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CONFLICTING PERSPECTIVES ON THE GOVERNMENT MANDATE FOR THE USE OF ELECTRONIC ON-BOARD RECORDING DEVICES IN COMMERCIAL MOTOR VEHICLES: A CASE STUDY

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ABSTRACT

In July of 2012, the President signed into law the bill, “Moving Ahead for Progress in the 21st Century” or MAP21, also known as the Surface Transportation Act. The Act instructs the Secretary of Transportation to promulgate regulations requiring the use of electronic on-board recording devices (EOBRs) to verify hours of service compliance by commercial motor vehicle drivers. The mandate has drawn opposition from many drivers and trade organizations, while simultaneously drawing support from government, union organizations and other trade organizations. Consequently, it appears that the EOBR mandate will continue to be a source of potential conflict for management and commercial motor vehicle drivers in some transportation organizations. This case study analyzes some of the factors involved and proposes recommendations for the mitigation of potential workplace conflict.

INTRODUCTION

The National Transportation Safety Board estimates that 34% of all fatal-to-the-driver heavy truck crashes are due to driver fatigue (Rosekind, 2011). Heavy trucks or Commercial Motor Vehicles (CMVs) are defined as those having a gross vehicle weight rating of more than 10,000 pounds (DOT, 2010a). A study of 46 CMV drivers over 16 months indicated that 26.4 percent of them included an observed rating of a drowsiness (ORD) score above the fatigue threshold (Wiegand, et al., 2008). Examining the most severe safety-critical events (i.e., crashes/near-crashes), 22.3 percent were above the fatigue threshold. Dingus et al. (2006) found that fatigue was a contributing factor in 20 per cent of 82 crashes and 16 per cent of 761 near-crashes captured in a “100-Car” study (Wiegand, et al., 2008).

Currently, CMV drivers are limited by FMCSA’s hours of service (HOS) regulations, which outline how much time a driver can spend behind the wheel and how much time off is required between driving sessions. In an effort to track driving time, drivers of CMVs are required by FMCSA to keep detailed self-

completed paper logs, known as hours of service (HOS) logs. The National Transportation Safety Board (NTSB) indicates that these written logs are susceptible to tampering, driver oversight and are often inaccurate (Kotowski, 2007).

In 1997, the NTSB began advocating studies of the use of electronic on-board recording devices (EOBRs) which would gather driving information electronically, eliminating the need for paper logs (Kotowski, 2007). The EOBRs track driver duty status, location of the vehicle (via GPS), and distance travelled.

The DOT then proposed a mandate that self-completed paper logs be eliminated and replaced with EOBRs by companies with a driver log violation rate greater than 10 per cent, and for passenger carriers, hazardous materials transporters, and new motor carriers seeking authority to conduct interstate operations in the United States (FMCSA, 2012). On April 5, 2010, FMCSA published a final rule entitled “Electronic On- Board Recorders for Hours-of-Service Compliance” (EOBRs) requiring that certain carriers use EOBRs for a 2-year period. They also modified supporting document requirements and compliance review procedures

for those carriers that voluntarily chose to use EOBRs (FMCSA, 2012). The final rule took effect on June 4, 2010.

On June 3, 2010, OOIDA filed a petition in the United States Court of Appeals challenging the final rule (FMCSA, 2012). The case is known as *Owner-Operator Independent Drivers Ass'n v. Federal Motor Carrier Safety Admin.*, 656 F.3d 580 (7th Cir. 2011). The court found that FMCSA's failure to address the issue of harassment as part of the rulemaking rendered it arbitrary and capricious. As a result, the court vacated the entire rule. Then in July of 2012, the President signed into law the bill dubbed "Moving Ahead for Progress in the 21st Century" or MAP2, also known as the Surface Transportation Bill (CVSA, 2012). The bill instructs the Secretary of Transportation to offer regulations requiring the use of EOBRs to verify HOS compliance by CMV drivers and both defines and sets requirements and performance standards for EOBRs (CVSA, 2012). The requirement for installation of EOBRs on CMVs is expected to be phased in over the next few years. However, Todd Spencer, OOIDA executive vice-president, says "the issue is far from settled" (OOIDA, 2012a). Rep. Jeff Landry (R-La.) said he is prepared to do whatever he can to stop the federal government from mandating such devices and said he will continue working to make sure the devices are not required on trucks. Landry indicated that "the potential impact it has on small businesses is catastrophic (Cama, 2012)."

