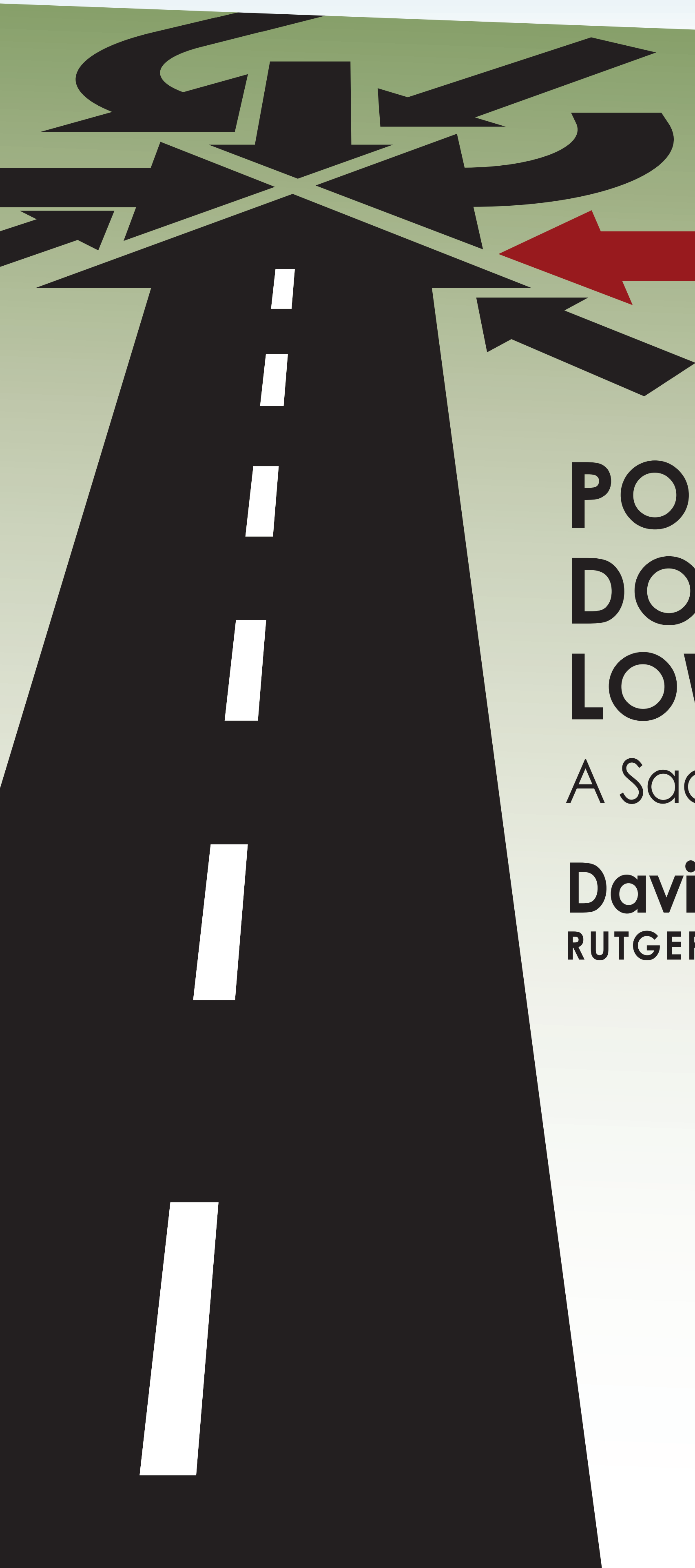

PORT TRUCKING DOWN THE LOW ROAD:

A Sad Story of Deregulation

David Bensman
RUTGERS UNIVERSITY

Dēmos

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David Bensman, Ph.D., is Professor of Labor Studies and Employer Relations at Rutgers University. He studies American labor history, education reform, and the impact of global economic integration on working people. He is the author of *Central Park East and Its Graduates: Learning by Heart*, *Rusted Dreams: Hard Times in a Steel Community*, *The Practice of Solidarity: American Hatters in the Nineteenth Century*, and *Who Built America? Volume II*.

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PREFACE

David Bensman's report is an extraordinary piece of work that explains the link between economic deregulation and the degradation of the workplace. As industry after industry was deregulated in the late 1970s and 1980s, the promise was of more competition, more innovation and more consumer choice. But as the Dēmos series of reports on deregulation documents, often the most significant impact is on the quality and reliability of work. Often the cost savings are mainly in the form of reduced wages and employee benefits. And the innovations sometimes actually result in a less attractive or reliable product from the perspective of the consumer. The impact on the industry as a whole is characteristically greater instability. This is the case in industries as diverse as electricity, airlines, finance, and trucking.

What these industries have in common is that they are not naturally competitive. Market discipline does not function to discipline producers and provide the promised cornucopia of choices to consumers. Rather, opportunism and scandal are rampant; prices are unstable; high quality producers often lose money and are driven out of business. And business seeks to recoup by gouging customers, recreating islands of monopoly, complicating price structures, and treating employees as an avoidable cost-center. The impact on innovation is paradoxical. After deregulation, we have less comfortable airlines; dirtier trucks; wild swings in energy prices; and a less reliable financial system.

But it is workers who often bear the brunt, and nowhere is this more powerfully demonstrated than in the case of trucking. Before 1980, the trucking industry was not without problems. But it provided a reliable system of freight carriage and a source of secure employment. With deregulation, employment in the trucking industry has become unreliable. In an environment of unstable, hyper-competition, carriers shift risks to drivers, who are increasingly treated as casual labor.

A driver who is an independent contractor must bear the costs of maintaining the truck and is typically paid by the load. This labor system, in term, sets up a chain of perverse incentives. Rather than modernizing communications technology and purchasing new, cleaner trucks, the industry shifts costs to drivers, who in turn can afford only antiquated and heavily polluting trucks. A standard job is turned into a substandard one.

The extreme case of this dynamic, recounted in detail by Bensman, is port-truckers—the drivers who pick up loads from the containers at the nation's ports. Rather than using modern computer technology to guide them to a precise rendezvous with a load, truckers wait in line for hours, engines on, spewing diesel particulate, fouling the air and sickening the inhabitants who live near our great ports. A process that might be performed with far greater efficiency is done with great waste of time and resources, because workers are bearing the cost.

As Bensman demonstrates, re-regulating the terms of port trucking could reverse the vicious circle. Raising standards and certifying only carriers that met them could turn the drivers back into regular employees and create incentives for carriers to modernize their equipment. This is a political struggle that has already begun at several of the nation's ports, where coalitions of trade unionists, community groups, environmentalists, and progressive local mayors are working to raise standards. But since port conditions are central to national security and since trucking deregulation was legislated nationally, it will take a change in Federal policy to fully reverse three decades of damage.

This report is a model of extensive research, policy analysis, political insight and narrative writing. We at Dēmos are proud to feature it in our series.

Robert Kuttner
Senior Fellow
Co-Director and Editor, Dēmos Project on Regulation

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EXECUTIVE SUMMARY

Port trucking, the segment of the freight movement industry that carries 80 percent of shipping containers between ports and warehouses or distribution centers, is an essential cog in the global trade system, but it suffers from excessive, destructive competition.

As a result of deregulation, the general public is placed at risk when sharing the road with increasingly dangerous and unsafe trucks and chassis, sometimes carrying overweight loads that have led to dangerous and deadly highway accidents. Unregulated trucks driven by so-called independent contractors have also added to a growing environmental crisis because of the inability of individual drivers to afford clean truck technology.

Low-paid drivers' financial inability to invest in clean trucks has led to a growing environmental crisis that pumps tons of dangerous toxins into the air residents near the port and along freight routes. The health impacts of diesel particulate matter in the air is negatively impacting human health and plaguing our health care system with otherwise preventable diseases like childhood asthma.

