Ninth Circuit Court of Appeals Ruling May Support Challenges to Validity of California Meal and Rest Break Regulations As Applied to the Trucking Industry

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By:
Ronald J. Holland
Jenna S. Barresi

In a decision making waves throughout the trucking industry, the U.S. Court of Appeals for the Ninth Circuit, in *American Trucking Association v. Los Angeles*, enjoined implementation of mandatory Concession Agreements for drayage trucking services at the Port of Los Angeles and the Port of Long Beach because it found that the Concession Agreements were preempted by the Federal Aviation Administration Authorization Act ("FAAA Act"). The decision not only presents a hurdle to union organizing efforts at the Ports, but it may also be used to challenge state meal and rest break regulations as they apply to the trucking industry.

Enactment of the Clean Truck Program

In June 2008, Los Angeles Mayor Antonio Villaraigosa signed the Clean Truck Program into law, requiring all 16,000 diesel trucks at the Ports of Los Angeles and Long Beach to meet enhanced environmental and other standards. The Clean Truck Program, which is supported by organized labor, has three main parts: (1) a progressive truck ban that prohibits pre-1989 trucks; (2) the Concession Agreements; and (3) a container fee to finance modernization of the truck fleet. The Concession Agreement requirements went into effect on October 1, 2008. The Port of Los Angeles Concession Agreement had a number of requirements for motor carriers, including that they: (1) remain licensed and in good standing; (2) enter and update information for trucks and drivers; (3) equip trucks with radio devices that would identify them when they entered a terminal; (4) phase out independent contractor trucks over a period of five years; (5) provide off-street parking outside of the Port; and (6) submit a maintenance and parking plan for each truck.

On July 28, 2008, the American Trucking Association (ATA) filed a federal district court action in California, arguing that it was entitled to an injunction against the enforcement of the Concession Agreements because they were preempted by the FAAA Act. The district court refused to grant the injunction, holding that the Concession Agreements were not preempted because of the FAAA Act's "safety exception." The Ninth Circuit reversed, remanding the case back to the district court to determine whether the Concession Agreements were preempted in their entirety or only partially.

The FAAA Act and Its Exceptions

The FAAA Act prohibits a state or city authority from enacting a law or regulation related to a price, route, or service of any motor carrier. The Ports did not dispute that the Concession Agreements were "related to a price, route, or service" of motor carriers. Rather, the Ports argued that the Concession Agreements were not preempted because they fell into the FAAA Act's "safety exception," which allows state regulations that are "genuinely responsive to safety concerns." Nevertheless, the Ninth Circuit found it "rather clear that some, indeed many, of the provisions of the Concession Agreements" were not safety related. In fact, the

court found that some of the regulations were an attempt to reshape and control industry economics, while others were environmental in nature. The court thus held that most of the provisions in the Concession Agreements were preempted by the FAAA Act and, therefore, the Ports should be enjoined from enforcing the Agreements in their entirety, at least until the district court can determine which portions of the Agreements, if any, are *not* preempted.

Labor and Employment Considerations Resulting from the Court's Decision

The impact of the Ninth Circuit's *ATA* ruling will be felt by trucking industry employers in two significant ways as it relates to labor and employment issues. First, employers doing business with the Ports of Long Beach and Los Angeles will no longer be bound by the independent contractor phase-out provision and the attendant unionization threat. Second, and perhaps more significantly, the Ninth Circuit, following the U.S. Supreme Court's decision in *Rowe v. N.H. Motor Transportation Association*,[1] has broadly interpreted the scope of the FAAA Act's preemption of state statutes. The*ATA* ruling thus puts into question whether California's meal and rest period laws are applicable to the trucking industry.

The Independent Contractor Phase-Out Provision: Designed to Promote Unionization Within the Industry

Of the several Concession Agreement terms considered by the Ninth Circuit, the independent contractor phase-out provision in the Los Angeles Agreement stands out as having a considerable impact on labor relations within the industry. Specifically, this provision required employers to transition from an independent contractor model to an employee model by December 31, 2013, with 20% employee status achieved by December 2009. Yet, as the court acknowledged, motor carriers cannot "simply flip a switch at the end of 2009 and have employees rather than independent contractors;" rather, they would have been "forced into making substantial changes commencing immediately."

