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In its bid to organize harbor truckers, the union demonstrates there are more ways to attack than a pre-emptive strike

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Harbor trucking executives across the U.S. celebrated an important victory last fall when the U.S. Court of Appeals for the 9th Circuit struck down an attempt by Los Angeles to ban the use of owner-operators under the port's clean-trucks program.

Because independent contractor drivers, by law, can't be organized by labor unions, harbor trucking executives felt, at least for a while, that the relentless efforts of the Teamsters union to organize drayage truckers had stalled.

That euphoria didn't last long. The Washington state Legislature on Jan. 24 heard comments for and against a Teamsters-sponsored bill that would classify owner-operators as employees, and therefore subject to possible unionization.

Two days later, the Teamsters sponsored a national teleconference from Los Angeles in which a professor of labor studies, a Catholic priest and an official of the Transport Worker's Union of Australia, among others, charged Toll Global Forwarding with attempting to delay a vote by 74 employee drivers in Southern California to join the Teamsters union.

The Teamsters-sponsored events, coming rapid fire in the first month of the year, send a strong signal that the campaign the union sponsored last year — using a variety of activist efforts to organize harbor truck drivers from coast to coast — won't be mere road kill in 2012.

The Teamsters' strategy at the local level involves picking off individual trucking companies they believe are ripe for organizing and mounting a publicity blitz against those companies. Last year, the Teamsters targeted Ironbound Express in Newark, N.J. The Teamsters now has Toll's trucking operations in Los Angeles-Long Beach in its crosshairs.

The union also sponsors legislation at the state level in labor-friendly environments such as California, New Jersey and New York. Those bills normally involve attempts to classify

independent drivers as employees of trucking companies so the drivers can be organized legally. The Teamsters in 2011 supported a driver classification bill in California that ran out of steam in late summer and was placed in the inactive file, but it could easily be brought back this year.

Attempting to demonstrate misclassification of drivers is also part of the Teamsters' strategy at the national level. For the past two years, Rep. Jerrold Nadler, D-N.Y., has sponsored clean-ports legislation that would give ports the authority to regulate harbor trucking for certain purposes.

The strategy, similar to what Los Angeles attempted to accomplish in its clean-trucks program, attempts to circumvent federal pre-emption law that prohibits states and local entities from regulating the routes, rates and services of motor carriers engaged in interstate commerce. As in Los Angeles, the strategy would be for a labor-friendly port to push for employee drivers for safety or environmental reasons.

One common thread running through all of these efforts is that the union is tenacious in attempting to organize a pool of harbor truck drivers generally believed to number more than 100,000 nationwide. "When the Teamsters are in a fight, they don't give up," said Curtis Whalen, executive director of the intermodal conference of the American Trucking Associations, who has gone toe-to-toe with the union on a number of occasions.

The Teamsters might appear to have a leg up in their current efforts to organize the Toll drivers in Southern California. Because the 74 drivers are employees, and they drive company-owned trucks, there is no legal impediment to organizing them.

Indeed, the Teamsters have been attempting since last June to organize the Toll drivers, but waited until Jan. 23 to file a petition with the National Labor Relations Board for permission to hold an election.

Toll said it took the union almost seven months to get enough support among the drivers for an election. The Teamsters accuse Toll of using the bureaucratic NLRB process to slow the election process and, at the same time, to intimidate drivers that appeared to support unionization. Each party dismissed the other's claim as inaccurate.

One glaring reason harbor trucking companies fear Teamsters unionization of drivers involves wages under a union contract. The Teamsters say Toll's employee drivers earn 32 percent lower than similarly situated drivers in the industry, a charge Toll disputes.

Andrew Ethell, Toll's general manager of group corporate affairs, said the Teamsters want the company to be a leader in establishing higher wages for harbor truck drivers. The Teamsters argue Toll "should pay significantly more than our competitors in order to somehow lead a general increase in U.S. drayage wages," Ethell said.

Although picking off individual companies for unionization efforts is a more manageable strategy than waging campaigns on a national or even state level, it's painstakingly long and, in the end, affects only the companies in question. Toll, for example, has employee drivers, and the vast majority of harbor trucking companies across the country use owner-operators.

Attempting to prove misclassification of owner-operators at an individual company, such as the Teamsters tried to do with Ironbound Express last year, involves steep legal fees and, at the end of the day, the outcome sets no precedent. Each case is fact-intensive, based on whether a company exerts control over the drivers, and operational practices can differ substantially from company to company.

“That’s the problem the Teamsters face in attempting to build a national strategy,” Whalen said. “If they take the long view that they can build from these ‘onesies,’ it takes a long time.”

Attempting to foster a statewide classification of harbor truck drivers as employees, such as the Teamsters attempted last year in California and are engaged in this year in Washington state, would be more encompassing if the Teamsters succeed. By definition, however, intermodal port traffic involves interstate competition, so crafting state legislation that doesn’t violate federal pre-emption law will be tricky.

Nevertheless, the rewards of quickly bringing more than 100,000 harbor truck drivers nationwide into the Teamsters union are too numerous to pass up. The union appears to have significant resources available to support its efforts, so its three-year effort to organize the drayage industry will continue for at least another year.

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