In addition to concerns over public safety, environmental impacts and the costs to public health systems, the quality of port trucking jobs has eroded significantly, forcing tens of thousands of working families into poverty. Drivers are misclassified as independent contractors by their companies in order to strip them of state and national labor and employment law protections, and to avoid financial liability for vehicle operations. As independent contractors, drivers are paid by the load and are responsible for all costs associated with truck ownership and maintenance. Without employment law protections, they lack the ability to raise rates when expenses rise, negatively impacting not only their own working conditions, but the well-being of their families, residents of communities located along freight routes, and the public at large.

Lack of incentives for licensed motor carriers to address the many negative impacts of trucking deregulation has also led to an increasingly inefficient drayage system that has failed to invest in improved communications systems and goods movement operations.

MAJOR FINDINGS

It was the deregulation of the port trucking industry, created by the Federal Motor Carrier Act of 1980, which created an unsustainable freight moving industry in the United States by:

- Making highway travel more hazardous
- Triggering an environmental crisis
- Degrading the quality of port truck driver jobs
- Externalizing enormous costs onto the public
- Creating an inefficient logistics and goods movement system

Highway travel has become more hazardous for the general public as a result of the Federal Motor Carrier Act of 1980.

- Nearly 78 percent of New Jersey port truck drivers reported receiving an unsafe chassis in the last 12 months. Thirty-five percent reported receiving more than 10 unsafe chassis in that same time period.
- On average, 40 percent of containers at Miami's port were overweight in 2006; in some weeks that figure reached 70 percent.

The port trucking system has not kept pace with advances in clean truck technologies, creating an increasing environmental crisis.

- Diesel emissions cause significant harmful health impacts, releasing particles into the air that are carcinogenic and dangerous to the environment and the health of nearby residents.
- Trucks made in 1997 and before emit .10 grams of fine particles per million, ten times the standard for 2007 trucks.
- Half of all trucks driven by port truck drivers were manufactured in 1997 or before. Worse yet, one out of every 14 trucks were manufactured before 1990.

The quality of jobs for port truck drivers has decreased substantially since the Federal Motor Carrier Act was implemented in 1980.

- Drivers are on the job five days a week, from ten to twelve hours a day, earning an average annual income of $28,000 in 2008.
- As "independent contractors," port truck drivers do not receive health care or any contributions to a retirement fund.
- Independent contractors are responsible for owning and maintaining their own trucks, which includes lease payments, fuel costs, tire repairs, truck maintenance, road licenses, taxes, insurance, tolls and traffic fines.

The Federal Motor Carrier Act of 1980 has shifted significant costs onto the public, costs which were previously shouldered by the shipping industry.

- Diesel emissions cause significant harmful health impacts, estimated by one study to cost the state of California $20 billion annually.
- More than a quarter of port truck drivers surveyed in New Jersey rely on public clinics or emergency rooms for health care because they lack health insurance.
- Drivers' family members often forgo routine preventive care that leads to serious health problems, putting additional and avoidable strains the health care system.

The goods movement system in the U.S. has become increasingly inefficient.

- Business logistics expenses for the port trucking industry increased for a fourth straight year in 2007, by $91 billion over the 2006 total.
- The current system does not incentivize warehouse companies to build facilities closer to ports or distribution centers to provide adequate parking space for container trucks making deliveries.
- A lack of communications infrastructure at the ports prevents dispatchers from communicating with port truck drivers while they are making deliveries to coordinate incoming and outgoing container movement.

The failure of the deregulated port trucking system has been recognized by three separate North American port agencies that have taken some action to mitigate the problems caused by the Federal Motor Carrier Act of 1980.

- In 2005, Vancouver adopted a truck licensing system, which ultimately required drivers to become employees rather than 'independent contractors.'
- In 2008, the Los Angeles Harbor Commission adopted a Clean Trucks Program in an effort to reduce toxic emissions in the air and stabilize the drayage industry.
- Also, in 2008, the Long Beach Harbor Commission adopted environmental standards for firms operating out of that port.

POLICY RECOMMENDATIONS

In order to address the many problems created by the Federal Motor Carrier Act of 1980, this report recommends three major areas for policy reform.

Improve quality of trucking jobs by cracking down on companies' misclassification of port truck drivers as independent contractors in order to avoid compliance with employment laws.

- Establish state study commissions to investigate the misclassification of workers in various industries with a focus on port drivers.
- Prohibit employers from calling workers independent contractors in sectors where it's unlikely that workers would be in business for themselves.
- Create inter-agency task forces to increase enforcement.
- Implement federal regulations to create the presumption of employment, protect workers from retaliation by employers and levy penalties heavy enough to discourage repeated law-breaking.

Improve air quality and reduce public health hazards and associated costs by establishing stricter federal diesel emission standards.

- Impose container fees on cargo owners whose shipments come through the ports to pay for the replacement of old equipment.
- Ban old trucks from port facilities on a schedule that will eliminate all trucks manufactured before 2007.
- Regulate and license trucking companies to encourage firms to meet environmental goals.
- Finance retrofitting and replacement of old trucks, scrapping the oldest vehicles so they cannot be used elsewhere.

Protect the driving public by enforcing highway safety standards, including weight restrictions and the new 2008 chassis standards for container trucks.

- Adequately fund the Federal Motor Carrier Safety Commission to enable greater rates of inspections and enforce current highway safety standards.
- Federalize enforcement of weight standards to remove reluctance of local authorities to enforce standards for fear of driving shipping elsewhere.

I. INTRODUCTION

Deregulation has created an unsustainable freight moving industry in the United States. All the hallmarks of deficient public policy can be found along America's logistics chain—bad jobs, environmental degradation and injustice, wasted energy, economic inefficiency, public health problems, blighted real estate, inadequate infrastructure and holes in the domestic security net. The port trucking sector, or drayage industry,[1] which carries containers to and from (mostly from, in this import economy) ports to warehouses and distribution centers, is the most obviously broken sector in the industry.[2]

It is ironic that port trucking has become the poster child for destructive deregulation, because the passage of the bill that deregulated the trucking industry, The Motor Carrier Act of 1980, was hailed by liberals and the business community alike as a triumph of policy reform. Senator Kennedy and Ralph Nader led the reformers who charged that trucking regulation meant high rates for consumers, and monopoly profits for businesses. Large shippers lobbied Congress for an end to the rate setting and route planning which limited competition and drove up the cost of freight transport.[3] Civil Rights organizations argued that deregulation would lower barriers that impeded African Americans from gaining a just share of decent trucking jobs.[4] Despite these high hopes, deregulation has wrecked the drayage industry.

PORT TRUCKS HAUL ABOUT 80 PERCENT OF THE 50 MILLION CONTAINERS THAT MOVE THROUGH AMERICAN PORTS ANNUALLY.

Before 1980, trucking companies had to get a license from the Interstate Commerce Commission to haul freight to and from the ports. The ICC limited the number of trucks to assure stability; the resulting rate structure was sufficient for companies to earn stable profits while providing workers with decent wages with benefits. The International Brotherhood of Teamsters organized and bargained for most of the port truckers, who received wage and benefit packages comparable to those of autoworkers, steelworkers, and over-the-road drivers.

All this changed with deregulation. New companies entered the industry, hiring their drivers non-union. Established companies faltered. Some went non-union; others went out of business. The firms that triumphed adopted a new business model. They sold all or most of their trucks to the drivers, then contracted with them on a per-load basis.[5] The emerging independent contracting model meant trucking companies had few fixed costs, had no responsibility for workers' compensation, social security, and unemployment insurance taxes, and were able to obtain drivers' services without paying for health care costs or pension plans.

There has long been a vein of economic thought characterizing unregulated transportation markets as inherently destructive. According to this analysis, once an independent truck driver delivers freight to a customer (the front haul), it makes sense for him to agree to accept a low rate from a shipper to send freight back to the driver's point of origin (back haul). Eventually, these low backhaul rates become the market price. Competition tends to drive this price down to the driver's cost for the return trip. Since the rate is not high enough for the trucker to pay his maintenance bills, lease payments, and licensing fees, drivers skimp on service and maintenance, work excessive hours, and frequently leave the industry.[6] The port trucking market has mirrored this analysis since passage of the Motor Carrier Act.

