

Teamsters Union Takes New Tack on Drayage Carriers

Bill Mongelluzzo | Sep 17, 2013 8:30AM EDT

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When long-haul and local truck drivers at Toll Global Forwarding's Cartaret, N.J., location voted this summer in favor of representation by the Teamsters, it was the union's latest successful bid to organize workers on the waterfront.

A month later, the union's primary vehicle to organize owner-operator drayage carriers first in Los Angeles and ultimately nationwide — the employee-driver mandate provision of the Port of Los Angeles's clean trucks plan — broke down permanently at the hands of a Southern California court.

The defeat dealt by a U.S. District Court, which confirmed decisions by an appeals court and the U.S. Supreme Court that a local or state entity cannot regulate motor carriers engaged in international commerce, came as no surprise to the Teamsters.

What it did was close one avenue, but left many others open. Indeed, the Teamsters' game plan is much more diverse than it was five years ago, when the union threw its weight behind the Port of Los Angeles's clean trucks plan, beginning its foray to organize harbor truck drivers, some of the lowest-paid workers in the transportation industry.

Even before losing the employee-mandate ruling, the Teamsters already were engaged in organizing efforts on other fronts, on the local, state and national levels.

Those efforts include unionizing employee drivers at drayage companies in Southern California and New Jersey, supporting legislation at the state level to make it easier to organize drayage truckers, weighing in on a national clean-ports bill and consulting with attorneys nationwide that have filed so-called misclassification lawsuits on behalf of drivers.

While those strategies aren't new, the frequency and scope of the efforts indicate the battle to unionize tens of thousands of harbor truck drivers across the country is alive and well. "What is different now is the number of incidents," said Nick Weiner, Teamsters port campaign director. Recent demonstrations in Oakland, Southern California, New Jersey and Savannah indicate drivers across the country are emboldened by what is happening, he said.

The battleground — harbor drayage — is one of the most critical links in the movement of freight from port to market, and the stakes are sky high: wages for some 100,000 drivers rising as much as 50 percent, plus benefits packages, with union representation. The math adds up to soaring costs for cargo owners and other transportation interests.

The American Trucking Associations, which successfully challenged the Port of Los Angeles employee-driver mandate, isn't surprised the Teamsters are diversifying their arsenal after having failed to convince the courts that employee drivers are a necessary component of a clean trucks program.

"The smokescreen of environment only goes so far. It is good for sound bytes, but doesn't do well in court," said Curtis Whalen, executive director of ATA's intermodal conference.

If the Teamsters had prevailed in the Los Angeles clean trucks case, the union's efforts would have been much easier than the path they must take now. The vast majority of the drayage truck drivers at U.S. ports are independent contractors, known as owner-operators. Independent contractors, by law, can't be unionized.

The Teamsters' strategy in Los Angeles was to win the support of Mayor Antonio Villaraigosa, who was sympathetic to labor, and convince him to lobby for inclusion of an employee-driver mandate in the port's clean trucks program. It proved a difficult task, however, because the port had to convince the courts that only financially sound motor carriers with employee drivers would be capable of affording clean new trucks. As the case dragged on, more than 10,000 new trucks in Los Angeles and neighboring Long Beach were purchased and maintained in good working order even though most of the drivers are owner-operators.

If the employee driver concession requirement had been allowed to stand in Los Angeles, the Teamsters could have methodically attempted to organize drivers at labor-friendly ports such as Long Beach, Oakland, Seattle and New York-New Jersey. As momentum built, they would have been expected to venture into less-accommodating environments.

Although that effort failed at the port level, the Teamsters are pursuing a version of the strategy before state legislatures. A bill considered in Olympia, Wash., would have allowed the Port of Seattle to hire drayage truck drivers. That bill died in May, said Jim Dutton, vice president of the Washington Trucking Association. Adding a different twist to the legislative efforts, misclassification bills in New Jersey and New York were approved this year by the respective legislatures.

