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# Newspaper carriers dispute 'contractor' label

Civil lawsuit alleges the Register should pay carriers as regular employees

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Attorneys presented sharply different versions of the job of a newspaper carrier Monday as a lawsuit challenging the Orange County Register's right to pay carriers as independent contractors got underway in Superior Court.

In his opening statement, Daniel J. Callahan, the attorney representing 5,000 current and former carriers, told jurors that the Register hired, supervised, trained and dismissed carriers as if they were regular employees.

"The bottom line is there's nothing independent about what they do," Callahan said.

The carriers maintain that they should be treated as Register employees and are demanding \$88 million in back wages, unreimbursed expenses and repaying fines for delivering papers which were late or damaged.

Todd Theodora, the attorney who represents the Register and its parent, Freedom Communications, Inc., said the carriers are paid to perform a service, which they can do themselves or sub-contract. Theodora said The Register has paid the carriers \$100 million since 1999.

"At all times the carriers have the right to control how they do their work," Theodora said.

The lawsuit, filed in 2003 but just now coming to trial, contends the Register violated wage and hour labor laws by failing to properly compensate the people who work in the middle of the night to deliver papers before 5:30 a.m.

In his opening argument, Theodora pointed to a 12-page contract that every carrier signs. The contract says, in essence, that the Register expects papers to be delivered in a timely, readable fashion, but it's up to the carriers to figure out how to do their job.

Callahan called the contract "a scam" that the Register created to avoid paying workers compensation insurance and to protect the company from liability if the carriers get in a car accident while they're delivering papers.

He played jurors a clip of a video that purports to show a carrier driving on the wrong side of the road to deliver papers, a procedure he said the Register advocates to save time.

"It's really dangerous," Callahan said. "Many people have been injured and the Register has taken the position: They're independent contractors."

Theodora did not address the wrong-side driving allegation during his opening statement, but when asked about it after trial recessed for the day, he said: "The carriers decide how they do their work. They decide how to drive."

Industry legal experts said this is the first California class-action case involving newspaper delivery personnel. Newspaper carriers in other states have filed similar complaints, which resulted in conflicting outcomes.

In 1998, the U.S. 10th Circuit Court of Appeals ruled that newspaper carriers for the Kansas City Star were not entitled to be paid as employees because they had signed contracts to work as "delivery agents" who were independent contractors.

In September, a Massachusetts state appeals court ruled that a laid-off carrier for the Worcester Telegram & Gazette was entitled to collect unemployment payments, rejecting the newspaper's contention that he had worked as an independent contractor.

Unlike typical independent contractors such as plumbers, Callahan said, the carriers need no special skills to deliver papers. In fact, they undergo a five-day training session when they start work.

"Training is a hallmark of employment, not an independent contractor," he said.

Theodora told jurors he will show that some carriers have contracts to deliver papers on eight routes each day, evidence that they are free to decide how to do their jobs.

"They can pick anyone they want to do their routes and they train their substitutes," he said.

But Callahan projected company documents onto a screen that he said show the Register approves and trains substitutes.

As evidence of the Register's control, Callahan noted the company instructs carriers to carry a flashlight, a pencil and a spare tire, to avoid slamming their car door or playing their radio too loudly so they don't disturb customers.

Theodora countered that the advice, which appears in the company's standard operating procedure manuals, stems from its long-time experience and expertise in customer satisfaction.

"The Register can specify results, provided the other person has the right to control how to achieve results," he said.

Like full-time employees, Callahan said, much of the carriers' work occurs on Register premises, when they sort and prepare the papers for delivery in a company warehouse. Theodora countered that carriers are free to prepare their papers at home.

Callahan said the carriers are required to adhere to a strict schedule, bagging and bundling papers according to explicit instructions and following a predetermined route that includes specific orders, such as when to put the paper behind a screen door or when to toss it over a fence.

Theodora said the Register requires a strict schedule because the newspaper is a perishable product and late delivery is bad for business. But he also cited the example of a carrier who was able to break from his route to go surfing.

Callahan said the newspaper requires carriers to deliver other products that it distributes, such as the Wall Street Journal and USA Today. Theodora said carriers can also deliver competing papers, such as the Los Angeles Times, and they can run their route in any order.

The trial is expected to last 10 weeks.

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