicle inspectors did 579 inspections. The Taxicab Authority responded to over 500 accidents.

Chief Aquino stated that the Taxicab Authority, under the leadership of Sergeant Rivers, caught 16 gypsy operators since the last board meeting. Chief Aquino stated that the types of gypsy drivers being caught today are different from those in the past. Gypsy drivers today are often unregistered, unlicensed, uninsured, and have warrants for arrest. Also, some gypsy drivers have applied to be TNC drivers but have been denied.

Member Aguilera asked about the procedure for gypsy cabs. Chief Aquino stated that gypsy vehicles are impounded, cited into the Taxicab Authority Administrative Court, and may also be cited into Justice Court.

Member Aguilera suggested using a table of average fares of cab rides from the airport to major strip hotels to help deter long hauling. Administrator Grogan stated it is something the Taxicab Authority can look into and he is interested in the industry's thoughts on this. Administrator Grogan stated he believes the real time tracking system is going to be the most effective way to make an impact on long hauling. In this system, the riding public will have the option to choose their route of travel.



Chairman Olsen asked Chief Aquino the source of the statistic "30,000 TNCs." Chief Aquino stated that number comes from the NTA. Chairman Olsen stated he has not seen 30,000 state business licenses for TNCs.

Member Campos asked how reporting by TNCs to the NTA compares to reporting by the taxicab industry to the TA. Chief Aquino stated he does not have access to that information.

Chief Aquino stated his staff does report impounds involving TNCs to the NTA but does not receive any follow up information. Member Campos asked what is available as public record regarding TNCs. Chief Aquino stated he is aware that a TNC driver has to register with the NTA and the driver then receives an NTA issued decal that signifies the driver has been vetted. However, Chief Aquino does not know what this vetting procedure entails.

Chairman Olsen stated the Director of Business and Industry is over both the Taxicab Authority and the NTA, and perhaps Director Breslow could provide answers to these questions.

Member Aguilera asked if there is anything the Taxicab Authority Board should be putting forth at the next legislature regarding the TNCs. Chairman Olsen stated he believes they should start building a case to level the playing field and speak with the legislators.

c. Stats for June 2016

Annette Watson on behalf of the Nevada Taxicab Authority was present to answer any questions or concerns regarding the monthly stats. Ms. Watson stated that August statistics reflected the second hardest hit month of this year. Ms. Watson stated there was one less weekend in the month of August 2016 as compared to August 2015 but this does not account for the entire difference in stats.

Member Thompson asked how much are rides and revenues down for the year. Ms. Watson stated trips are down approximately 16% and revenue is down approximately 11%.

Jonathan Schwartz, YCS, and John Marushok, Frias, stated that the increase in passengers through the airport has been in lockstep with the increase of taxi rides for 30 years. There is no increase this year, and they attribute that and all decreases in trips this year to the TNCs. Jonathan Schwartz stated no public information data exists for TNC rides except for TNC trips to the airport.

Chairman Olsen asked Administrator Grogan to provide the TNCs trip data from the airport at the next board meeting.

d. Future Agenda Items

Administrator Grogan stated future agenda items will include holding a roundtable discussion with the industry to discuss aggressive drivers and leveling the playing field with TNCs.



10. Report of Legal Counsel

Deputy Attorney General Gary Mathews had nothing to report.

11. Workshop to Solicit Comments on Proposed Regulations – Leasing Taxicabs

Administrator Grogan stated that at the end of the July Board Meeting it was agreed that the staff would look into the legislative intent for the leasing regulations. After researching the matter he believes that the legislature’s intent was to allow for leasing the way it is done in the rest of the State.

Attorney Janette Reyes-Speer gave a presentation that addressed the legislative intent behind SB 376 and summarized the concerns of the industry. Attorney Reyes-Speer explained the legislative intent behind SB 376 is to allow leasing as it is done in the rest of Nevada; does not relieve the certificate holder or independent contractors of their obligations under Nevada statutes; and that certificate holders and independent contractors under lease agreement remain subject to similar laws as certificate holders and drivers. Attorney Reyes-Speer explained that these conclusions are based upon the language contained within the legislative counsel’s digest, and the similarities between the Nevada statutes used to permit leasing in areas supervised by the NTA and in areas supervised by the TA.