WHILE DEREGULATION SUCCEEDED IN DRIVING DOWN RATES, IT CREATED UNINTENDED AND UNWELCOME PROBLEMS.

For the past quarter century, American shippers have benefitted from freight rates lower than those of the regulated era.[7] Lower rates, combined with the spread of containerization and the increased size of the ocean carriers that carry containers across the world's oceans, facilitated the rapid growth of global trade, which in turn spurred the growth of port trucking.[8] Today, port trucks haul about 80 percent of the 50 million containers that move through American ports annually.[9] China is the biggest source of shipments, so the West Coast ports, especially those of Los Angeles and Long Beach, have grown the most in recent years.

By 2002, these ports had become overwhelmed by the volume of trans-Pacific containers. In that same year, the Pacific Maritime Association locked out the west coast union longshoremen in an attempt to drive down the cost of loading and unloading ships. As a result of the labor strife and traffic delays, shippers began diverting freight to Gulf Port and East Coast ports.[10] There are now at least 70,000 port truckers, with 16,000 operating in LA/Long Beach, another 7,000 in the New York metropolitan area, and significant numbers at the ports of Houston, Jacksonville, Miami, Savannah, Charleston, Norfolk, Oakland, Seattle and Vancouver.[11]

While deregulation succeeded in driving down rates, it created unintended and unwelcome problems. First, it made highway travel more hazardous. The Motor Carrier Act of 1980 and the Interstate Commerce Termination Act of 1995 so reduced Federal oversight, and state regulation proved so ineffective, that truck accidents provoked public outrage. After only 19 years, the deregulation of trucking was partially reversed in 1999, when Congress passed The Federal Motor Carrier Safety Improvement Act, establishing the Federal Motor Carrier Safety Administration. Nine years later, the agency adopted robust regulations for chassis inspection and safety.[12]

Trucking deregulation also triggered an environmental crisis. In 1995, the Environmental Protection Agency acknowledged that deregulation had allowed truck emissions to get out of control, when it enacted the first federal standards for heavy diesel engine emissions. In 2000, the EPA also began regulating the sulfur content of diesel fuels, because sulfur damages emissions control devices, but the new rules only went into effect in 2007.[13]

The third negative impact of deregulation, the degradation of the labor market, began almost immediately after the Motor Carrier Act went into effect in 1980. Drivers who couldn't make a living as owner operators fled the industry, creating chronic shortages. Immigrants filled the ranks of the independent contractors.[14] Twenty-seven years after deregulation, the ranks of the independent contractors who are the backbone of the American logistics system include thousands of drivers with false social security cards, concealed felony records, and phony commercial drivers' licenses. In 2006, when the Department of Homeland Security did background checks on drivers at the ports of Newark and Elizabeth, in preparation for launching a new federal security initiative, it found that "of the 9,000 truckers checked, nearly half had evidence of criminal records. More than 500 held bogus driver's licenses, leaving officials unsure of their real identities," despite the fact that the Port of New York and New Jersey's pass system was supposed to screen out such drivers.[15] The Boston Consulting Group concluded that 15 to 22 percent of Los Angeles' "drayage drivers (were) ineligible to receive…certification" under Federal rules designed to enhance national security.[16] Port trucking had changed from a good union job to an industry of last resort—a place shunned by workers with alternatives.

The failure of the deregulated port trucking system has already been recognized by the agencies overseeing three of North America's ports. In 2005, Vancouver adopted a Truck Licensing System which set standards for the trucking companies and the trucks doing business at the port.[17] By 2007, after experimenting with a system that allowed trucking companies to use independent contractors as well as employees to haul freight, the Authority ruled that all new drivers would have to be employees rather than independent contractors.[18] In 2008, the Harbor Commission of Los Angeles adopted similar rules, after the courts had decided that the existing system of drayage was generating unlawful diesel pollution.[19] In Long Beach, California, the Harbor Commission adopted environmental standards and other regulations governing drayage firms, but did not require that drivers be employees.[20] These local actions were adopted despite repeated challenges from logistics firms, which argued that regulation would drive freight shipments to less-regulated ports.

It is time for national action so that the positive moves taken at three ports on the Pacific Coast are not undermined by destructive competition.

THE EMERGENCE OF INDEPENDENT CONTRACTORS

The story of how deregulation has broken the port trucking industry begins with the labor market. The emergence of a work force based on independent contracting speaks volumes about the neo-liberal labor markets of our time. In theory, an independent contractor is a businessman, trying to make a profit by offering flexible, even customized services. As a businessperson, he or she is supposed to compete with other independent contractors, not cooperate with them by establishing standards, as union employees try to do. Furthermore, since he is self-employed, he is not an employee. He is not covered by the laws and regulations that govern employment contracts. There is no Occupational and Safety regulation, no Fair Labor Standards, no Labor Relations protection. Theoretically, independent contractors don't need such things. They are free to enter into contracts that advance their interests.

Let us be clear about the difference between independent contractors and employees who are misclassified as such. "Independent contractors," according to leading experts, move "from employer to employer with no stability or employment security. A substantial majority of these individuals prefer this arrangement because it allows them to earn more in the short run and to learn by taking on new and challenging assignments that expand their professional networks."[21] These mobile professionals are different from contingent workers, who are "unable to find jobs that provide more security, higher pay, and access to benefits."[22]

In reality, independent contracting in many labor markets such as trucking, construction, warehousing, light manufacturing, and home health care, to name a few egregious examples, is a lot more like "contingent" employment than truly "independent contracting."[23] Consider port trucking.

When a worker decides he wants to become a port trucker, he goes to a trucking company office in one of the cities located near a port to ask for work. If he has a truck, a clean driving record and a commercial driver's license, the company will sign him up, for the industry has suffered a chronic shortage of drivers.

If he doesn't have a truck, the company manager may suggest to him that they visit a truck dealer, where the worker will be able to select a truck cab for his new career as an owner operator. (If he doesn't have legal documentation of his immigration status, the first step will be to buy fake ID's). The new driver will pick out a truck cab—usually an old one to keep down monthly payments—and sign a lease. Since the driver will rarely have much of a credit history,[24] the truck sales company relies on the port trucking company's promise of future work as the basis for approving the lease application. If the driver is unlucky enough to have landed in the hands of an unscrupulous—or low-road—trucking company, his boss will then take the lease back to headquarters and keep it in his files.

If the company is one of the better ones, the driver will keep the lease.

All independent contractors, regardless of the scrupulousness of the company they work for, must shoulder the burden of paying for not only his rig, but truck maintenance, tolls, road taxes, licenses, and fuel costs as well. From then on, this owner-operator will "independently contract" to drive for the trucking company by appearing at the dispatch station every day to receive his assignment. He will receive a written order to pick up and deliver a container from a warehouse to the port or vice versa, for a specified sum, which is supposed to be based on a percentage of the rate that the company has negotiated with a customer. Since the driver doesn't see the contract to haul the freight, he doesn't know if he is receiving the correct amount.

The key to the legal status of this labor system is that the worker is "independent" of any particular employer. One expert explains the difference between dependent and independent contractors this way:

> *While an independent contractor operates under its own authority, locates its own freight, and manages its affairs on its own, a dependent contractor operates under another motor carrier's authority, hauls that motor carrier's freight, and that motor carrier manages its affairs to a significant degree.*[25]

What kind of independence do port truckers have? Their dispatcher may hold their lease; he controls their access to work; and he forbids them to seek delivery orders from other companies.

