

# INTERNATIONAL MARITIME

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By Bill Mongelluzzo

## WHO'S DRIVING THE DRIVER?

Labor groups say their study shows port drayage drivers are being misclassified as independent operators

**THE TEAMSTERS UNION** says it may not need to require that port drayage operators become company drivers because the drivers already are, in fact, company employees.

Change to Win, a coalition of labor organizations supported by the Teamsters, is teaming up with the National Employment Law Project, an advocacy group for worker rights, on a study that alleges motor carriers are misclassifying drivers as independent contractors for commercial gain.

"The Big Rig: Poverty, Pollution and the Misclassification of Truck Drivers at America's Ports" argues many of the nation's 110,000 harbor truck drivers are "highly vulnerable to misclassification."

It's a new wrinkle in the battle being waged in the courts and the legislative arena over drivers serving the ports of Los Angeles and Long Beach, and it brings to the ports an argument that's been swirling through parts of truckload and parcel business as organized labor and state regulators look at how the trucking industry uses owner-operators.

Reclassifying independent contractors as employee drivers, through legislation or changes in the law, would create a shortcut to unionization of the drivers. Federal law prohibits the unionization of independent contractors, but companies with employees can be unionized.

The report recommends U.S. ports adopt

uniform rules requiring motor carriers to own the trucks used in harbor drayage and employ the drivers directly.

The Port of Los Angeles has an employee-driver mandate in its clean-trucks program, but that concession requirement was enjoined by the U.S. District Court in Los Angeles. The American Trucking Associations sued to block the employee-driver mandate on the grounds that federal law prohibits ports from regulating interstate trucking. The case is under appeal to the U.S. Court of Appeals for the 9th Circuit.

The Big Rig report also recommends Congress approve the Clean Ports Act of 2010, sponsored by Rep. Jerrold Nadler, D-N.Y., which would allow ports to regulate harbor trucking to promote safety, efficiency and environmental stewardship.

Curtis Whalen, executive director of the ATA's Intermodal Conference, said the Teamsters and NELP are using the study to promote passage of the Nadler bill. "This study is an attempt to put some facts into the bill," he said.

Government agencies say they lose mil-



lions of dollars a year in tax revenue when employees across various industries are misclassified as independent contractors.

To demonstrate misclassification in harbor trucking, the report analyzes the behavior of motor carriers and their contract drivers, benchmarking those activities against Internal Revenue Service regulations. The report details the daily

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procedures of the average harbor trucking company, suggesting motor carriers at each step impose requirements on drivers that constitute an employer-employee relationship. The report’s authors surveyed 2,183 drivers at seven large container ports.

For example, companies often require

truck inspections, drug testing for drivers and detailed record-keeping. Motor carriers determine how, when, where and in what sequence drivers pick up and drop off containers. Trucking industry executives say such requirements are mandated by federal or state law, especially requirements related to safety.

Greg Steffle, a Southern California transportation attorney and president of intermodal trucking company Rail Delivery Services, said demonstrating employer control normally requires proof the company engages in these activities for commercial gain. “If the government requires the motor carrier to do certain things, that activity cannot be used to show control,” he said.

But Rebecca Smith, an NELP attorney, says contracts the group studied go “beyond what the law requires.” NELP and Change to Win see an even brighter line in a contractual requirement that owner-operators drive only for one motor carrier at a time. A truly independent contractor in most industries faces no such limitations.

And the report argues that in the real world, drivers who refuse assignments often face disciplinary action and may be denied future work. Employers say they will dismiss a driver for a day if actions affect efficient operations.

Steffle said an efficient company draws up a master plan for the drivers based on that day’s pickup and delivery orders. Drivers’ moves are sequenced electronically in order to eliminate “deadhead” or empty moves. If a driver refuses one of the calls in the rotation, the dispatcher will give the work to another driver.

However, Smith says dismissal of a driver who refuses a load for a day amounts to discipline.

One of the most passionate arguments of workers’ rights groups is that independent contractor drivers earn less than similarly situated employer drivers. The Big Rig report cites studies by academics that calculate the average annual take-home pay of drivers at \$28,000 to \$30,000 after expenses. Drivers normally work much

more than a 40-hour week to make ends meet, and normally don’t have medical insurance, paid sick days or pension benefits. Such studies sometimes refer to harbor trucking as “sweatshops on wheels.”

There are myriad factors that go into driver earnings, Steffle said, and at his company, weekly take-home pay of \$1,000 is common for drivers, and some earn much more than that, he said. **joc**

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### EMPLOYEES VS. INDEPENDENTS

■ Analysis of surveys of almost 2,200 drivers shows the following differences between employee drivers and independent contractors.

#### DRIVERS CLASSIFIED AS:

Employees	17.8%
Independent Contractors	82.2%
Direct Contractors	69.8%
Sub-Haulers*	12.4%

#### ANNUAL INCOME, net of truck expenses

Median	
Contractors	\$28,783
Employees	\$35,000
Mean	
Contractors	\$33,081
Employees	\$38,000

#### HOURS PER WEEK (all drivers)

Median	59.0
Mean	55.7

#### HOURS PER DAY (all drivers)

Mean	11.7
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#### WAGES PER HOUR (mean)

Contractors	\$11.91
Employees	\$14.71

#### HAVE HEALTH INSURANCE

Contractors	25.1%
Employees	65.0%

#### HAVE RETIREMENT PLAN

Contractors	7.3%
Employees	20.8%

\*Individuals who haul for another driver who owns or leases a truck.

Source: “The Big Rig: Poverty, Pollution and the Misclassification of Truck Drivers at America’s Ports,” National Employment Law Project, Change to Win