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Scrutiny grows over truckers' listing as employees or contractors

By Laura Hautala
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A recent settlement between a Los Angeles port trucking company and its drivers may seem unremarkable, but the workers' lawyers and union forces are calling it a vital win.

No money will change hands in the agreement reached last month. Pacific 9 Transportation Inc. will simply post a notice in the workplace informing drivers of their right to engage in union activities free from retaliation. "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 poster will read in part.

But truck drivers count it as a win because they couldn't have inked the settlement with Pacific 9 without the National Labor Relations Board's determination that they are in fact employees of the company, not independent contractors.

"The threshold issue is that the NLRB has jurisdiction over employees," said Julie Gutman Dickinson, a partner at Bush Gottlieb in Glendale who serves as outside counsel for the International Brotherhood of Teamsters. The union helped the Pacific 9 truck drivers with their NLRB case.

Truck drivers who work on a contract basis but who say they are really under the control of one company have increasingly turned to regulatory bodies to address their concerns. The NLRB doesn't keep track of how many charges it receives from truck drivers who say they're misclassified, but at least two more are pending in Southern California. The Labor Commissioner's office has received more than 500 complaints of unpaid wages from truck drivers who say they're misclassified since April 2011, and has found 11 companies in violation of the law.

The drivers complain they have to pay a vehicle lease, maintenance costs and all their taxes but they don't have the

freedom to set their own schedules or run deliveries for other companies. That might change with more attention from the NLRB and other regulators.

"I think that it is gradually going to start bringing up the standards," said Matthew M. Sirolly, director of the Wage Justice Center in Los Angeles. Sirolly has helped truck drivers win unpaid wages through the Labor Commissioner's office.

This battle over employment status looms large at ports throughout the country: Are short-haul trucking companies bilking the drivers who pick up and drop off shipments at the port by calling them independent contractors? Or are they giving drivers the opportunity and freedom to run their own businesses?

Beyond that question lies a legal reality affecting union participation and the ability to file wage and hour lawsuits. Employees can join a union and seek unpaid wages as a class, but contractors can't.

As a result, truck drivers are pursuing cases in every regulatory body. At the NLRB, they seek employee status so they can engage in union activity. At the U.S. Department of Labor and the state Labor Commissioner's office, they seek employee status so they can pursue unpaid wages. At the state Employment Development Department, they seek employee status so they can receive unemployment insurance.

Even the IRS can have a say, because if a company misclassifies its drivers as independent contractors, they could owe taxes.

Stacey McKee Knight, a partner at Katten Munchin Rosenman LLP in Los Angeles who represents trucking companies, said the regulatory push is directly related to union organizing.

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vocal in that this is a priority for them," she said.

McKee Knight said many truck drivers want to be indepen-

dent owner-operators. She also noted that government agencies have an interest in finding the drivers to be employees because it generates fines and taxes.

"It is a full frontal assault on the owner-operator industry," she said.

But lawyers for truck drivers say some drivers earn less than minimum wage under this model after taxes and all their paycheck deductions.

Several agencies have at some point found misclassified drivers, and some cases are now on appeal. The owners of Seacon Logix Inc. have appealed a labor commissioner decision, and the case awaits briefing in the 2nd District Court of Appeal.

Meanwhile Ana Cisneros, Sirolly's colleague at the Wage Justice Center, is working with the Labor Commissioner's office in a civil court case against Seacon that will try to enforce separate judgments from the agency on behalf of several truck drivers.

"What it appears happened is [the owners] abandoned operations under Seacon," Sirolly said. "It's a similar workforce servicing the same customers, but it's in physically a different location. Unfortunately, it happens a lot."

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