

Newspaper Can Dock Workers' Commissions

By Dan Evans
Daily Journal Staff Writer

In a blow to labor, a state appellate panel ruled Monday that the Los Angeles Times can yank commission payments to its telemarketers if the subscriptions they sell are canceled within the first 28 days.

The 2nd District Court of Appeal, in a unanimous published ruling, said "commission chargebacks" allow companies to compensate highly productive employees while ensuring that salespeople are not pressuring customers into buying something they don't want.

The decision upholds a ruling by Los Angeles Superior Court Judge Jon Mayeda, who dismissed the telemarketers' suit in December 2003.

Mayeda ruled that the commissions were properly considered advances, so their revocation did not run afoul of state labor laws. *Steinhebel v. Los Angeles Times*, B172415 (Cal. App. 2nd Dist. Feb. 7, 2005).

"I'm crushed," said Reno attorney Mark R. Thierman, whose firm specializes in overtime and wage disputes. "They say it's an advance, but that's a nonsense word. It doesn't mean anything. If it's not a wage, it's a loan and should be treated like a loan."

Thierman, who represented the five named plaintiffs in the case, vowed an appeal to the state Supreme Court.

Justice Madeleine Flier, writing for the

court, wrote that the payment schedule made sense, because an advance, "by definition, is not a wage because all conditions for performance have not been met."

The justice noted later in the opinion that advances have long been given to salespeople. And Flier wrote that, because

opportunity for employees to earn income exceeding their hourly wage in proportion to their efforts," she wrote.

Thierman, however, said the justices seemed to be more concerned about not shaking up a long-standing, if unjust, system.

"And that's just not appropriate," he said.

After the plaintiffs filed suit in July 2002, the Times closed its subscription office, contracted out the jobs and laid off the workers. The suit did not allege any claims for unjust termination.

A similar case against Investor's Business Daily targeted commission payments that were removed if a cancellation occurred during a four-month period. Oral arguments have not been set in that case. *Harris v. Investor's Business Daily, Inc.* B178428 (Cal. App. 2nd Dist. filed Sept. 24, 2004). Thierman also is representing the plaintiffs in that case.

Thierman acknowledged that the Investor's Business Daily case likely will have the same result in the appellate court. However, he said that, if the Times' case is successful on appeal, it will have a positive result for workers in both cases.

Seyfarth Shaw attorney Kenneth Sulzer, who represented the newspaper, referred calls to Los Angeles Times Vice President Martha Goldstein. Goldstein did not return calls seeking comment.

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commissions came on top of a base minimum wage, the employees were being paid for their time.

"Should we hold such a beneficial arrangement in violation of statute, the most likely result would be the elimination of commissions and any incentive or

Los Angeles Daily Journal