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Driven to Poverty: Misclassification & Wage Theft in Southern California's Short Haul Trucking Industry

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Truck driving once provided a desirable blue collar occupation for America's working class. Truckers and their families were well paid, thanks in large part to high union density and federal and state regulation which placed limitations on cutthroat competition. Indeed, regulation largely grew out of the pervasive and unsustainable price gouging in the trucking industry in the early 20th century, which led California to place intrastate trucking under the auspices of the Public Utilities Commission in 1917, and the Federal government to place interstate trucking under the regulatory framework of the Interstate Commerce Commission with the Motor Carrier Act of 1935.¹ These regulatory frameworks placed limits on the number of carriers operating in the market, set prices through rate setting bureaus, and brought stability to the relatively volatile industry.² In fact in a 1965 investment assessment of the trucking industry, A. Joseph Debe of Chase-Manhattan Bank noted that regulation not only brought considerable stability to the trucking industry but also, "provide(s) incentive for well-managed companies to exceed the profitability of their particular regions through superior service and efficient utilization of labor."³ Firms no longer had to compete through pricing structures since rates were set by the regulatory agencies. The Teamsters Union thrived under these conditions and helped secure relatively high wages for truckers comparable with those of unionized workers in the steel and auto industries.

However, the efforts of a broad coalition of independent truckers, consumer advocacy groups, and deregulatory minded individuals in the Nixon through Carter Administrations successfully deregulated the motor carrier industry in the 1970's, largely as a way to combat the decade's battle against runaway inflation, culminating with the Motor Carrier Act of 1980, and California's A.B. 1232 in 1979.⁴ Deregulation removed barriers to entry, gave rate-setting bureaus considerable leverage to adjust rates, and exposed the trucking industry to the competitive pressures of an unregulated market economy. As a result, truckers and trucking firms across the nation have faced downward pressure on wages and rates, in a sense restoring the cutthroat competition the industry faced in the early 20th century.

These market-driven competitive pressures gave firms strong economic incentive to shift their labor force from company drivers to independent owner-operators.

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Unionized drayage firms tended to perish under such conditions. Unable to remain competitive, longstanding drayage firm California Cartage bowed out of trucking altogether in 1985.⁵ Cal Cartage president Robert Curry lamented, “There are just too many other non-union truckers on the road underselling us.”⁶ Joel Anderson, economic development specialist with the California Trucking Association, explained that, “Harbor freight rates have been driven down below the bone. Deregulation took away his (Curry’s) niche.”⁷ As the workforce shifted from company drivers to independent owner-operators, this seemingly minor shift in employment status meant that truckers would no longer receive protection under labor law and could no longer unionize.⁸ Independent owner-operators also provide their own rigs and cover fuel, maintenance and other incidental costs such as insurance and retirement. And though their gross income is comparatively higher than company drivers, independent truckers’ net income after expenses hovers around minimum wage rates.⁹

The drayage industry’s shift from company drivers to independent owner-operators somewhat coincidentally occurred in tandem with the massive influx of imports from Southeast Asia, which quite literally transformed ports like Los Angeles and Long Beach.¹⁰ In 1972 \$6.2 billion in imports and exports passed through the Los Angeles Custom’s District, by 1985 that number had ballooned to an astonishing \$63.8 billion.¹¹ Truckers, sapped of their collective strength through their ability to negotiate work conditions through collective bargaining contracts, and paid on a per-trip rather than hourly basis, were forced to endure lengthy uncompensated wait times at loading terminals. In a 1985 piece for the *Los Angeles Times*, Trucker Dennis Prosenko remarked that it was, “not unusual to sit down here four and a half to five hours waiting for a load.”¹² And Gonzales Sanchez noted that he would go, “...from one big line to another, there are big lines down here [at the ports], and there are big lines downtown at the rail yards. I spend a lot of time doing nothing but waiting.”¹³ These lengthy uncompensated wait times contribute substantially to the high degree of wage theft that plagues the drayage industry.