After a strike in Vancouver in 2005, a government study commission concluded that Vancouver's owner operators had been misclassified as independent contractors. Instead, the Commission found, they were "dependent contractors," who were economically reliant upon individual trucking companies. By so ruling, the Commission cleared the way for the drivers to unionize as well as to come under the protection of labor and employment laws.[26]

The International Brotherhood of Teamsters has been challenging the "independence" of similar arrangements at the Federal Express Corporation for years. In December 2008, a California court issued a declaratory judgment upholding the contention of local Federal Express pick-up and delivery drivers that they were employees, not independent contractors. In their suit, the drivers alleged that Fed Ex forced them to buy their trucks from a designated supplier, paint the trucks in a way that indicated that they were part of Fed Ex, buy repair services from Fed Ex, and park their trucks—for a fee—on weekends and overnight on Fed Ex premises. The court ruled that the company had to pay the drivers $27 million in back pay. The IRS fined the company $319 million for misclassifying its employees in 2002. Nevertheless, the abuse of the legal fiction of independent contracting remains rampant in American labor markets.[27]

THE WORKING LIFE OF PORT TRUCKERS

The daily work life of a port trucker is a tale of woe.[28] Drivers are on the job five days a week, from ten to twelve hours a day, earning an average income of $28,000 per year. They don't receive health care and their "employers" don't contribute to any retirement fund. They bear all the costs and all of the risk of being in business for themselves. They pay for truck leases, for diesel fuel, for tires and tire repairs, for truck maintenance and repair, and for road licenses, taxes, insurance on their rig, tolls and traffic fines. When the price of fuel rises, their dispatchers collect surcharges from shippers but don't always pass the fees on to the drivers. If they get in an accident, they may find that their load wasn't insured, despite the fact that their trucking company had charged them for the insurance. This scam has sent more than one port trucker into personal bankruptcy.

Most port truckers wake up early in the morning and drive their rigs to the office of the trucking company, usually in the vicinity of the ports. At the office, they pick up the papers pertaining to an order, then they drive to the port to pick up a container to deliver to a warehouse. Less often, they pick up a container at a warehouse for delivery to the port. (Imports outstrip exports three-to-one.)

THE DAILY WORK LIFE OF A PORT TRUCKER IS A TALE OF WOE...THEY BEAR ALL THE COSTS AND ALL OF THE RISK OF BEING IN BUSINESS FOR THEMSELVES.

When a driver arrives at the terminal, he has to get on the end of a line of trucks. The trucks begin lining up hours before the gates open. If a ship has recently arrived, there will be a long line of trucks waiting. When the driver reaches the gate, he shows his identification card to the guard.[29] After the guard checks his credentials, he tells the driver to proceed to a lane where trucks wait to present their papers to terminal checkers. Finally, after waiting on two different lines, the driver submits his order number to terminal personnel.

Until recently, this was a matter of the driver handing over his papers to the checker, but some terminals have shifted to a system whereby the driver transmits the information via microphone. The checkers receiving this information are 50 yards away, inside the terminal office building. This change eliminates the need for paper, and decreases the chance that drivers will be forced to bribe the checker for access to his shipment.

After the driver presents his order, he may be to go to the "trouble desk" because there is a problem with the work order. There are a great variety of problems: sometimes it's a matter of fines that the trucking company has not paid for returning chassis or containers in bad condition; sometimes there's a charge that needs to be paid because a container was not picked up or returned within the time period allowed by the terminals. Other problems might concern the delivery order, insurance or customs.

WHEN THEY FINALLY PICK UP THEIR CONTAINER AND EXIT THE PORT, DRIVERS ARE SUBJECT TO TWO HEALTH-DAMAGING CONDITIONS.

Whatever the problem, terminal personnel will call the trucking company, the shipping line, the freight forwarder, the customer or the customs broker to straighten out the problem while the driver waits, his time unpaid.

If there is no problem, or when the problem has been resolved, the driver has to go to the chassis yard, where a terminal employee will attach a chassis to his rig. (The chassis is the wheeled platform that carries the container.) In the United States, and nowhere else, the chassis are provided by the ocean carriers, as a service to their customers. When not in use, they are stored in yards inside, or adjacent to, the port. Because no one makes money on the provision of chassis, and/or there is inadequate regulation, there is no incentive for the carrier lines or the terminals to keep them "roadworthy." According to federal legislation passed in 2005, chassis should be inspected annually, but the law was not implemented until the end of 2008.[30]

Since roadworthy chassis are in short supply, drivers don't always report directly to the chassis yard. If they notice a well-kept chassis being returned to the terminal by another truck, they often will follow that truck around the terminal so that they can have the good chassis attached as soon as it is disconnected. This scrounging after good chassis disrupts traffic flow in terminal yards, and is illegal, but it is a daily, if dangerous, fact of life.

When the driver has his chassis, he proceeds to the container yard and backs into the narrow slot where either a yard truck or a gantry crane is supposed to load a container onto his chassis. Often the container isn't there when the driver shows up. Usually, that's because it's been "lost"—it wasn't where it was supposed to be, and now a terminal employee is driving around looking for it. Our port trucker has to wait until the container is found and attached to his rig. Drivers are supposed to be paid for their waiting time if they have to spend more than two hours inside the terminal yard. But this requirement is subject to dispute, and drivers often don't get when they think they're entitled to.

When they finally pick up their container and exit the port, drivers are subject to two health-damaging conditions. First, they're inhaling diesel exhaust all day long, not only from their own vehicles but from other trucks in motion on the roads, or idling on lines at terminals and warehouses, but also from the ocean carriers burning low-grade bunker fuel while they're being unloaded and loaded at the berth; and from tug boats and diesel-powered yard equipment.

Diesel emissions cause significant harmful health impacts. In part, this is because 94 percent of the particles emitted when diesel fuel burns are "fine," that is to say, less than 2.5 microns in diameter. These particles are coated by more than 40 substances classified by the U.S. Environmental Protection Agency as "hazardous." Fifteen of these are certifiably, probably or possibly carcinogenic, according to the International Agency for Research on Cancer.[31] When these tiny bits of poison enter the human body through the lungs, they cause asthma, lung disease, lung cancer, and heart disease.

Second, drivers suffer stress that comes from not being in control of their working lives. Since they're paid by the load, rather than by the hour, their work day consists of interminable unpaid waiting; they wait at truck company yards, at terminal entrances, in container yards at ports, and at warehouses and distribution centers. Each time they go to the port, they spend on average two hours, most of it waiting. Drivers complain that the terminal employees look down on them for being non-union, for being Hispanic, for speaking with an accent. If a driver dares to complain, he may be made to wait longer, burning up his fuel and his meager profits; even worse, he could be banished from the terminal.[32]

FIRST, THEY'RE INHALING DIESEL EXHAUST ALL DAY LONG... SECOND, DRIVERS SUFFER STRESS THAT COMES FROM NOT BEING IN CONTROL OF THEIR WORKING LIVES.

After the driver passes through congested terminal exits, where the truck rig, chassis and container are supposed to be inspected, he encounters frequent traffic bottlenecks because road, bridge, tunnel and highway infrastructure for carrying imported goods has been overwhelmed by the past decades' explosion of manufactured imports, mostly from China.[33] When the drivers finally reach congested warehouse complexes, they may be denied access because they've arrived after their scheduled time, or after the warehouse is closed for the day.[34]

These working conditions—long hours, stress resulting from lack of control over scheduling and traffic, unpaid waiting time, prolonged exposure to diesel emissions, immersion in congested local and highway traffic—create numerous health problems. While the severity and frequency of these problems are impossible to quantify, given the fact that so many of the drivers and their families have little access to health care, drivers' self-reports indicate this is an issue which deserves further attention. More than half (58.6 percent) of surveyed New Jersey drivers reported that they suffered from "stress," and almost a fifth (18.6 percent) reported "high blood pressure." Truckers also complained of back pain and knee pain, lack of sleep, hemorrhoids, hearing loss, kidney problems and chronic headaches. It is not hard to understand how the difficult working conditions might contribute to each of these health problems.[35] Furthermore, since drivers often take unsafe containers out on the road, it is perhaps not surprising that nearly 20 percent of those surveyed reported suffering work-related injuries in the previous year. In almost 60 percent of the cases, they said, the company did nothing about the injury.

