



Rewards for entrepreneur's hard work could dissolve 'overnight'

By Jim Waters

Lexington entrepreneur Paul Spicer faced a big decision 24 years ago.

"I could be an employee and make \$60,000 to \$65,000 a year — just like UPS (employees) — or I could make \$250,000 a year," Spicer said.

Spicer is now one of 191 [independent contractors](#) for FedEx Ground in Kentucky. These contractors employ nearly 600 Kentuckians.

Spicer holds nothing against UPS.

"They have a very positive image across the country," he said. "It's just that I wanted to do better than 'OK.'"

Spicer said FedEx made his dreams come true by allowing him to own a business rather than just work for one.

"Twenty-four years ago, I couldn't even imagine where I am now," he said. "I had goals. I wanted to be certain things and do certain things. But it turned out much better than I thought."

Yet, the state's top law-enforcement officer wants to take all this away from Spicer and his fellow independent contractors.

Attorney General Jack Conway [filed a lawsuit](#) in Franklin Circuit Court on Sept. 2 that could deny FedEx the freedom to classify its drivers as independent contractors.

Conway doesn't just want to force Spicer and other contractors to become employees. He wants to penalize FedEx for violating unemployment-compensation and tax-withholding policies — and force the company to pay \$10 million.

In the lawsuit, Conway accuses FedEx of cheating, labeling its operations "unfair trade practices."

But saying FedEx operates unfairly because it found an innovative, industry-changing way of delivering packages is like saying Harry the surgeon should not make more money than Terry the tire repairman.

- Harry chose to pursue a medical career. Terry did not.
- Harry chose to spend the money necessary to become a surgeon. Terry liked regular hours and working on tires.
- Terry may regret not becoming a doctor. But that doesn't make Harry's success *unfair*, does it? It surely doesn't call for a lawsuit, does it?

It's not just happenstance that UPS — FedEx's main competitor — *chose* many years ago to unionize, which Spicer believes hurt it.

“When there were strikes, I talked to guys in Maine who relied on the company to ship fresh lobsters next-day air,” Spicer said. “When a strike happened, many of those guys lost their businesses. It’s like I tell my five daughters, ‘For every action, there will always be a reaction.’ There cannot be a non-reaction to an action. Something has to give.”

If Conway’s lawsuit succeeds, an unpleasant reaction faces FedEx and other companies employing independent contractors.

UPS has survived and thrived for 100 years. But like any company, it doesn’t necessarily relish stiff competition.

In fact, it’s quietly trying to get its own [federal bailout](#) by using its significant influence via lobbying and campaign contributions in Washington to get Congress to change laws that benefit FedEx’s business model.

It’s not one of UPS’s greater moments.

But Big Brown’s real problem: It’s stuck.

Its dilemma vividly portrays how big labor’s goals of unionization and an entrepreneur’s drive to succeed without the Teamsters mix about like oil and water.

If UPS tried to change its model to include independent contractors, the union backlash would be severe. So it’s resorted to using government to try and diminish FedEx’s success.

Conway’s lawsuit involves more than just UPS versus FedEx: It attacks the free-market system.

“It seems like every time a small guy like me has opportunity to do more than just ‘ok,’ the state comes in and seems to tell everyone else through its policies: It’s okay if you’re just ‘OK.’ ” Spicer said. “But guys like me want to do better than ‘OK.’ ”

And they ought to have the support of Kentucky’s leaders in doing so.

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