Consequently, it appears that the EOBR mandate will continue to be a source of conflict for those involved. These organizations will include governmental agencies, special interest groups, management and drivers; each with their own interests, opinions, power, and authority.

THE CASE STUDY

A case study approach was chosen in an effort to gain a better understanding of the perceptions of

inequity regarding the EOBR mandate from the perspective of management, employees, and contractors of a small transportation organization. The organization chosen for the case study is a family-owned and operated transportation company located in the southeastern United States. The information gained may be applicable to other small transportation organizations facing this or a similar conflict.

In addition to administrative and management personnel, the organization currently employs approximately 15 company drivers and utilizes some 60 owner-operators or individuals who own their trucks and contract their services to the organization. Data was collected using a combination of face-to-face and telephone interviews using open-ended questions. All of the participants have a stake in the conflict and participated voluntarily in the survey.

PERSPECTIVES

The reported underlying reason for the EOBR mandate is an attempt by governmental agencies to reduce or eliminate intentionally or unintentionally falsified HOS driver logs in the hopes of decreasing the incidence of tired driving and ultimately decreasing the number of accidents involving CMVs. "We are committed to cracking down on carriers and drivers who put people on our roads and highways at risk," said Secretary Ray LaHood. "This rule gives us another tool to enforce hours of service restrictions on drivers who attempt to get around the rules (DOT, 2010)."

The trade organization, OOIDA, representing small business and independent truck drivers, continues to oppose the mandate on the grounds that the EOBR technology has not been proven to improve safety. "This is being done under the guise of compliance with federal hours-of-service regulations, but it is actually a way for large motor carrier companies to squeeze more 'productivity' out of drivers and increase costs for the small trucking companies they compete

with,” said OOIDA Executive Vice President Todd Spencer (Szakonyi, 2012).

An opposing view of the mandate is held by the American Trucking Associations (ATA) organization, whose website indicates that its mission is “to serve and represent the interests of the trucking industry with one united voice (ATA, 2012).” “Clearly, these devices lead to greater compliance with maximum driving limits, which is very good for the trucking industry as a whole and highway safety [in particular],” said ATA President and CEO Bill Graves, who adds that the EOBRs could also help drivers better manage fuel use, routes and other fleet operations (Szakonyi, 2012).

While management, employees and owner-operators all agree with the importance of safety-related measures, all expressed a dislike of the requirement being mandated by government. According to John Stuart Mill, there are two states of inclination: the desire to exercise power over others and the disinclination to have power exercised over themselves (Lukes, 1986). There are, however, differing perceptions of the fairness of this mandate. Equity theory explains that individuals can perceive certain arrangements as being unjust. Like the mandate for use of EOBRs, there are conditions in which individuals fail to achieve outcomes that they consider to be fair or equitable, which are likely to be marked by social conflict (Schellenberg, 1996).

Management indicates that they have strict policies and procedures in place to handle issues of HOS log errors. They indicate that while there isn't a high incidence of intentional falsification of HOS logs, driver oversights and/or a lack of understanding have created some issues for the organization.

“Because we are not OTR (over the road), there is no need for a driver to intentionally falsify their logs. There are some minor issues, but each driver violation

carries a score. That score goes on the company's overall score too. When our score goes over a certain threshold, DOT is alerted and we are signed up for an audit. With the EOBRs, the HOS violations basically disappear.”

Conversely, owner-operators for the company express views different from those of management with regard to the problem of falsified HOS logs. A general feeling of inequity was expressed by the drivers.

“I'm sure it happens, but I've never been guilty of falsifying my logs. The main reason some drivers do it is because they get held up and need to get their loads delivered, but why should everyone get punished? Why not just make the violators pay?”

The EOBR mandate would impose a very significant financial cost on the transportation industry. This is based on the Agency's Regulatory Impact Analysis (RIA) for the 2011 notice of proposed rulemaking (NPRM), which estimated total costs of the program at \$2.377 billion per year (FMCSA, 2012a).

While management agrees that there are significant financial costs to businesses required to implement the mandate, their view is that the potential benefits outweigh the cost, which, in their opinion, justifies the expense. Karl Marx presumes that individuals in different classes, in this case, the management and the drivers, have different economic interests, regardless of their awareness of them (Schellenberg, 1996). The financial expense appears to be of little concern to management, who indicated:

“It's expensive, but we want them. We would spend the money and although I don't like anything to be mandated, our ultimate goal is safety.”

