

## Teamsters Get Boost From Amazon Joint Employer Findings

By **Tim Ryan**

Law360 (September 27, 2024, 8:50 PM EDT) -- Two recent determinations from National Labor Relations Board officials that Amazon jointly employs delivery drivers who work for contractors could bolster the Teamsters' efforts to unionize the workers, experts said, as the union continues its efforts to organize the e-commerce giant.



So far, the Teamsters have undertaken major public organizing efforts among drivers for delivery service partners in Palmdale, California; Skokie, Illinois; and Queens, New York. (Sipa via AP Images)

In late August, the NLRB's Los Angeles regional office **found merit** to unfair labor practice allegations the Teamsters had filed against Amazon and a contractor called Battle-Tested Strategies, including the claim that Amazon jointly employs the drivers with BTS. On Sept. 5, the NLRB's Atlanta office **similarly found merit** to claims that Amazon jointly employed drivers with contractor MJB LLC. The merits determinations mean that if the parties do not settle the cases, board prosecutors will issue complaints based on the allegations.

Julie Gutman Dickinson, a partner at Bush Gottlieb who represents the Teamsters in the case in the Los Angeles regional office, said the findings are important because drivers across the country have relationships with Amazon that are similar to those the board officials considered. She said the merits determinations are a critical step forward for organizing the some 280,000 drivers who work for Amazon contractors by highlighting the control Amazon has over the fleet that makes its delivery

operations possible.

"We are pleased to see that we are starting to break this business model and show it for what it is — that Amazon is an employer of these workers," Gutman Dickinson said.

The Teamsters have ramped up efforts to organize workers at Amazon in recent years, **launching a division** within the international union in 2022 devoted to the campaign at the union-averse company. Those efforts have included organizing at warehouses, such as the JFK8 facility in Staten Island, New York, that is represented by the now-Teamsters-affiliated Amazon Labor Union, at air hubs like **the KCVG facility** in Kentucky and among the contract drivers at issue in the NLRB merits determination cases.

The drivers whom the union is seeking to organize work for companies known as delivery service partners, or DSPs, which contract with Amazon to deliver packages from the company's fulfillment centers. DSP drivers work for independent companies and drive in vans with Amazon branding, according to the company's website.

So far, the union has undertaken major public organizing efforts among DSP drivers in Palmdale, California; Skokie, Illinois; and most recently Queens, New York.

Workers in Palmdale were the first to unionize in 2023 and were voluntarily recognized by their DSP, Battle-Tested Strategies, even reaching a collective bargaining agreement with BTS before Amazon ended its contract with the company. In the unfair labor practice charge in the Palmdale case, the Teamsters alleged that Amazon cut ties with BTS because of their unionization effort, but the board's Los Angeles regional office did not find merit to that claim.

Drivers in Skokie announced they had unionized with Teamsters Local 705 this June and filed a petition for a representation election with the NLRB that the union ultimately withdrew. DSP drivers in Palmdale and Skokie have launched strikes over what they say are unfair labor practices committed by Amazon.

On Friday, the Teamsters **announced a majority of drivers** at eight DSPs operating out of a Queens warehouse had organized with the Teamsters, the latest group to do so.

Randy Korgan, director of the Teamsters' Amazon Division, said drivers who have organized have already seen results from their efforts, such as safety improvements and Amazon's announcement earlier this month of a \$2.1 billion investment in DSPs that the company says will allow DSPs to raise average pay to almost \$22 per hour.

"Workers win when worker power is asserted, period," Korgan said.

Amazon's website describing DSP driver positions says that DSPs directly employ the drivers and set their pay and other benefits, and Amazon has maintained that it is not a joint employer. An Amazon spokesperson did not immediately respond to a request for comment.

The Teamsters have a different view of the DSP drivers' employment status. Gutman Dickinson said that in reality, Amazon has "overwhelming control" over DSP drivers because the company sets out certain policies that DSPs must follow and determines key job factors, like the amount of work drivers receive and their routes.

"It is essentially a business in a box," Gutman Dickinson said.

The NLRB's offices in Los Angeles and Atlanta agreed that there is merit to the Teamsters' view of the employment status of the drivers, though the reasoning is not public. If Amazon does not settle the Los Angeles case, board prosecutors will accuse the company of dodging its obligation as a joint employer to bargain with the Teamsters over the effect of its decision to cut off its contract with the DSP, in addition to threatening workers. The Atlanta case also would contend that Amazon is a joint employer and would accuse the company of making unlawful coercive statements and giving workers the impression they were being surveilled.

While the merits determinations are not precedential in the same way that a board decision would be, Dan Altchek, a partner at Saul Ewing LLP who represents employers, said the finding is a first step for a more binding holding at the board.

A joint employer holding from the board would mean Amazon could face liability for unfair labor practices

and be required to bargain with workers who unionize.

The determinations are also an important sign because it is unlikely that a regional director would issue such a decision without guidance directly from the General Counsel's Office, Altchek said. That means that wherever Amazon and a DSP have a setup similar to the ones the regions analyzed in the Los Angeles and Atlanta cases, it is likely the outcome will be the same, Altchek said.

"The reasonable inference here is that as long as the facts are substantially analogous in other locations in terms of the relationship between Amazon and the DSP and the employees at issue, ... I would expect to see the same action taken by regional directors everywhere else these joint employer allegations are made," Altchek said.

Amazon may be able to make changes to its business model with the DSPs that would undercut the holdings, though doing so during an active organizing campaign might be risky, said Thomas Lenz, a partner at Atkinson Andelson Loya Ruud & Romo who represents employers.

Korgan, the Teamsters director, said the merits determinations help to bolster already existing organizing by validating workers who see Amazon as their true employer that should be the target of their demands. The confidence that comes from the validation of a federal agency can help the union's goal of building power and demanding changes from Amazon outside the lengthy NLRB process for union recognition, Korgan said.

"I think the jig is starting to get up on Amazon to where their business model and their sham of trying to hide behind these DSPs and dump their responsibility is coming to the surface that it's not good for workers," Korgan said.

Lenz said the Teamsters' ambitions of organizing DSP drivers might pose challenges that efforts to organize warehouse workers do not. For example, he said Amazon does not have the type of investment in its relationship with DSPs that it does in its sprawling warehouses, making it easier for the company to move on from its contracts with the delivery companies.

"You're a little more nimble in being able to add or cut off things that you do or don't need," Lenz said. "Flipping an on and off switch basically."

Korgan said that while there are differences in the process of organizing workers at Amazon warehouses and the drivers and in the concerns that motivate different groups of workers, the Teamsters are poised to respond to workers' concerns because of the union's long-standing experience in the industry.

"Our understanding of those issues and how to resolve those issues is obviously a natural relationship with those workers," Korgan said.

--Editing by Abbie Sarfo and Nick Petruncio.