The Teamsters union and its Justice for Port Drivers affiliate hailed two awards last month to 24 truck drivers that it says total “nearly $6 million by the California Labor Commissioner for wage theft due to misclassification as independent contractors.”

It said the drivers were employed by two units of NFI Industries’ California Cartage subsidiary — California Cartage Express (CCX) and California Multimodal.

Barb Maynard, a spokesman for Justice for Port Drivers, said the CCX award was significant because it marks “the first time that the individual liability provision of California Senate Bill 588 (Labor Code Section 558.1) has been applied in port trucking.”

She pointed to a 2013 article published by University of California, Los Angeles Labor Center that called the law “landmark legislation,” adding, “Businesses can no longer use layers of subcontracts and unclear reporting relationships to deliberately make enforcing labor laws difficult. Additionally, individuals involved in wage theft will now be held accountable.

“The bottom line is that that’s got to send a very strong message to these companies that the corporate veil has been pierced,” said Maynard. Executives at companies “are personally at risk if they are found to personally be managing or mismanaging truck drivers that are illegally classified as independent contractors.”
“Our logic tells us that when you’re holding individuals personally responsible for the corporate decisions that they make they may well start to make different decisions because they can no longer throw up their hands and say that was the corporation, that wasn’t me,” said Maynard.

In a statement, NFI said, “The Division of Labor Standards Enforcement (DLSE) decisions relate to alleged violations that took place prior to NFI’s acquisition of Cal Cartage and were not issued against NFI or its Cal Cartage operations. We understand that the decisions are being appealed, at which time the decisions become void and subject to a new trial.”

NFI, a 3PL headquartered in Cherry Hill, N.J., acquired Cal Cartage in 2017. According to its website, NFI “generates more than $2 billion in annual revenue and employs more than 10,500 associates and has a company-owned fleet of over 4,000 tractors and 9,000 trailers.”

NFI said, “The DLSE opinions are part of an ongoing effort by the Teamsters to force the thousands of hardworking port drivers to become employees against their will, instead of the entrepreneurial businessmen and women they have chosen to be. It is a shame that the Teamsters and their supporters fail to acknowledge that there are thousands of available positions in Southern California for those drivers who would prefer to be employees.”
Weston LaBar, chief executive officer of the Harbor Trucking Association, which represents drayage companies in Southern California, said the Justice for Port Drivers statement “is another example of the Teamsters Union misrepresenting the truth to help exploit workers into forced collective bargaining agreements and highlights why the California Trucking Association is suing the secretary of Labor and her department.

“This decision predates the NFI acquisition of Cal Cartage and is under the appeals process, meaning that no final decision has been made on these misclassification accusations,” he added. “NFI/Cal Cartage and all of their divisions are exemplary companies and have been the target of union organizing in an effort to add their 1,000-plus owner-operators to the Teamsters’ dues roles to help prop up their failing pension fund.

“The HTA fully supports any measure that helps protect against the exploitation of the men and women whom drive our industry,” he said. “There are thousands of jobs available for drivers who want to be employees and for those who want that opportunity they should seek employment at a company using the company driver business model. Unfortunately, no one is protecting the hardworking men and women who identify as independent from the continuous efforts of the Teamsters to force all drivers to be employees and their eventual forced unionization to enter the ports. The HTA will continue to fight for right of drivers to choose whether they want to be employees or contract independently. Perhaps one day we will see the Teamsters and a majority of our elected officials make decisions with the drivers’ best interests in mind as opposed to their own.”

Maynard said there is a California Cartage family of companies that includes several different warehouse and drayage companies.

“The entire NFI family of companies here at the Ports of Los Angeles and Long Beach should consider this a serious wake-up call,” she said.

While she agreed the DLSE decisions can be appealed, “of course our hope would be at some point they see that every appeal that any company has ever made is lost and that they would come to the table and reach a settlement and modernize their operations and make them legal.”

She added: “in Los Angeles and the eastern ports, NFI/Cal Cartage companies experience forced work.”
She said the “the Los Angeles city attorney has sued three NFI/Cal Cartage companies for wage theft and unfair competition, and the Los Angeles City Council overrode the L.A. Harbor Commission by refusing to give a lease to NFI on property owned by the Port of Los Angeles due to strikes and disruption caused by workers protesting their misclassification.”

She added that Cal Cartage is “continuing to operate without a lease on port property.”

Update posted Jan. 14: Barb Maynard of Justice for Port Drivers took issue with comments from Weston LaBar of the Harbor Trucking Association in this story, saying, “LaBar is wrong in his assertion that all these claims were filed before NFI took over and that the findings were for violations that occurred before the purchase. All of the CCX claims were filed well after the purchase, and the CMI claims were filed right around the time of the purchase — just before and after. More importantly, the violations and all the unpaid wages that both CMI and CCX are being ordered to pay go up to the hearing dates — which in both cases were well after the purchase.

“LaBar stated that the decisions weren’t issued against NFI or its Cal Cartage operations, which is also false. In the CCX decision, NFI’s representative confirmed that the new NFI-created entity, CCX2931 LLC, was formerly known as California Cartage Express LLC and that they are ‘essentially the same companies’ (p45 of the ODA). Also, the CMI decision reflects the exact same thing (p38 of the ODA) and the decision was issued jointly against both the NFI-created entity, CM29131, and CMI.

“The bottom line is that these findings are in fact against NFI, and the violations continue under their ownership!”

LaBar, together with his counsel, offered this response: “Barb is correct that certain of the claims were in fact filed around the time of or shortly after NFI’s purchase of Cal Cartage. So it is true that not all of the claims were filed before the closing. However, all of the filings in question were made before, during or immediately after the acquisition.

“Barb’s statement that the decisions were issued against NFI-created entities is wrong. The decisions were issued against the predecessor Cal Cartage companies only, which changed their names after the closing of the acquisition. More specifically, CCX2931 I.L.C. is not an NFI entity. It is owned by the Curry family. It was formerly...
acquisition. More specifically, CCX2931 LLC is not an NFI entity. It is owned by the Curry family. It was formerly known as California Cartage Express LLC and changed its name following the closing. The two are in fact the same company. The same is true of the CMI entities. The statement that the decisions were not issued against NFI’s Cal Cartage entities is 100 percent accurate.”