In stark contrast to management, a common theme among the owner-operators was the idea that the mandate would result in an expense, which represents a tremendous financial burden. Additionally, a common sentiment expressed was that the EOBR mandate was ultimately unfair and particularly hurtful to independent drivers and small businesses. One of the owner-operators expressed his opinion:

“A lot of us can’t afford it. It’s just another way for the government and big companies to squeeze out competition from independent drivers and small companies.”

Table 1 below summarizes the comments made by the various parties.

POWER RELATIONSHIPS

In an attempt to understand conflict situations, it is useful to understand power relationships. Goldman (1972) posits that relative power, in certain situations, depends on other assets, including other relationships. He further posits that in attempting to achieve an end in opposition to others, one frequently performs certain acts intended to elicit aid from other persons. When individuals with common interests or goals join together, mutually

supportive acts can create a collective ability to exercise power or influence (Lukes, 1986). Goldman (1972) adds that a collective power results when members of a group have greater confidence in the reliability of their partners and consequently more confidence in their own acts as part of the larger group, giving the group more power together than members have individually.

The above discussion of “power relationships” provides some insights into the behavior of the actors in the situation under study here. For instance the references to the increased confidence that can result from “collective power” play out in our case study as described below. While management indicated that they had little interest in participating in any “political activist groups,” several owner-operator drivers indicated that they were members of the OOIDA organization because of its support of such issues, [and presumably because of the resulting collective power]. In the words of one owner-operator:

“I joined OOIDA because they keep up with things like this. They stand up for us, which is what the Teamsters used to do before all of the corruption. Now they’re just in it for themselves.”

**TABLE 1
ANTICIPATED CONSEQUENCES OF THE MANDATE IDENTIFIED
IN THE CASE STUDY**

<u>Management</u>	<u>Employees</u>	<u>Owner-Operators</u>
Reduction of liability	Increased loss of control	Increased financial burden
Increased control of employees	to management	Increased invasion of privacy
Reduction of paperwork	Increased loss of productivity	Inequitable penalties
Increased reliability of Information	Inequitable penalties	Increased loss of control to government
Increased driver safety	Reduction of paperwork	

Several groups have joined forces to either support or oppose the EOBR mandate. The American Trucking Association (ATA), American Automobile Association (AAA), the National Transportation Safety Board (NTSB), the National School Transportation Association (NSTA), and the Teamsters Union have joined together to create a collective power in support of the mandate. However, it has been met with opposition from the collective power of the Owner-Operators Independent Driver's Association (OOIDA), the largest national trade organization representing the interests of professional and small business truckers, and from small business groups such as the National Federation of Independent Business, National Ready Mixed Concrete Association, National Association of Small Trucking Companies, Portland Cement Association, American Concrete Pavement Association, National Precast Concrete Association, Agricultural Retailers Association and the Petroleum Marketers Association of America (OOIDA, 2012).

PROPOSED SOLUTION TO CONFLICTING INTERESTS OF DRIVERS AND MANAGEMENT

In this case, management is cognizant of the likelihood that the mandate will result in a financial burden for the owner-operators working for their organization. Additionally, management indicated that there would certainly be a backlash from the drivers, particularly the owner-operators. Consequently, in an effort to mitigate potential conflict, management has proposed taking financial responsibility for the purchase of all necessary EOBR equipment and developing a program which will allow drivers to utilize the equipment at no cost to them. The drivers in this case were in agreement that eliminating the requirement for purchasing the EOBR equipment would certainly reduce the financial burden for them.

Certainly, management has different economic interests than those of the drivers. Marx

indicated that managers may attempt to gloss over differences in economic interests in order to avoid conflict with their workforce (Schellenberg, 1996). In this particular case, management did express the desire to avoid any conflict with the owner-operators that contract with their organization. However, management has elected not to attempt to avoid the issue of financial impact to the owner-operators, but to put the economic interests of those drivers in front of those of the organization.

ANALYSIS OF ISSUE

An understanding of power is important to understanding and managing conflict. Galbraith indicates that power is the possibility of imposing one's will on the behavior of other individuals (Lukes, 1986). In this case, there are many groups involved with differing interests and wills; and consequently, many different power relationships. With differing interests and viewpoints also come many different potentially adversarial relationships, in which power becomes a critical tool. For example, those relationships include the power of government versus the power of organizational management, the power of government versus the power of the workforce, the power of management versus the power of the workforce, the power of government versus the power of trade organizations and even the power of one trade organization versus another.