The problem is so pervasive that recent studies by the National Employment Law Project indicate nearly two-thirds of the nation’s 75,000 port truckers are misclassified as independent operators.¹⁴ Of those 75,000 port truckers nationwide, roughly one out of four or some 17,000 short haul truckers work in Southern California, moving containers from busy ports of Los Angeles and Long Beach to sprawling inland warehouse complexes and rail yards.¹⁵ And like most precarious workers, short haul truckers face discrimination and retaliation when organizing their workplace or when pressing for changes in their work conditions. When faced with an organizing campaign, Compton based Green Fleet Systems fired Mateo Mares and Amilcar Cardona for attempting to organize the workplace, encouraged anti-union employees to report on organizing attempts, coerced employees to sign anti-union pledges, and encouraged drivers to withdraw wage claims filed with the state.¹⁶ These workers also face outdated labor law, which not only makes the common law distinction between employee and independent contractor somewhat ambiguous, since it is measured by indices of control, but also prevents independent owner operators from forming a union of their own choosing and excludes these workers from protections under labor law.¹⁷ Though this untenable situation has spurred some change, such as favorable rulings for some of the 300 wage theft and misclassification cases brought before California’s Department of Industrial Relations between 2012 and 2013, California lags behind in addressing these inequities through state law.¹⁸

Though the ports of Los Angeles and Long Beach Clean Trucks Program of 2008 addressed some long standing issues, namely by phasing out port trucks built before 1994 in an effort to lower emissions, and placed a ban on drayage firms use of owner-operators, the American Trucking Association filed a complaint to the U.S. 9th Circuit Court of Appeals, which effectively blocked the employee mandate.¹⁹ Unfortunately for port truckers, the injunction exacerbates many of the issues facing these precarious

workers, since they are required to secure a compliant rig to continue to haul at Southern California's twin ports. These workers usually do not earn enough to pay for routine maintenance for their dated rigs, let alone to amass capital to secure newer compliant vehicles. As Los Angeles trucker Carlos Santamaria noted, "I used to see a lot of people drive messed up trucks. They often had to make a decision, 'do I fix my truck, or do I put food on the table?'"²⁰ Firms, rather than truckers, take advantage of equipment depreciation in the tax code and sizable grants made available through the ports. As such, independent owner-operators tend to lease compliant rigs from drayage firms rather than purchase their own outright. As the *Journal of Commerce* notes, "clean-trucks programs, which have resulted in many drivers leasing compliant trucks from trucking companies or their affiliates, have further complicated the independent contractor analysis," since the lessor often exerts a great deal of control over the lessee.²¹ Though the Clean Ports initiative proved to be a step in the right direction by removing unsafe trucks from the roads, the unaddressed issue of employment misclassification of a large percentage of independent owner-operators remains a policy oversight.

California law makers would do well to investigate and study the effects of New York's recent Commercial Goods Transportation Industry Fair Play Act signed by Governor Cuomo on January 10, 2014, and possibly to use the policy as a model for similar legislation at the state level. The Act draws a sharper distinction between employee and independent contractor than currently exists in common law distinctions, and imposes far stiffer fines for firms misclassifying employees.²² This policy largely grew out of a 2013 study, which identified some 24,000 instances of employee misclassification, discovered more than \$333.4 million in unreported wages, and nearly \$12.2 million in Unemployment Insurance contributions. The political climate is right for such change in California. Crafting policy to address these issues would remove ambiguity from dray truckers' employment classification, work towards eliminating wage theft that is rampant in the drayage industry, ease the burden on the state's Labor Commissioner's Office, reclaim potentially millions in payroll taxes for the state's coffers, and help to improve the lives of thousands of working class families in the state of California.