A recently-completed study by Harvard Medical School researchers indicates that truck drivers, including port truckers, generally have elevated mortality rates from lung cancer and heart disease, and suffer more injuries from accidents than the average population. These findings are consistent with previous studies relating diesel particulate matter exposure to lung cancer and cardiovascular disease.[36]

SINCE DRIVERS OFTEN TAKE UNSAFE CONTAINERS OUT ON THE ROAD, IT IS PERHAPS NOT SURPRISING THAT NEARLY 20 PERCENT OF THOSE SURVEYED REPORTED SUFFERING WORK-RELATED INJURIES IN THE PREVIOUS YEAR.

II. LOW EARNINGS AND EXTERNALIZED COSTS

Port trucking's reliance on poorly-paid independent contractors generates enormous public costs. In the language of economics, these are externalities, or costs shifted by economic actors onto others not directly involved in the transactions. These costs include, but are not limited to, highway accidents and traffic congestion, the health impact of excessive diesel emissions on people living alongside ports and freight routes, and the cost of health services for uninsured drivers and their families

EXTERNALIZED COSTS: HIGHWAY SAFETY

The drivers' low earnings and the fact that they are paid by the delivery, not by the hour, act as a constant pressure to squeeze an additional move into the day's work. This pressure can have unsafe consequences not only for the driver, but for the public as well**.** Drivers may accept unsafe chassis, ignore the fact that their containers are overweight, speed through local streets, run stop signs and traffic lights, tail-gate the cars in front of them, and unsafely pass slow-moving vehicles, All these actions contribute to the carnage on our nation's roads.

This problem sometimes begins at the terminals' chassis yards. If the chassis attached to a driver's rig is in bad condition, if, for example, it has a bad tire, the driver can refuse to accept it, in which case he may be told to go to the repair station and wait for a mechanic to correct the problem. Alternatively, he may be told to wait until a better chassis becomes available.

Shortages of roadworthy chassis are common. Drivers often receive bad chassis. When asked, "In the last 12 months, how often have you been given an unsafe chassis?," 77.8 percent of New Jersey truckers reported receiving an unsafe chassis. Worse, 35 percent said that they had received more than 10 unsafe chassis.

Because waiting for an unsafe chassis to be repaired costs the driver serious money, eleven per cent of surveyed drivers said that they had taken their last unsafe chassis on the road. If we project this proportion to the national total of container moves, each month tens of thousands of unsafe chassis are entering the nation's roads where they can break down, causing traffic jams, or even worse, traffic accidents. A well-publicized case involving the popular Cuban-born singer, Gloria Estefan, became a national symbol of this problem. On March 26, 1990, a tractor-trailer truck traveling on a highway in Pennsylvania in front of the singer's tour bus jack-knifed. When her vehicle jammed on the brakes, the container truck behind her could not stop and crashed into the tour bus, breaking two of the singer's vertebrae, and injuring other passengers. The cause: three of the brakes on the container truck's chassis wheels were inoperable. The chassis had been assigned to the truck driver by a chassis provider on a contract with Maersk International, the world's largest ocean carrier company. Since Maersk had a contract with mechanics to insure that its chassis were roadworthy, the company had to pay most of the damages.[37]

In December 2008, the Federal Motor Carrier Safety Administration adopted regulations and standards aimed at ensuring that all chassis that leave the ports are maintained well and inspected regularly.[38] Whether or not these regulations will be enforced remains to be seen.

SHORTAGES OF ROADWORTHY CHASSIS ARE COMMON...77.8 PERCENT OF NEW JERSEY TRUCKERS REPORTED RECEIVING AN UNSAFE CHASSIS. WORSE, 35 PERCENT SAID THAT THEY HAD RECEIVED MORE THAN 10 UNSAFE CHASSIS.

Port trucking endangers public safety in another way**:** overweight containers are commonplace. Containers weighing more than 80,000 pounds are not supposed to use interstate highways, but enforcement is feeble. At the ports, no one weighs the containers. Neither the crane operators who load the container onto the chassis nor the drivers know their weight. Overloaded trucks can't stop in time to avoid accidents; they topple on curves; they tear up roads and highways. Such was the case in Miami, in 2007, when Luis Ribera's truck, carrying a container loaded with marble, 20,000 pounds overweight, turned over as he attempted to merge onto I-95 from the Palmetto Expressway.[39] Traffic delays caused by such accidents are a multibillion dollar tax on the economy.

ON AVERAGE, 40 PERCENT OF CONTAINERS WERE OVERWEIGHT IN 2006; IN SOME WEEKS, THAT FIGURE REACHED 70 PERCENT.

While overweight containers are ignored at most ports, they've received attention in Miami ever since the newly-crowned Miss Florida of 2003, Shaunda Pender, was nearly killed by a container truck filled with avocados which swerved to avoid a pickup truck and tipped over, falling on Ms. Pender's car. Since that incident, authorities have instituted random weight checks. On average, 40 percent of containers were overweight in 2006; in some weeks, that figure reached 70 percent.[40] One truck driver testified before Miami's Blue-Ribbon Commission that the trucking companies "tell us to avoid the scales" (on the highways). He explained that independent contractors have to pay the fine if their load is overweight, even if they have been ordered by their dispatchers to haul it. As a result of this perverse incentive, drivers often take roads that they are not supposed to travel.[41]

EXTERNALIZED COSTS: DIESEL EMISSIONS AND PUBLIC HEALTH

The public also bears the cost of the broken port trucking industry in the form of excessive diesel emissions. Studies of independent contractors at several ports puts their median earnings, net of expenses, at only $28,000 annually, which means that half the drivers make even less.[42] Since these drivers receive neither health insurance nor contributions towards retirement from the trucking companies, they are in the ranks of the working poor.[43] Struggling to pay their expenses and feed their families, few port truckers can afford to lease the new generation of low-emission, high-efficiency diesel trucks, which sell for more than $100,000. Instead, half the trucks driven by independent contractors were made in 1997 or earlier.[44] One in 14 trucks was manufactured before 1990. They are on the road because the Environmental Protection Agency's Diesel Emissions Standards, issued in 2000, "grandfather" used diesel engines.[45] Since heavy diesel engines last for 29 years, this means that many outmoded trucks will remain on the road for decades. (Drivers leave the industry, but their trucks are recycled.)

Only 29 percent of independent contractors have trucks made since 2000. By contrast, the vehicles driven by employee drivers are much more modern. For example, less than two percent of employee truckers drive trucks made before 1990. Employee drivers are ten times more likely than owner operators to drive new trucks.[46]

The independent contractors' old trucks are dirty. Trucks made in 1997 trucks emit .10 grams of fine particles per million, ten times the standard for 2007 trucks.[47](If all the trucks were from 2007, there would be 90 percent fewer fine particles emitted.)