The legislative counsel’s digest stated, “Section 1.5 [codified into NRS 706.88396(1)] and section 1.7 [codified into NRS 706.88181] of this bill allow, in areas regulated by the Taxicab Authority, for a person to operate a taxicab as an independent contractor in a similar manner as in areas regulated by the Nevada Transportation Authority.” This language shows that the legislature intended for leasing in Clark County to be conducted similarly to the rest of Nevada.

NRS 706.88396(1) and NRS 706.473(1) contain similar language. NRS 706.88396(1) which governs areas regulated by the TA requires a lease agreement between the parties; the TA’s approval of the lease agreement; and limits the use of the leased taxicab to “a manner authorized by the certificate holder’s certificate of public convenience and necessity.” Similarly, NRS 706.473(1) which governs areas regulated by the NTA requires a lease agreement; the NTA’s approval of the lease agreement; and limits the use of the leased taxicab to be used “only in a manner authorized by the lessor’s certificate of public convenience and necessity.” Nevada statutes for both the TA and NTA use similar language when defining the use of a leased taxicab and outlining what is needed for a valid lease agreement.

Attorney Reyes-Speer stated that the legislature also used similar statutory language to define the liability of parties in a lease agreement. The Taxicab Authority compared the language in NRS 706.88396(3) with the language in NRS 706.473(3). Attorney Reyes-Speer explained that taxicab companies are jointly and severally liable when an independent contractor commits any action that causes damages or injuries to others. Further, NRS 706.88396(3) and NRS 706.473(3) place an affirmative duty on the taxicab companies at the beginning of their relationship with independent contractors that mandates taxicab companies to “ensure that the independent contractor complies with such provisions [of NRS Chapter 706] and regulations [adopted thereto].” Taxicab companies are liable for the actions of independent contractors both at the beginning and at the end of their contractual relationship.

Attorney Reyes-Speer stated this workshop is framed by the legislative intent that allows leasing in Clark County to operate similarly to leasing done in the rest of Nevada; that leasing under NRS 706.881 – NRS 706.885 does not relieve certificate holders or independent contractors from their obligations



under Nevada statutes; and that certificate holders and independent contractors under a lease agreement remain subject to similar laws as certificate holders and drivers.

Attorney Reyes-Speer discussed that the legislature under NRS 706.88181(1) mandates the Taxicab Authority create leasing regulations for the following purpose “(a) Carry out the provisions of NRS 706.88396; and (b) Ensure that the taxicab business remains safe, adequate, and reliable.”

Attorney Reyes-Speer then summarized industry concerns about the proposed regulations as discussed at earlier workshops.

Concern: Notify the Taxicab Authority about lease terminations within 48 hours. Attorney Reyes-Speer stated the purpose of this regulation is to ensure the driver has a legitimate right to act as an independent contractor, allow the Taxicab Authority to accurately input the length of each lease agreement into its real time data system, and to deny an independent contractor’s access to the respective taxicab in the event the lease is terminated before its expiration. Attorney Reyes-Speer stated this is important to ensure no one is driving a taxicab unless they are authorized to do so.

Concern: section 4.1 is vague when it states “except as otherwise provided in subsection 4, such a lease is not executed until it has been approved or preapproved by the Administrator pursuant to this section.” Attorney Reyes-Speer stated this language is consistent with NRS 706.88396(2) which states, “A certificate holder who enters into a lease agreement with an independent contractor pursuant to this section shall submit a copy of the agreement to the Taxicab Authority for its approval. The agreement is not effective until approved by the Taxicab Authority.”

Concern: Consideration within submitted templates. Attorney Reyes-Speer stated there only needs to be a section in the template allowing for consideration to be paid in exchange for the use of the taxicab. The Taxicab Authority does not propose that the taxicab companies insert a fixed consideration amount in its template. Leaving a blank for the consideration amount in the template should suffice. Attorney Reyes-Speer clarified that a section for consideration needs to appear in the lease agreement.

