

BN            FedEx Heads Toward Crash With Drivers in Job Status Lawsuits  
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By Laurence Viele Davidson and David Mildenberg

Aug. 7 (Bloomberg) -- FedEx Corp. is speeding toward a collision inside an Indiana federal courthouse where drivers at the company's ground-delivery unit are demanding full-time status.

The court is weighing suits filed by 150 independent contract drivers who say they are treated as full-time employees and should be paid as such. Limiting the FedEx ground delivery unit's use of contractors may wreck its chances of gaining on larger rival United Parcel Service Inc. The unit helped FedEx take as much as 19 percent of the ground delivery market while UPS has fallen from 82 percent to 70 percent in the last decade.

Losing the battle could flatten the company's model of using workers who are self-employed and don't get benefits or paid time off. FedEx may have to buy as many as 15,000 drivers' trucks for \$45,000 apiece. That \$630 million bill could jump even higher if health care, pension costs and back pay are added.

``Treating any particular class of workers as independent contractors is, in many ways, an all-or-nothing proposition,'' said expert Carey L. Bartell, a labor lawyer at Reed Smith in Chicago. ``If you're right, you avoid certain expense and hassle. If you're wrong, however, you can lose big.''

Microsoft Corp. settled legal claims by contract workers in 2000 for \$97 million. FedEx spokesman Maury Lane said comparing the contractor suits to Microsoft's settlement is unfair because the software company's workers had to report to work at Microsoft offices and sit at a company desk. FedEx says contractor drivers set their own hours and work how they want.

The FedEx cases are before a federal judge in South Bend, Indiana, who will decide after a hearing later this month whether the claims of contractors from 29 states should be combined in a single lawsuit. If the suit goes forward, the court will decide if the law allows for making the jobs full time.

#### Teamsters Disputes

The lawsuit is of one of several disputes between the Memphis, Tennessee-based company and the Teamsters union. The union on July 24 sent a former FedEx contract driver to a U.S. Congress committee to testify about working conditions.

FedEx, which has 280,000 employees, gave the court in Indiana e-mails between union officials and lawyers to show the unions are driving the lawsuits.

``Both the Teamsters and plaintiffs attorneys have targeted FedEx as a way to generate revenue, and they have proven time and time again that they will say and do anything to achieve those

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results," Lane said in an e-mail.

While organized labor has a similar interest in workers' rights, the unions aren't funding the litigation, said lead attorney Lynn Faris in Oakland, California. The drivers claim fraud and illegal exclusion from retirement plans and denial of holiday pay and other benefits accorded full-time workers.

'A Sham'

'What they have now is a sham,' Faris said in an interview. 'It's illegal.'

David Welker, a Teamsters' campaign coordinator for the parcel and small-package division, said there is a two-front battle for workers' rights in Congress and in court.

To obtain permission to sue on behalf of all 15,000 drivers, the workers must show their cases have common facts and legal issues. To win the lawsuit, they must prove that FedEx exerts the same amount of control over the contractors as regular employees in areas such as work schedules and appearance.

Beyond the legal wrangling, the fates of drivers such as Theo Fleming in Jackson, Mississippi, hang in the balance.

Fleming, 36, makes about \$75,000 a year as a FedEx ground delivery contractor. He says that by the time he deducts costs including fuel, maintenance and paying for replacement drivers when he's sick or on vacation, he clears only about \$30,000.

'They are constantly taking, taking, taking,' said Fleming.

#### Four Routes

Not all of his counterparts feel the same way. FedEx says only a fraction of the 15,000 contractors are critical of the system.

Terry Collier in Ellenwood, Georgia, says he grosses \$250,000 a year, has several employees making deliveries on his four routes and plenty of autonomy.

'You've got to want to do this, to get in and out of the truck every day, said Collier, 38. 'The business is all about if you care or not.'

FedEx lost a similar case in California where a state court in Los Angeles ruled FedEx owes 200 drivers \$5.3 million in expenses. The case is being appealed. Gannett Co. won a similar claim last year when newspaper carriers in Kentucky lost a bid to have the National Labor Relations Board classify them as full-time employees.

The ground unit's contractor model has broadened FedEx's appeal to small businesses, which historically relied on UPS, said Donald Broughton, an A.G. Edwards & Sons analyst in St.

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Louis, who has a ``buy'' rating on FedEx. FedEx's system contrasts with that at UPS, the largest employer of Teamsters. Atlanta-based UPS employs its drivers full time and owns the trucks.

``FedEx Ground can grow faster in the contractor model because capital costs are lower with contractors buying the trucks,'' he said.

The case is In re FedEx Ground Package System Inc. Employment Practices Litigation, No. 05md527, U.S. Northern District of Indiana (South Bend).

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