Table 1: Age of Trucks Driven in New Jersey Drayage Industry

Truck Model Year	Independent Contractors		Employee Drivers	
	Count	%	Count	%
1980 to 1984	4	1.89	0	0
1985 to 1989	11	5.21	1	1.82
1990 to 1994	37	17.54	7	12.73
1995 to 1999	98	46.45	22	40.00
2000 to 2004	57	27.01	15	27.27
2005 to 2010	4	1.90	10	18.18
N	211		55	
Mode	1991 (30)		1998, 2000 (7)	
Median	1998		1999	

The problems caused by old, dirty trucks are exacerbated by long lines and extensive delays. In Miami, while drivers wait on five separate lines as they pick up a container at the terminal, they "must keep their vehicles running. For hours, they burn fuel and their trucks belch fumes into the air."[48] If anti-idling laws were enforced, the problem would only be compounded, because the drivers would have to restart their engine every time they moved their truck.[49]

Diesel emissions cause significant harmful health impacts. Children who grow up in neighborhoods with high levels of diesel exhaust suffer decreased lung development, which afflicts them throughout their lives.[50] One study estimated that the health costs borne by the state of California as a result of diesel emissions amount to $20 billion annually—and 5,000 premature deaths.[51]

The ports of Long Beach and Los Angeles have recognized that independent contractors cannot be relied on to reduce diesel emissions on their own. Both ports adopted Clean Trucks Programs in order to satisfy state legislation, in October 2008. The plan called for 20-year-old trucks to be scrapped and replaced by new trucks, which would be paid for by a $35 fee for every twenty-foot container that moves through the port. This process will continue until all the trucks made before 2007 are retired.[52] The Los Angeles Harbor Commission, recognizing that financially-strapped independent contractors cannot be expected to maintain their equipment in top-flight condition, also required port trucking companies to hire their drivers as employees.[53] This shifts responsibility for truck ownership and maintenance, health care, and diesel emission reduction, to the trucking companies, rather than the drivers. However, a three judge panel of the Ninth District Court of Appeals on March 20, 2009, stated that a District Court Judge had erred when she denied a request for a preliminary injunction against implementation of some of the Harbor Commission's regulations concerning trucking companies, including the employment requirement. Challenges to the both the L.A. and Long Beach "clean trucks program" are being heard in Federal courts in California as well as the District of Columbia.[54]

EXTERNALIZED COSTS: HEALTH SERVICES

Unlike the union truckers of the regulated era, today's independent contractors don't receive health insurance from the trucking companies. Although in some cases the slack is taken up by working wives with employment-based coverage, more than a quarter of the surveyed drivers in New Jersey rely on public clinics or emergency rooms for health care because they don't have any health insurance. If we project this to the entire population of port truckers in the U.S., there are approximately 17,500 families of port truckers relying exclusively on public health services because they have no health insurance. All of us pay for these services in taxes, as we pay for millions of other uninsured Americans Other drivers and their families receive no health care at all. Members of these families will develop serious health problems, and treating those problems later will cost more than preventive care would have cost.

EXTERNALIZING COSTS: THE INEFFICIENCY OF THE LOGISTICS SYSTEM

The port trucking employment model, based on so-called independent contracting, impedes the logistics industry's progress.[55] Indirect evidence for this can be found in the 2009 Annual report of the Council for Supply Chain Management Professionals. The report found that business logistics expenses had increased for the fourth straight year in 2007, by $91 billion over the 2006 total. "For the first time since 2000, business logistics costs surpassed the 10 percent threshold, rising from 9.9 percent to 10.1 percent of the nominal Gross Domestic Product (GDP)," according to the organization's annual survey.[56]

Logistics costs could be reduced if port trucking were restructured. If drivers were paid for the time they spend at the terminals, for example, the terminals' customers would have greater incentive to see that trucks moved through the ports quickly. Warehouse companies would have greater incentive to site and build vertical warehouses closer to the port. Distribution centers would have more incentive to provide adequate parking space for inbound container trucks.

The most important savings would come from upgrading the communications capabilities of port truckers, so that they can interface with the other businesses in the port. A study of the southern California ports puts the matter starkly when it explains why drayage firms have not introduced equipment such as on-board computers and two-way digital radios that would enable them to communicate with other businesses in the logistics industry:

> *(O)ne of the difficulties faced by today's highly competitive but unorganized port drayage sector is its inability to gain the efficiency and cost benefits of the information systems that have been developed for the trucking industry. This is the case due to the inability of the weaker (Licensed Motor Carriers[57]) to install the necessary hardware and software systems on the trucks working with them, and most importantly, to have their staffs trained to consistently and accurately use them.*[58]

Imagine a port trucker who has driven a container 75 miles from the port to an inland distribution center. He has been paid $150 for his trip, but because his dispatcher has no order for him to bring a container back from that distribution center to the port, he must return without a load. (This is called driving "bobtail.") Think of the time and fuel he is wasting.

If his dispatcher was part of a well-designed business information system, the driver would not have to return bobtail. His dispatcher would be able to locate a loaded container ready to be hauled back to the port at a nearby site. The driver would make money for hauling freight on both legs of his trip. Gallons of diesel fuel would be saved. Millions of fine diesel particles would not be emitted.

Reregulating the port trucking industry to restore the functioning of the market in freight rates would give trucking firms greater ability to invest in business information equipment. Reregulation would also give all the businesses in the logistics chain greater incentive to invest in new technology and information systems so that they could interface directly.[59]

Of course, bringing new technology into the port trucking industry, and more generally into the logistics sector, would required greater investment in human resources.[60] Drivers, warehouse employees, and crane operators would need to input and read data. Logistics companies would have to do more training, and workers would have more opportunities to upgrade their skills. Given the lack of job ladders in logistics today, this is all to the good.

REREGULATING THE PORT TRUCKING INDUSTRY...WOULD GIVE TRUCKING FIRMS GREATER ABILITY TO INVEST IN BUSINESS INFORMATION EQUIPMENT.

If logistics firms increased the integration and the information-intensiveness of the logistics system, and upgraded the skills of their work forces, more businesses could implement just-in-time inventory systems, eliminating waste throughout the supply chain. Furthermore, if trucking companies had to internalize the full cost of doing business, instead of externalizing these costs, America's logistics system would have more incentive to develop in a sustainable fashion once global trade resumes growth.[61]

III. THE NEED FOR PUBLIC POLICY: REREGULATING THE PORT TRUCKING INDUSTRY

An efficient, high-road, information-intensive freight movement system would look very different from the low-road system American now endures. If we look at some of the world's leading ports and the logistics chains that connect them to producers and customers, we can get a sense of the huge distance we have to travel.

THE BEST PORTS USE TECHNOLOGY TO SCHEDULE DELIVERIES AND PICK-UPS...THEY POSSESS ELECTRONIC INFORMATION SYSTEMS THAT INTEGRATE OCEAN CARRIERS, TERMINALS, TRUCKING COMPANIES, WAREHOUSES, CUSTOM BROKERS, AND SHIPPERS.

In Vancouver, a taskforce appointed by the Government of Canada surveyed "best practices" in port trucking operations around the world. Its portraits of Singapore, Rotterdam and Antwerp differed markedly from its pictures of American ports. The best ports use technology to schedule deliveries and pick-ups. They minimize waiting times. They possess electronic information systems that integrate ocean carriers, terminals, trucking companies, warehouses, custom brokers, and shippers. By operating off-dock storage facilities, they keep port areas clear of empty containers, idling trucks, and tall stacks of containers waiting to be loaded onto ships or unloaded from them. They weigh containers, and enforce weight limits. And they maintain chassis regularly, inspect them, and make sure that faulty equipment does not get on the public roads.[62]

A high-road freight movement system integrates the business of multiple firms, thereby reducing unnecessary operations and minimizing waste. Freight is delivered faster. Freight doesn't get sent to far-off warehouses where land and labor is cheap, only to be returned to retail stores in urban areas. Traffic moves smoothly. Goods sit in warehouses for shorter periods. Warehouses and container yards consume less land. Fewer diesel emissions foul the air and sicken people. Customers such as Wal-Mart and Target pay less for warehouse space, and save on interest costs. Retailers are able to discount fewer of their goods because there are fewer late deliveries. A high-road logistics system produces billions of dollars of economic benefits for businesses and the public alike.

Stuck on the low road, individual logistics companies in the United States won't make the necessary investments to upgrade their equipment or to restructure their industry.[63] Under the current system, they benefit directly from lower freight rates, but suffer indirectly from a broken, unreliable, inefficient drayage system.