Concern: Permitting cab companies to determine whether to allow independent contractor to also work on a TNC platform. Attorney Reyes-Speer explained that the legislative intent is to have leasing in Clark County operate similarly to leasing in areas regulated by the NTA. Attorney Reyes-Speer further stated that NRS 706.8827 addresses the purpose behind a CPCN which is to operate as a taxicab business. Due to this limitation, the Taxicab Authority has no authority to grant the industry’s request.

Concern: Strike language in 5.1 that limits use of taxicab – manner authorized by a cab owner’s CPCN. Attorney Reyes-Speer explained that this request is not consistent with legislative intent, and request goes beyond the authority given in NRS 706.88396.

Concern: Strike language in 5.1(g) that allows the Taxicab Authority in the lease agreement to add “other provision(s) necessary to protect the health and safety of the public.” Attorney Reyes-Speer explained that this only applies to provisions within the lease agreement; that any additional language must satisfy the purpose - to protect the health and safety of the public; and that the Taxicab Authority remains limited by statutory authority. Attorney Reyes-Speer further stated the Taxicab Authority



believes this is consistent with NRS 706.88396 where it mandates the Taxicab Authority to ensure that the taxicab business remains safe, adequate, and reliable.

Concern: NRS 706.88499: prohibition only forbids employees not independent contractors from working simultaneously as TNCs. Argument is that this silence may be interpreted as permitting the independent contractor to simultaneously use the leased taxicab for both taxicab rides and TNC rides. Attorney Reyes-Speer addressed this argument and stated that administrative leasing statutes create authority under which parties may act. Absent a statute, an act may not be committed. For instance, leasing in Clark County was not permitted until the Legislature passed SB 376. SB 376 authorized cab companies in Clark County to lease taxicabs to independent contractors. There needs to be specific language authorizing independent contractors to simultaneously use leased cabs for taxicab rides and TNC rides. There is none found. The use of leased taxicabs is limited under NRS 706.88396 which states, “The taxicab may be used only in a manner authorized by the certificate holder’s certificate of public convenience and necessity.”

Concern: Section 9.1 submission of daily trip sheets – does this allow for electronic submission? Attorney Reyes-Speer stated NRS 706.8844 specifically allows trip sheets to be in electronic form. NRS 706.8844(1) states, “A certificate holder shall require the certificate holder’s drivers to keep daily trip sheet in a form to be prescribed by the Taxicab Authority, including, without limitation, in electronic form.” Attorney Reyes-Speer also stated that at the May 16, 2016 workshop, the Taxicab Authority agreed to accept electronic trip sheets sent by taxicab companies.

Concern: Section 10.5 requires cab companies to notify Taxicab Authority within three business days if the medallion is lost. Some argue that this time limit is unnecessary. Attorney Reyes-Speer stated that the timeframe benefits the Taxicab Authority in its ability to track its property, budget for additional lease medallions, and maintain updated reports of industry practices. Attorney Reyes-Speer stated that it also ensures timely reporting from cab companies. At current allocation levels, companies have no compelling reason to report lost medallions on a timely basis.

Concern: Section 11 – suggested language. Add “as” in between the words “operates” and “a.” Attorney Reyes-Speer stated that this change would not be consistent with language in NRS 706.88396 and legislative intent.

Concern: Section 11.1 makes an independent contractor who operates a taxicab which has been leased from a certificate holder will be deemed to be on duty for the purposes of sections 2 to 12, inclusive, of this regulation. Attorney Reyes-Speer stated the existing language is consistent with NRS 706.88396 and legislative intent. Attorney Reyes-Speer also stated that this language is similar to the NTA language for leasing in NAC 706.3763, “The Authority will deem that a driver of a taxicab who is operating a taxicab is on duty and working his or her shift and is subject to the provisions of this chapter and chapter 706 of NRS.”

Concern: Section 13 – request made to add definition of certificate holder. Attorney Reyes-Speer explained that NRS 706.8813 already defines certificate holder.

Concern: Section 16.2 requires cab companies to inform both drivers and independent contractors of violent crimes. Companies argue this requirement is too cumbersome. Attorney Reyes-Speer stated that



company procedures do not have to be taxing to be effective. Attorney Reyes-Speer offered ideas on how to notify independent contractors through existing means of communication.

