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Misclassification Flouts Drivers' Union Rights, NLRB Claims

By **Vin Gurrieri**

Law360, New York (April 22, 2016, 3:50 PM ET) -- A National Labor Relations Board regional official has accused a trucking services provider company of committing unfair labor practices by misclassifying its drivers as independent contractors in order to block the Teamsters from organizing them.

Regional Director Olivia Garcia, who heads the NLRB's Region 21 office covering Southern California, issued a complaint on April 18 alleging that Intermodal Bridge Transport Inc. violated the National Labor Relations Act when it misclassified its drivers. Under the NLRA, independent contractors don't have the right to organize a union.

The complaint alleged that the classification of workers as independent contractors is, itself, a violation of federal labor law because it interferes with the workers' rights under Section 7 of the NLRA to organize and collectively bargain.

"Since at least March 24, 2015, [Intermodal] has misclassified its employee-drivers as independent contractors, thereby inhibiting them from engaging in Section 7 activity and depriving them of the protections of the [NLRA]," the complaint said.

The complaint was based on an unfair labor practice charge issued by the International Brotherhood of Teamsters. The union filed an initial charge in August and subsequently filed two amended charges, the most recent of which was last month.

In a statement Thursday, the Teamsters called the regional office's complaint "historic," and said it represents a determination by the regional office that misclassifying drivers is in and of itself a labor law violation.

"The complaint will lead to an historic trial where for the first time, a judge will determine whether the act of misclassifying drivers in and of itself violates the NLRA," said Julie Gutman Dickinson, an attorney for the Teamsters Port Division.

Since only employees have the right to organize a union under the NLRA, Gutman Dickinson said that port trucking companies nationwide, including Intermodal, have adopted a strategy of misclassifying employees as independent contractors in order to prevent them from organizing.

"It is effectively telling workers that they cannot unionize, and thereby interfering, restraining and coercing them in the exercise of their very basic rights to choose whether or not to form a union," Gutman Dickinson said. "The prosecution of the complaint by the general counsel of the NLRB will send the message loud and clear to the trucking industry that misclassification carries a high price."

In addition to the misclassification allegations, the regional director's complaint claimed that Intermodal's managers and supervisors made unlawful threats against employees that they would lose their jobs if they supported union activities, improperly interrogated some employees about their union leanings, and promised more work for workers if they refrained from supporting a union.

Intermodal must file an answer to the complaint by May 2.

A representative for Intermodal did not respond to a request for comment Friday.

Counsel information for Intermodal was not immediately available.

The case is Intermodal Bridge Transport v. International Brotherhood of Teamsters, case number 21-CA-157647, before the National Labor Relations Board.

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