The Concession Agreements were backed wholeheartedly by organized labor. The Teamsters Union, in particular, has been trying to organize Port workers. In a *Los Angeles Times* article published March 2, Teamsters ports division director, Chuck Mack, stated that port truckers were unionized before deregulation allowed the industry to utilize independent contractors. According to Mack, later efforts to unionize the drivers failed because, as independent contractors, they had no employer with which to bargain. The switch to an employee-driver system made union membership possible for the drivers, and it likely would have resulted in increased membership for the Teamsters. With implementation of this provision on hold, the Teamsters are not likely to see this membership increase any time soon.

The ATA Ruling Calls into Question the Continued Validity of California's Meal And Rest Break Rules As They Are Applied to the Trucking Industry

The *ATA* ruling also calls into question the validity of California meal and rest break rules as plaintiffs have attempted to apply them to the trucking industry. California Labor Code section 512 mandates that an employer provide an employee with a 30-minute meal period before the completion of the fifth working hour and provide an employee who works more than 10 hours an additional 30-minute meal period before completion of the tenth hour. Although the issue is currently before the California Supreme Court, at least one appellate court has held that an employer must *ensure* that all meal breaks are taken and must compensate the employee for any missed meal periods with an additional hour of pay.

The court's broad ruling in *ATA* could support the argument that the FAAA Act preempts California's meal and rest break laws as applied to the trucking industry. Specifically, the FAAA Act preempts those state laws that "relate to" industry employers' prices, routes or services, which would be affected by enforcement of California's meal and rest break laws. For example, if a driver has to stop in the middle of a shift (and possibly in the middle of his or her route) to take a mandatory meal break, this would delay delivery of freight to customers. Freight operations are carefully designed to allow drivers to reach intermediate destinations (*e.g.*, company terminals or a customer's warehouse) where lunch breaks can be safely taken without impeding the complex, multi-step transportation process needed to timely deliver freight to its ultimate location. While the driver is having a meal, freight arriving from many locations can be consolidated and reloaded for the next stage of its transportation, with a new load being made available for the drivers to transport back to their home terminals. This scheduling is designed to optimally use the drivers' time and company equipment and to schedule on-road operations to avoid high-congestion periods.

Further, requiring intermodal drivers to stop short of their intended destination for a meal or rest break can disrupt or delay the entire transportation process. Because it adds to the time needed to complete the overall operation, it pushes driving times into congested periods or requires employers to utilize more equipment and drivers (also adding to congestion) to meet critical deadlines. Service options may be curtailed, *i.e.*, one-day delivery becomes two-day, etc. From the drivers' perspective, a forced, untimely meal period requires them to stop at inconvenient, possibly unsafe, locations en route and forces them to use their time less efficiently. This is precisely the sort of interference with carriers' services that the FAAA Act is designed to prevent.

Nor do California's meal and rest period regulations appear to fall within the motor vehicle "safety exception" to FAAA Act preemption. In order to fall within the motor vehicle exception, a law must be "genuinely responsive to" a motor vehicle safety concern, not merely "reasonably related to" a motor vehicle safety concern. Nowhere in the relevant case law or statutory text or the legislative history is there *any* indication that California's meal and rest period laws are specifically related to — much less genuinely responsive to — motor vehicle safety concerns. Indeed, these laws do not even prohibit employers from not providing meal and rest breaks to their employees; they only require that employers provide an extra hour of compensation when such breaks are not provided.

Conclusion and Recommendations

For now, it appears that southern California port drivers will be able to retain their independent contractor model, avoiding costly operational changes and an immediate unionization threat. However, in an effort to maintain the employee transition timetable in the Los Angeles Concession Agreement, the Ports may request rehearing by the Ninth Circuit *en banc*, to attempt to lift the injunction. Regardless of the outcome of an *en banc* ruling, the stakes raised by organized labor and the ruling's potential effect on application of the state's meal and wage laws to the trucking industry make it likely that one or both parties will seek U.S. Supreme Court interpretation before these issues are resolved.

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[1] 128 S. Ct. 989 (2008).

Ronald J. Holland is a Shareholder in Littler's San Francisco office. Mr. Holland is co-chair of the Transportation Industry practice group. Jenna S. Barresi is an Associate in Littler

Mendelson's Atlanta office. Littler's Transportation Industry practice group represents a variety of employers in the airline, trucking and railway industries. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Holland at rholland@littler.com, or Ms. Barresi at jbarresi@littler.com.