Concern: Section 18: update location of where to place medallions. Change: left rear fender to left rear quarter panel. Attorney Reyes-Speer stated the Taxicab Authority acknowledges this language clarification.

Concern: Section 19: include language that requires placement of a mirror on the outside of the front door on passenger's side. Attorney Reyes-Speer stated this recommendation is noted.

Concern: Section 27: dress code. Attorney Reyes-Speer stated cab owners are not required to have a dress code for independent contractors. Attorney Reyes-Speer also stated section 27.1 has the words, "if applicable," to allow cab owners to decide whether or not to include dress code in their contracts.

Concern: Section 28 discusses rotation. Cab companies do not feel they have the power to make independent contractors comply with this requirement. Attorney Reyes-Speer stated NRS 706.88396(3) places an affirmative duty on cab companies to ensure independent contractors comply with Nevada statutes and regulations. Attorney Reyes-Speer also stated independent contractors will be individually held to statutory requirements under NRS 706.881 – NRS 706.885 and applicable regulations under NAC chapter 706. Taxicab Authority Investigators will give citations to independent contractors when needed.

Concern: Section 28.10 prohibits an independent contractor from operating a taxicab while taking drugs that may impair his or her ability to safely operate a taxicab. Attorney Reyes-Speer stated administration believes the current language is broad enough to include both legal and illegal drugs.

Concern: Section 28.12 discusses advertising on the leased cab. Cab companies are concerned about exerting control over the independent contractor. Attorney Reyes-Speer explained the purpose is to ensure that the condition of leased taxicabs do not change without the prior approval of cab owners. Attorney Reyes-Speer stated it may become costly if the cab owners must re-wrap or repair to take advertising off. Attorney Reyes-Speer explained this issue may be addressed through a contract clause between cab owners and independent contractors.

Concern: Section 34.1 allows independent contractors to lease taxicabs from multiple carriers. Concern is tracking the number of hours driven by independent contractors. Attorney Reyes-Speer reiterated the suggestion made by Chairman Olsen at a previous workshop to have independent contractors maintain a log documenting hours on duty.

Concern: Section 34.1(g) only permits paying passengers to ride in leased taxicabs. Attorney Reyes-Speer stated existing language is consistent with NRS 706.88396; legislative intent; and similar to NTA's leasing language under NAC 706.365(2) which states, "No person other than the driver may be allowed within any taxicab unless that person is a passenger who is actually being transported and is paying a fare, unless that person is another taxicab driver being transported to or from his or her shift as a taxicab driver." A change to this language is beyond the authority of the Taxicab Authority.

Chairman Olsen invited discussion on leasing regulations.



John Marushok, Frias, agreed that the limitations of 706 and the legislature brought about the regulations as they are proposed. Mr. Marushok expressed concern about section 34 allowing a driver to work for multiple companies at the same time. Mr. Marushok expressed concern that this obstructs his company's ability to know how many hours a driver is working in a particular day or week and therefore creates a threat to public safety and impacts Frias' liability.

George Balaban, Desert Cab, asked for clarification on the lease template in regards to allowing for multiple blanks in the lease agreement in the areas of consideration, vehicle to be leased, and the length of the lease. He asked whether he would need to provide each signed and executed lease to the Taxicab Authority on the day they are initiated. Attorney Reyes-Speer answered on behalf on the Taxicab Authority that yes each signed lease agreement needs to be provided. Attorney Reyes-Speer also addressed that lease templates can have multiple blanks and it is up to the companies to draft their lease agreement. Member Aguilera suggested an attachment for the variables that can be sent to the Taxicab Authority upon execution of the lease agreements. Mr. Balaban asked why the trip sheets for independent contractors need to be sent to the Taxicab Authority after each shift when this is not the procedure for employee drivers. Administrator Grogan stated he does not need every trip sheet rather only when requested. Mr. Balaban stated he is confident that Administrator Grogan will enforce trip sheets as represented but believes the Taxicab Authority's current position on this issue should be spelled out in the lease regulations. Administrator Grogan stated he will look into this issue.

Administrator Grogan added that it is clear that SB 376 used leasing regulations in Northern Nevada as a model. This concern with the trip sheets is part of that model.

