



Court says newspaper carrier can keep jobless benefits

By Donna Goodison | Friday, September 26, 2008 | [Business & Markets](#)

A former newspaper carrier for the Worcester Telegram & Gazette can keep his unemployment payments after the newspaper lost an appeal claiming he was an independent contractor and not entitled to the benefits.

The Massachusetts Appeals Court, in an opinion issued yesterday, ruled that the newspaper exercised too much control over Thomas Driscoll's job not to classify him as an employee.

Under state law, an individual performing any service for a company is considered an employee unless he is free from control and direction in his performance; the service is performed outside the usual course of the employer's business; and the individual is engaged in an independently established occupation or business of the same nature as the service.

The Telegram "controlled virtually all aspects" of services provided by Driscoll, the court said.

A Winchendon resident and 21-year employee of the Telegram, Driscoll applied for unemployment assistance after the newspaper fired him in 2003.

The state denied Driscoll's claim after determining there was no "employer-employee relationship" between him and the Telegram. But a district court judge reversed the decision in 2006, allowing Driscoll to collect about \$6,000 in unemployment payments.

The Appeals Court decision is a bad precedent for newspapers and distributors who similarly misclassify carriers, said James Galliher, Driscoll's Fitchburg attorney.

"It may be good for employers, because they get to save on the bottom line and not pay benefits," he said. "But it hurts not only the individual employees but the taxpayers, because they have to pay the tab for the unemployment assistance and workers' compensation that should have been properly paid by the newspaper."

In May, Massachusetts drivers for Publishers Circulation Fulfillment filed a proposed class-action lawsuit claiming the newspaper distributor misclassifies them as independent contractors. "This is another helpful decision that will support our case against PCF," Boston attorney Shannon Liss-Riordan said.

Attorneys for the Telegram did not return calls for comment.