Only effective public policy can restructure port trucking, enabling America's logistics system to embark on the high road. Effective public policies, well-enforced regulations, and targeted public investments in infrastructure could produce many positive outcomes, such as:

- Raising workers' earnings;
- Reducing diesel pollution in out-of-compliance communities adjacent to freight transportation routes;
- Improving public health;
- Providing health care to currently uninsured drivers and their spouses and children;
- Improving highway safety and reducing traffic congestion;
- Reducing charity health care drains on the public treasury;
- Strengthening state unemployment insurance and workers' compensation funds;
- Improving truck drivers' health; and,
- Increasing the efficiency of the logistics system, thereby spurring economic growth.[64]

STEP ONE: END THE MISCLASSIFICATION OF INDEPENDENT CONTRACTORS

Good public policy would begin with rectifying the misclassification of independent contractors. Port truckers are not independent of the companies that give them orders. Many depend on them for access to credit to lease their rigs; their trucks bear their brokers' name and logo; they are not allowed to haul containers for anyone else.

Misclassification of port truckers is an example of a spreading blight on American labor markets. Misclassification is now commonly found in what one expert calls "low-paid, often dangerous jobs," in construction, warehousing, street vending, home health care, and taxi driving,[65] where so-called independent contractors do not enjoy the protection of employment laws and "are deprived of proper coverage of social insurance."[66] Employers don't make contributions to Workers Compensation and Unemployment Insurance funds for their misclassified workers. Furthermore, independent contracts are denied their collective rights, deprived of their right to safe and healthy worksites, and do not enjoy freedom from discrimination in employment .[67]

How widespread is misclassification? The General Accounting Office found in 2006 that 15 percent of employers improperly categorized employees as independent contractors, and noted that the victims are disproportionately immigrants.[68] A study by Cornell University's School of Industrial Relations found that 39,587 employers misclassified about ten per cent of private sector employees in that state as independent contractors.[69] This deprived the state of New York of significant revenue. More than one billion dollars a year of taxable wages a year were underreported to the state's unemployment insurance fund. More than $40 million a year in taxes were underreported to the state's workers' compensation fund.[70] The state's treasury was not the only victim: misclassification enabled low-road employers to evade tax payments while law-abiding companies paid them. This saves cheating employers 15 to 30 percent on their payroll costs.[71] Unfair competition tilts the playing field, which has the perverse consequence of favoring low-road businesses that drag down standards and evade the law.

In recent years, labor and immigration rights advocates have been working with state departments of labor in Washington State, New York, New Jersey, California and North Carolina to curb misclassification. Promising state initiatives include:

- Establishing state study commissions.
- Prohibiting employers from calling workers independent contractors in sectors where it's unlikely that workers would be in business for themselves.
- Creating inter-agency task forces to increase enforcement.

While these are important initiatives, federal action is also needed, because misclassification is so widespread and has such a strong tendency to favor low-road employers, In 2007-2008, three bills were introduced in Congress to curb misclassification. These bills created the presumption of employment, enabled unions and community groups to take action, protected workers from retaliation by employers, and levied penalties heavy enough to discourage repeated law-breaking.[72] The current Congress should enact legislation combining these principles.

FEDERAL ENVIRONMENTAL STANDARDS ON DIESEL EMISSIONS

The best way to get old port trucks off the road would be for the Congress to change diesel emission policy. Currently, the EPA regulates emissions from newly manufactured heavy-duty diesel engines, and has left regulation of emissions from existing engines to the states and local government authorities. In effect, over 7 million heavy-duty diesel engines, including port trucks, have been "grandfathered." This policy has two obvious disadvantages. First, it will leave dirty trucks on the road for more than two decade. Second, leaving regulations to the states spurs ports to compete for business by reducing emissions standards. This dynamic was visible when programs to retire old trucks were introduced in Vancouver, Los Angeles and Long Beach. The proposals were opposed fiercely by logistics firms which argued that the rules would drive shipping to less-regulated ports. Now that the ports in New York/New Jersey and Oakland are considering similar plans, the same argument is being heard. The Federal government should issue nation-wide regulations in order to boost efficiency and create a level playing field on which ports can compete for business.

Since Congress does not give any sign of willingness to establish national standards for all diesel engines, the campaigns of the Clean Air Task Force to reduce emissions from heavy-duty diesel engines through both voluntary and regulatory measures constitute the leading-edge of the diesel emission campaign in the United States. The Clean Air Task Force calls for a three-phase strategy to retrofit existing diesel engines, requiring emissions reductions of 50 percent by 2010, 75 percent by 2015, and 85 percent by 2020. CATF estimates that this plan would eliminate 91,000 premature deaths between 2005 and 2030.[73]

THE BEST WAY TO GET OLD PORT TRUCKS OFF THE ROAD WOULD BE FOR THE CONGRESS TO CHANGE DIESEL EMISSION POLICY.

When it comes to the ports and their logistics chains, the Clean Trucks Plans adopted in Vancouver, Los Angeles, and Long Beach, should serve as models.[74] The Los Angeles plan includes five elements:

1. **Impose** a fee of $35 per container passing through the port, to pay for the replacement of old equipment.
2. **Ban** old trucks according to a timetable that will eliminate all trucks manufactured before 2007 by 2012.
3. **Restrict access** to port terminals to trucking companies that have entered into concession agreements with the ports. The concession contracts require firms to meet environmental, operational and safety/security goals, and to hire their drivers as employees.
4. **Raise** security and safety standards for ports, trucks and drivers.
5. **Finance** retrofitting or replacement of old trucks, and scraps the oldest vehicles so that they cannot be shifted elsewhere.

In practice, the Los Angeles plan would force businesses that wish to participate in port trucking in LA and Long Beach to buy new or nearly-new trucks. They should be able to recoup their investment through the higher rates they will be able to charge. More than 3000 new trucks were registered with the Los Angeles Harbors Commission in the first five months after the Clean Trucks Plan went into effect.[75] Despite this progress, on April 28, 2009, the U.S. District Court Judge Christina A. Snyder granted a preliminary injunction against those parts of the Los Angeles and Long Beach plans that are not directly tied to safety. Her ruling put a temporary end to the Port of Los Angeles' requirement that all trucking companies doing business at the port hire their drivers as employees. A trial to hear the merits of the plans is scheduled for December 15.[76] If that trial were to establish that the employee-requirement found in the Los Angeles plan is invalid, the southern California ports would remain dependent on so-called independent contractors driving trucks they could not afford to maintain. Air quality and highway safety would remain in jeopardy.

HIGHWAY SAFETY

There is a clear need for increased federal regulation of the port trucking industry to reduce the carnage and traffic delays on the highways.[77] The Federal Motor Carrier Safety Commission (FMCSC), which was set up in 1996 to address this problem, has been so underfunded that it could only inspect 2 percent of registered motor carriers.[78]

While it remains to be seen whether the chassis standards introduced in December, 2008 will be enforced robustly, there is no question that the problem of overweight containers demands resolution. The current system leaves enforcement of weight standards to local agencies, which are reluctant to do their job for fear of driving shipping elsewhere. Overweight containers will continue to cause trucks to tip over, chassis to break down, and traffic to snarl on freight routes throughout the country until the FMCSC steps up. The case for Federal action is compelling.

It would take a public outcry, such as the mobilization of the 1990's, which led to the passage of the Motor Carrier Safety Act of 1999, to force action on this subject, however, because strong business interests are opposed to change. In the meantime, state and local authorities should address the problem, as the Los Angeles and Long Beach Clean Trucks Programs have done.

IV. CONCLUSION

The deregulation of the port trucking industry, which began in 1980, has achieved some of its goals of increasing competition and driving down freight rates, but the public cost of this success is now clear: Ports compete for business by abdicating responsibility for air quality, chassis and container safety, and labor standards. Logistics firms benefit directly from lower freight rates, but suffer indirectly from a broken, unreliable, inefficient drayage system, which cannot share business information in a transparent and timely manner. When ports do take action, as Vancouver, Los Angeles and Long Beach have done, they meet opposition and threats to move shipping elsewhere.

The non-system of local, state and federal regulation keeps being patched up with new legislation, rules and agencies, but the problems will grow until Congress restores Federal authority. An effective public policy would eliminate misclassification, enforce labor and employment legislation, establish uniform standards for diesel emissions, and implement highway safety regulations.