Administrator Grogan stated that the Taxicab Authority is not concerned with the blanks in the lease agreements because these details are between the taxicab companies and the independent contractors. However, the Taxicab Authority will investigate any complaints about lease agreements.

Mr. Balaban asked how independent contractors will be regulated on their compliance with the 12-hour per day work rule. Administrator Grogan stated the overarching premise is that these lease regulations are consistent with NRS 706.881 through NRS 706.885. Member Aguilera commented on a device provided by his insurance company that tracks driving speed and driving time. Member Aguilera suggested using such a device in leased vehicles. Mr. Balaban stated his DT5 meter can provide that information and he would use that to track the independent contractor's hours. Administrator Grogan asked Mr. Balaban to sit down with him to discuss what DT5 can provide and perhaps this will satisfy the requirements of the 12-hour per day work rule.

Robert Winner, Attorney Desert Cab, stated he is concerned about the interpretation of lease agreement approvals. For example, the executed lease must be approved but a template may also be approved. Mr. Winner is concerned a different Administrator may read Section 4.1 to mean each lease agreement must be approved before it is executed. Mr. Winner stated if lease regulations are susceptible to different interpretations they need to be written out and explained. Mr. Winner raised concerns over when the independent contractor's shift starts. He asked if the 12-hour work rule begins when the independent contractor takes possession of the vehicle. Attorney Reyes-Speer answered that she believes the 12-hour work rule and the on-duty rule are issues of liability. Attorney Reyes-Speer stated that as of now the best



answer is for the independent contractor to keep a log or perhaps the companies having the DT5 meter can utilize that technology.

Jonathan Schwartz, YCS, stated Section 5(4)(II) is a lease killer. He suggested adding to the language that a supervisor can meet the independent contractor and inspect the vehicle or strike this language from the regulations. Mr. Schwartz was also concerned over Section 5(4)(III). He stated in some leases independent contractors will share a vehicle and so there will be more than one person on a lease. Mr. Schwartz addressed Section 10(3). He stated he sees no reason why there should be a limit. Administrator Grogan stated that Mr. Schwartz's discussion about Section 10(3) is beyond the authority of the Taxicab Authority. SB 376 itself states no more than half the medallions may be leased. Administrator Grogan stated that legislative language is not ambiguous to him.

Jay Nady, A-Cab, did not believe it would be possible to call independent contractors - independent contractors. He discussed only contracting with independent contractors that are LLCs. Mr. Nady believed that independent contractors will eventually argue they are employees because of the control cab companies have over them and their rates. Mr. Nady asked if he can lease to an LLC, a company, or a nonperson entity of any kind. Administrator Grogan stated there is language that states you can only lease one cab to one person. Mr. Nady stated he would only lease to a single member LLC. Member Aguilera asked if an LLC can hold a driver's permit and a medical certificate. These questions need further research.

Marc Gordon, Attorney YCS, stated he looked at SB 376 and found no restriction on how much of your fleet you can lease. Attorney Reyes-Speer stated that language in Section 10(3) applicable to the Taxicab Authority mirrors the language contained in NAC 706.375(3)(c) which regulates leasing for the NTA. The Taxicab Authority used language similar to existing leasing regulations used by the NTA in the Taxicab Authority's efforts to be consistent with legislative intent behind SB 376 and have leasing in Clark County operate similarly to leasing done in the rest of Nevada.

Chairman Olsen stated we will not know what works until we try it. Companies have the choice of trying leasing or not. Chairman Olsen stated legislative action will be needed in order to level the playing field. Chairman Olsen suggested the industry work with the Taxicab Authority to map out where they need to go with the next legislature.

12. Public Comment

No comments.

13. Adjournment

All in favor of adjournment – motion passes.



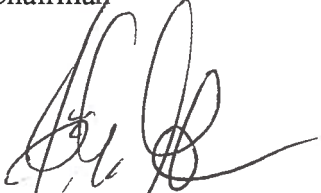
Approved by:



Stan Olsen
Chairman

10-27-16

Date



Ronald Grogan
Taxicab Authority Administrator

10-27-16

Date

