

## *Unfair Labor Practices*

### **Pacific 9, Port Truck Drivers Settle NLRB Organizing Case; Employee Status Involved**

**P**acific 9 Transportation Inc. and port truck drivers in California, who alleged in an unfair labor practice charge filed with the National Labor Relations Board that the company tried to block their union organizing efforts by using threats and intimidation, have settled the case, advocates for the drivers announced March 21 (*In re Pac. 9 Transp., Inc.*, NLRB Region 21, No. 21-CA-116403, *settlement 3/20/14*).

According to the settlement agreement, the truck drivers' allegations included "threats to employees to close the business and loss of their jobs" if the International Brotherhood of Teamsters were to succeed in its organizing efforts.

Advocates for the truck drivers claimed that by accepting the settlement, the company acknowledged that the workers are employees covered by the National Labor Relations Act and not independent contractors over whom the NLRB has no jurisdiction. This acknowledgment, according to one attorney, "sets the stage" for thousands of other port drivers who have been "misclassified by numerous companies."

The Teamsters filed the charge with the NLRB's Region 21 in Los Angeles on behalf of 156 drivers, who also alleged that the company interrogated them about "their union sympathies."

Pacific 9 Transportation did not respond to a Bloomberg BNA request for comment about the case.

**IBT Says Case Has Major Implications.** The Teamsters and groups that support the port truck drivers' ongoing effort to gain union representation said the NLRB's use of the term "employee" to describe the drivers throughout the settlement agreement is proof that they no longer can be illegally misclassified as independent contractors by Pacific 9 Transportation or similar employers.

Michael Manley, the staff attorney for the Teamsters who filed the charge with the NLRB, said in a March 21 statement: "The National Labor Relations Act, in Section 2(3), 29 U.S.C. 152(3), defines 'employees' to specifically exclude persons classified as independent contractors. As a result, independent contractors have no rights whatsoever under the NLRA—they have no right

to organize and no right to be protected from unfair labor practices."

"Thus, in order for the Region to propose this settlement, it had to first find that the drivers were employees," Manley said. "If the Region had found the drivers to be independent contractors, the Region would have had no statutory power or authority to propose, let alone accept, the settlement signed by Pac 9."

"The settlement's reference to 'employee' is the written confirmation of the Region's determination that, in their view, these drivers are employees," Manley added.

In the past three years, a growing number of U.S. port truck drivers have filed complaints with state and federal enforcement agencies to challenge employers that classify them as independent contractors when they actually are employees, labor advocates said in a report released in February (34 DLR A-5, 2/20/14).

**'Huge Impact Throughout Country.'** Julie Gutman Dickinson, a partner with Bush Gottlieb, a labor law firm based in Los Angeles, echoed Manley.

"The NLRB only has jurisdiction over employees, not over independent contractors," she told Bloomberg BNA March 21. "The bottom line is the NLRB region would not authorize issuance of a complaint and would not require the employer to enter into a settlement agreement. It would have dismissed the whole case if it did not determine the drivers were employees."

Dickinson, who provides outside counsel for the Teamsters, added that even though the settlement agreement includes a non-admissions clause, which states that by entering into the agreement Pacific 9 Transportation does not admit to a violation of the NLRA, "they have effectively acknowledged that these drivers are employees, and agreed to post a notice advising them that federal law gives them the right to form, join or assist a union."

She described the settlement as "consistent with well-established NLRB law" and said it will have a huge impact for misclassified port drivers throughout the country.

"There are thousands of port drivers in the Port of Long Beach and the Port of Los Angeles," Dickinson said. "This settlement acknowledges that the drivers are, in fact, employees and are misclassified." She said the settlement "sets the stage for what we fully believe is the employee status of the drivers throughout the ports who have been misclassified by numerous companies."

Nonunion drivers working for three trucking companies at the Port of Los Angeles conducted strikes in November, alleging unfair labor practices and retaliation by their employers in response to the truckers' efforts to form a union (227 DLR A-10, 11/22/13).

The drivers who work for Pacific 9 Transportation took part in the strike, although their unfair labor practice charge pertained to the company's actions earlier last year, Barb Maynard, a spokeswoman for Justice for Port Truck Drivers, a group in California, told Bloomberg BNA March 21.

Frederick Potter, international vice president and port division director for the Teamsters, said in a March 21 statement: "The 30-year debate is over, port drivers are employees. Now every port driver who wants to end their sweatshop conditions—get fairly compensated for every hour they work so they can drive safely, have sanitary bathroom facilities, clean drinking water, and medical insurance for their families—can bargain collectively to climb the economic ladder into the middle class."

**Settlement Stipulations.** The settlement requires the company to post for 60 consecutive days a page of the agreement on the bulletin board in the company break/

lunch room where other employment-related notices are posted.

It states that the NLRA gives employees the right to form, join, or assist a union; choose a representative to bargain with on the workers' behalf; act together with other employees for their benefit and protection; and choose not to engage in any of these protected activities.

The notice also states that Pacific 9 Transportation will neither prevent workers from exercising these rights nor ask them about their support for a union.

"We will not threaten you with closure of the facility and loss of your job if you choose to be represented by or support a union," the notice said. "We will not in any like or related matter interfere with your rights under Section 7 of the [NLRA]."

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*Text of the unfair labor practice charge is available at <http://op.bna.com/dlrcases.nsf/r?Open=rsmh-9hesmk>.*

*Text of the settlement agreement is available at <http://op.bna.com/dlrcases.nsf/r?Open=rsmh-9heslp>.*

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