RECOMMENDATIONS

1. California policy makers should work with officials at the ports or the Public Utilities Commission to conduct a study on the full extent of misclassification in the drayage industry. This would help identify the number of misclassified port truckers, and place a number on the amount of payroll, Social Security contributions, workers' compensation, and other taxes currently not collected by the state and federal governments.
2. State officials should also study the effects of New York's Commercial Goods Transportation Industry Fair Play Act of 2014. The sharper distinction between employee and independent contractor, and financial disincentive to misclassify workers could help remedy the shortcomings of 2008's Clean Trucks Program. This could shift much of the workforce currently misclassified as independent contractors to employees, and would also allow these workers to take advantage of protections in labor law and to unionize should they so choose. This should also ease the burden on state agencies responsible for wage theft and misclassification cases.

⁵ John Broder, "California Cartage Co. to End Trucking Today," *Los Angeles Times*, 5 April 1985.

⁶ Ibid.

⁷ Ibid.

⁸ Refer to Jean-Christian Vinel's *The Employee: A Political History* (Philadelphia: University of Pennsylvania Press, 2013) for more information on the differentiation between an independent contractor and the common law definition of employee. See also Lafayette G. Harter, Jr. "Are They Employees or Independent Contractors?" *Labor Law Journal* (December 1978), for the history of NLRB and US Courts jurisprudence in employment classification cases.

⁹ Belzer, 37.

¹⁰ "Los Angeles County," *LA County Economic Resource Profile* (New York: NY, 1988), 15.

¹¹ Ibid.

¹² Tim Waters, "Growing Numbers, Long Waits at Cargo Terminals: A Rough Road for Independents," *Los Angeles Times*, 18 August 1985.

¹³ Ibid.

¹⁴ Figures cited in Ricardo Lopez, "Southern California Port Truck Drivers Loading up on Wage-Theft Cases," *Los Angeles Times*, 4 July 2014.

¹⁵ Data cited from "Confronting Freight Challenges in Southern California," Joint Field Hearing before the Subcommittee on Highways and Transit and the Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Committee on Transportation and Infrastructure – House of Representatives," Los Angeles, 20 February 2009 (Washington: U.S. Government Printing Office, 2009), xvii.

¹⁶ Dan Weikel, "Federal Board Accuses Port Trucking Firm of Labor Law Violations," *Los Angeles Times*, 19 June 2014.

¹⁷ Lafayette G. Harter, Jr. "Are They Employees or Independent Contractors?" *Labor Law Journal* (December 1978).

¹⁸ Ricardo Lopez, "Southern California Port Truck Drivers Loading up on Wage Theft Cases," *Los Angeles Times*, 4 July 2014.

¹⁹ Louis Sahagun, "Panel Throws Out Part of Port of L.A.'s Clean Truck Program," *Los Angeles Times*, 27 September 2011; Steven Greenhouse, "Clearing the Air at American Ports," *New York Times*, 26 February 2010. See "Legislation to Preempt State Motor Carrier Regulations Pertaining to Rates, Routes, and Services," Hearing before the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation – House of Representatives, One Hundred Third Congress, second session," 20 July 1994, (Washington: U.S. Government Printing Office, 1994) for more information on the hearings which reference several bills used to block regulation at the state level. See pages xvii-xix in "Confronting Freight Challenges in Southern California," Joint Field Hearing before the Subcommittee on Highway and Transit and the Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Committee on Transport and Infrastructure, House of Representatives, One Hundred Eleventh Congress, First Session, 20 February 2009 (Washington: U.S. Government Printing Office, 2009), for an overview of the Clean Truck Program at the Ports of Los Angeles and Long Beach, as well as an overview on the legal challenges to 2008's Clean Truck Program.

²⁰ Steven Greenhouse, "Clearing the Air at American Ports," *New York Times*, 26 February 2010.

²¹ Samuel Samaro & Sean Mack, "How Independent are Owner-Operators?" *Journal of Commerce* 27 February 2012.

²² Cited from, <http://www.labor.ny.gov/pressreleases/2014/april-30-2014.shtm>, accessed 7 April 2015.