As seen in this case, the government, a source of great power, can utilize its authority to dictate or mandate certain behaviors of organizations and of the workforce, particularly when pertaining to matters that concern the welfare of the general public. While, in this case, there was a dislike of the EOBR mandate by management and the workforce, there exists a certain amount of acceptance of the power of the government and of the final decision as binding. Consequently, there is a shared attitude by both management and the workforce that conceding to the power of the law is inevitable.

However, the same attitude was not shared by the trade organization OOIDA, which has more economic and collective power than does management or individuals within this organization. Arendt, in 1970, indicated that power corresponds to the human ability to act in concert (Lukes, 1986). Consequently, members of management and individual members of the workforce may join groups, such as trade organizations in an attempt to increase the power they have. Simmel, in 1966, posits that where the rule of law prevails, there is always a two-way flow of influence between the more powerful and the less powerful, but one should not ignore the secondary flow, the factors responsible for it, and the consequences of it (Lukes, 1986).

While management has the authority to mandate the use of EOBRs for their employees, regardless of the government mandate, they have not done so. Management has done a good job of mitigating potential conflict with the owner-operators by putting the financial interests of the drivers before their own. Although management agreed that the use of EOBRs would reduce organizational liability and reduce workload, it has not mandated their use in an effort to avoid placing additional burdens on the drivers. Although the owner-operators will be required to have the equipment in their CMVs, management's proposal to bear the burden of the expense, which will result from the mandate, should prove successful for several reasons. First, for the owner-operators, it eliminates the major source of contention regarding this issue. Second, it may indicate to the drivers that management recognizes the legitimacy of their concerns. Finally, it may serve to strengthen the relationship between management and owner-operators.

RECOMMENDATIONS

Certainly, the EOBR mandate will not disappear in the foreseeable future and the government appears to have prevailed on this issue.

However, in anticipation of the impacts of the mandate and the potential for backlash from employees and drivers, management should begin to take pro-active steps to mitigate potential conflicts. There are several suggestions that are drawn from the literature on social interaction, an understanding of which is critical in the management of workplace conflict:

- **Separate Fact from Fiction.**

Care should be taken by management to ensure that all of the facts, both negative and positive, are openly communicated. Drivers and employees should also understand that the mandate and resulting consequences were a result of the power of government and not of the organization. Effectively communicating all of the facts about the issue should help employees/drivers understand the intended benefits of the mandate and the idea that the mandate should not be viewed as a "victory" for the organization.

- **Acknowledge the Impact on Employees.**

Management should address the legitimacy of the major concerns of both the company drivers and the owner-operators. When dealing with issues that affect the employees/drivers, often the key is not so much in trying to solve their problems, but in simply being a good listener. By being truly listened to, employees are often empowered to solve many challenges on their own (Billikopf, 2006).

- **Create a Sense of Community.**

For the company drivers, fear of increased control by management was a critical concern. Honest and open two-way communication between management and company drivers regarding the issue will be helpful in attempting to decrease an "us" against "them" mentality. Additionally, the collective power of the trade organizations

should not be discounted. Management, drivers and any other employees who are opposed to the mandate should consider becoming involved in and supporting the trade organizations, which continue to challenge the mandate.

- **Shift Focus to the Overall Organizational Goal.**

Create and communicate a shared vision. The intent is to clarify why the team is here and where they are heading. Many “visions” are one-sided and reflect one individual’s (or one group’s) vision imposed on an organization, which calls for compliance-not commitment (Senge, 1990). A shared vision is a vision created with the input of the team, changing the need for compliance with the organization into a desire for commitment to the organization.

- **Create Written Policies and Procedures.**

All employees/drivers should understand which aspects of the issue are inflexible and the consequences of failing to comply. Putting the rules and resulting penalties for non-compliance in writing removes any ambiguity and potential for misunderstandings. Additionally, having written policies and procedures is important to ensure consistent and fair application of the rules and avoid conflicts caused by perceptions of inequity from the employees/drivers.

CONCLUSION

Certainly, there will always be conflict in the workplace, particularly when faced with governmental restrictions and controls. However, there are steps that management can take to both mitigate potential conflict situations resulting from the mandate, and to help diffuse existing ones. There are no ready-made conflict prevention plans which are applicable to every situation. These are merely recommendations

based on this particular case, which consequently, may be applicable to other industries and situations. The suggestions are intended to increase employee/driver personal power and feelings of importance within the organization, decrease feelings of inequity, and increase the collective power of everyone within the organization, which should result in a decreased incidence of conflict.

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