Misclassification is a tricky route to take because the plaintiffs, in this case the owner-operators, must demonstrate the companies exert as much control over their daily work activities as the companies would if the drivers were direct employees. The strategy in misclassification legislation is therefore to make it easier for drivers to prove company control of their activities.

The Teamsters believed they had a driver-friendly bill in New Jersey, one that, if signed into law, would have made it easier for the Teamsters to organize drivers in that state. But Republican Gov. Chris Christie, vetoed the bill last week. The New York legislation was struggling until it was changed to make it more difficult to prove employer control. Employer trucking associations then dropped their opposition, and the bill was passed and is awaiting action by Gov. Andrew Cuomo.

The Teamsters also are members of the Blue Green Coalition that is involved in the project to increase the height of the Bayonne Bridge to allow access to the Port of New York-New Jersey by large vessels. The Teamsters support the project, Weiner said, but insist that it includes clean air measures, including a ban on dirty trucks.

A clean ports bill at the national level co-sponsored by Rep. Jerrold Nadler, D-N.Y., and Sen. Kirsten Gillibrand, also a New York Democrat, would give ports more leeway to regulate trucking as part of their clean-air efforts.

“I think it is a good bill,” Weiner said. The bill before Congress would add clarity to port-sponsored clean air efforts. “The Los Angeles decision told the ports what they can’t do. The Nadler-Gillibrand bill tells them what they can do,” he said.

The legislation will face similar obstacles as the Los Angeles program because it attempts to protect local entities from federal pre-emption law, Whalen said. The Republican-controlled House of Representatives also opposes the bill, he noted.

The misclassification route is growing in popularity across the country in individual lawsuits, and is occurring in a number of industries where the use of independent contractors is common. This movement has the support of the federal government and some state governments because studies have alleged that employers are using independent worker status to avoid paying withholding taxes, thereby reducing state tax revenue.

The Teamsters, Weiner said, often consult with attorneys representing drivers in these misclassification lawsuits, although the Teamsters don’t initiate the cases. Misclassification lawsuits are lengthy and fact-intensive and involve demonstrating employer control in many aspects of a driver’s daily work schedule. Furthermore, rulings generally don’t set a precedent, but rather apply only to a particular company.

Misclassification is a complex issue because there is a “hodgepodge” of sometimes-conflicting state and federal laws, and decisions by various agencies, as to what constitutes employer control, Weiner noted.

Still, the U.S. Department of Labor sent out a memo about five years ago encouraging states to take up the misclassification issue, Whalen noted. The

result? Investigations initiated by various states, including California, are under way. A number of motor carriers have received letters requesting they turn over a large amount of information on their operations.

Answering these requests from state regulators can be overwhelming and costly, especially for smaller trucking companies, and no significant results have been forthcoming, Whalen said. “I’m not aware of anything other than harassment that has come forward,” he said.

The Teamsters are achieving success, though, when they attempt to organize the relatively few drayage companies that have employee drivers. Because the drivers are direct employees, there is no legal obstacle to unionization.

Such is the case with Toll Global Forwarding, where the Teamsters organized drivers in Southern California last year and in New Jersey this summer. The union earlier this year negotiated a contract that increased the California drivers’ wages \$6 an hour to \$19, and held the first contract negotiation in New Jersey last month.

Such victories were especially exciting — and important — for the Teamsters because a full-service logistics company such as Toll offers a variety of organizing opportunities in harbor trucking, warehousing and over-the-road trucking, Weiner said.

Although the Teamsters have made no overt attempts to organize warehouse operations in port-dependent regions such as Southern California, New Jersey or the Pacific Northwest, or in large inland distribution centers, controlling the supply chain from the port to the warehouse and beyond could be a long-term strategy, said John Husing, a research economist specializing in Southern California supply chain matters.

Leveraging the supply chain, he said, is likely being considered by the “deep thinkers” in organized labor.