The Clean Trucks Program, which was advanced in LA and Long Beach by the Coalition for Clean and Safe Ports, an alliance of environmental organizations, labor unions, public health advocates, and faith-based and other community organizations, recognizes that the port trucking industry needs to be restructured. In the absence of Congressional action, it represents the best hope for bringing about desperately-needed changes in the port trucking industry.[79]

A FINAL NOTE

Even if the FMSCC were to step up to the plate on highway safety, the perilous condition of the nation's highways, bridges, railroad lines, and road interchanges would continue to cause equipment damage, accidents, wastes of fuel, and excessive diesel emissions. The surge in imports from China in the past decade have overwhelmed America's infrastructure. By 2002, the ports of Los Angeles and Long Beach, which handled the greatest share of China's goods, were jammed. The roads leading out of the port became scenes of despair, as trucks bound for inland warehouses idled impatiently behind gridlocked commuters. The railroads hauling double-stacked containers from the ports to intermodal yards in Chicago and Kansas City, quickly reached capacity. Frustrated shippers began shifting their orders to Gulf Coast and East Coast ports. By 2005, the Port of New York and New Jersey was the scene of long lines and jammed connecting roads.[80]

Ocean carriers are planning to cut costs by building larger ships and sending them through an expanded Panama Canal. But there's a problem: many ports won't be able to handle them. Consider the case of New Jersey, where the waterway leading to the ports of Newark and Elizabeth passes under a bridge that is not high enough to allow the next generation of ships to pass. Rebuilding, raising, or razing the Bayonne Bridge is necessary, but as of April 2009, it was not in any agency's budget.

Equally revealing is the miserable situation of freight bound for New England. None of that region's ports is now equipped for large container ships, so most goods pass through the ports of New Jersey. Unfortunately, the railroad bridges crossing the rivers along the route from New Jersey to Boston are not high enough to allow trains with double-stacked containers to pass under them. Sending single-stacked containers by rail is too expensive. As a consequence, containers go by truck. The Cross Bronx Expressway leading to the New England Thruway is America's most congested road.[81]

Thus, in addition to reversing the destructive impact of deregulation on the port trucking industry, America needs an infrastructure investment program to increase rail capacity, connect abandoned rail junctions, rebuild highway, waterway and railroad bridges, and enlarge roads that connect highways to ports and inland warehouse districts. The America Recovery Act of 2009 made a small step in the right direction—a cross-harbor tunnel connecting the Brooklyn waterfront to the New Jersey ports was partially funded, for example, but much more remains to be done.

ENDNOTES

1. A dray in the eighteenth century was a sideless cart. *Random House Dictionary*, 2009.
2. Port trucking is a small but important sector of the entire trucking industry. There are less than 100,000 port truckers who regularly haul containers to ports from warehouses and distribution centers, and vice versa. Usually, the warehouses and distribution centers are located within seventy-five miles of the port. At the warehouses and distribution centers, the freight is usually unloaded from the container (stripped). Most of the freight is re-loaded into trailers, which are larger and cheaper to convey than containers. The truck drivers who haul the trailers are part of a different sector of the trucking market (long-haul) than are the port truckers. Most of the more than 1.8 million truck drivers reported by the U.S. Bureau of Labor Statistics are long-haul drivers. Some of the freight that is unloaded from containers will be loaded into delivery trucks that carry mixed loads—goods bound for a variety of destinations. This trucking segment is called the less-than-truckload industry. The economics of the three segments of the trucking industry are different. While the deregulation of 1980 led to the replacement of employed drivers by independent contractors in all three industries, in the less-than-truck-load sector, the union has remained powerful, and earnings and labor standards are relatively high. However, port trucking remains at the bottom of the trucking industry, with the lowest pay rates and the laxest standards. U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2008-9; Michael Belzer, *Sweatshops on Wheels* (New York: Oxford University Press, 2000); Dale Belman and Kristen Monaco,"The Effects of Deregulation, De-Unionization, Technology, And Human Capital On The Work And Work Lives Of Truck Drivers," *Industrial and Labor Relations Review*, vol. 54(2), March 2001, pp. 502-524.
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7. Ibid., p. 268.
8. Marc Levinson, *The Box: How the Shipping Container Made the World Smaller and the Global Economy Bigger*, (Princeton, N.J.: Princeton University Press, 2006).
9. The rest go by rail or on inland water routes.
10. Council of Supply Chain Professional Managers, "Annual Report", 2009.
11. The expansion of port trucking, like the expansion of global trade, ground to a halt at the end of 2008, as a result of the global economic slowdown.
12. Federal Motor Carrier Safety Administration, "FMCSA Issues Rule to Improve the Safety of Equipment Used in the Transportation of Intermodal Containers," Dec. 17, 2008.
13. Environmental Protection Administration, "Heavy Duty Diesel Program, Regulations and Standards," http://www.epa.gov/otaq/highway-diesel/regs.htm.
14. Edna Bonacich, "Labor and the Global Logistics Revolution," in Richard Appelbaum and William I. Robinson, *Critical Globalization Studies* (New York: Routledge, 2005), p. 366; David Bensman and Yael Bromberg, "Report on Truck Drivers' Survey in the New Jersey Ports," Rutgers University, School of Management and Labor Relations, January 2009, http://www.smlr.rutgers.edu/DavidBensman/News/BensmanDriver_Survey_Report%201%2023%2009.pdf. In Los Angeles and Long Beach, the drivers are primarily Mexican. In New Jersey, they are mostly from Central and South America.
15. Pierre Thomas, "Criminal Records, Bogus Licenses Among Truckers at Key U.S. Port," ABC World News, March 7, 2006.
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28. This picture of port truckers is based on David Bensman and Yael Bromberg's "Report on Port Truckers' Survey at New Jersey Ports," January 23, 2009. That survey asked 299 drivers, selected randomly, more than 50 questions about their working lives. The portrait drawn from the surveys is consistent with studies done of port trucking in Los Angeles/Long Beach, Oakland, Miami and Seattle. See Acknowledgments section of this paper.

29. Transportation Worker Identification Credentials, which are bio-metric, were mandated by Congress under the Maritime Transportation Security Act of 2002. As of April 30, 2009, the bio-metric features of the credentials are not functional.

30. www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/rule-programs/rule_making_details.asp?ruleid=257&year=2008&cat=final.

31. California Air Resource Board. "Fact Sheet: The Toxic Air Contaminant Identification Process—Toxic Air Contaminant Emissions from Diesel-Fueled Engines," 1998.

32. This account of driver mistreatment at the terminals is based on interviews with independent contractors at the Ports of Newark and Elizabeth, and at the Global Terminal in Bayonne.

33. Council of Supply Chain Management Professionals, "Annual Report," 2009.

34. In New Jersey, many warehouses are closed at night, so that their owners don't have to pay for extra security guards, and because residential neighbors don't want night-time truck traffic to disturb their sleep. In California, warehouses and distribution centers are usually open at night.

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37. Blue Ribbon Commission, "Miami's Cuban-American Port Truck Drivers, Victims of Abuse…A White Paper Investigative Report by a Distinguished Citizen Review Panel," February 21, 2005, p.4.

38. www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/rule-programs/rule_making_details.asp?ruleid=257&year=2008&cat=final.

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42. Bensman and Bromberg, 2009; Kristen Monaco & Lisa Grobar, "Study of Port Drayage at the Ports of Los Angeles and Long Beach," Cal-State Long Beach, 2004; Hannah Betesh, "Implications of a Port-Employer Contract: Results from a Survey of Truck Drivers at the Port of Oakland," UC Berkeley – Goldman School of Public Policy, 2007; CGR Management Consultants, prepared for The Gateway Cities Council of Governments, "A Survey of Drayage Drivers Serving the San Pedro Bay Ports," 2007. An alternate way of calculating the independent contractors' net earnings in New Jersey shows that the net in-

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