

## Oil-field services company wins over government in legal labor battle

By BY JESSICA PRIEST - JPRIEST@VICAD.COM

Originally published February 19, 2013 at 8:57 p.m., updated February 20, 2013 at 8:42 a.m.

A South Texas oil-field services company won a labor battle with the U.S. government, which the company says was strong-arming it into paying millions in taxes.

Three years ago, the Department of Labor told Corpus Christi-based Gate Guard Services to begin classifying its gate attendants as employees, not independent contractors.

It said Gate Guard Services violated the Fair Labor Standards Act and owed more than \$6 million in back wages because the company did not pay its attendants a minimum wage for each of the 24 hours they worked out of their recreational vehicles at the site. A job of an attendant is to log vehicles that enter and depart drilling operations.

Gate Guard Services pays about 400 gate attendants anywhere from \$100 to \$175 daily. The company maintained gate attendants have the opportunity to engage in other activities, such as reading, browsing the Internet, watching television and shopping when things get slow and mostly are not monitored.

Victoria Federal Judge John D. Rainey weighed a few factors, such as the degree of control Gate Guard Services had over its workers, and said in a summary judgment Thursday that the U.S. Department of Labor was wrong.

Gate Guard Services' attorney Dan Pipitone said the ruling is an important victory for the gate attendants, who enjoy being transient; the consumer, who will see lower prices if the energy industry is "leaner and meaner;" and capitalism in general.

Department of Labor spokeswoman Elizabeth Todd said the agency is disappointed in the outcome and is evaluating what its next step should be.

Pipitone and co-counsel Annette Idalski anticipate an appeal to be filed in about 60 days.

Overall, they said the Department of Labor began targeting companies similar to Gate Guard Services to garner more revenue during the economic downturn.

Idalski hopes this will encourage other small businesses that are currently too intimidated to fight back against an agency that appears to have unlimited financial resources at their disposal.

"This is the first time, by our research, that the Department of Labor has lost a Fair Labor Standards Act case dealing with the misclassification issues," Idalski said.

Shawn Fluitt, who operates a Boerne-based gate attendant business called TimeKeepers Inc. said he was ecstatic about the success of his competitor in court.

Two years ago, Fluitt thought it best to comply with the Department of Labor's demands and turned some 150 independent contractors into employees overnight - much to his wallet's dismay.

He said he thinks the agency just does not understand that this is not your usual 9-to-5 job.

"It's a nightmare to try to manage all of that," he said of the complex formula now used to determine when a gate attendant qualifies for overtime. "We treat our people the best we can. We have folks that are coming in that are 60 or 70 years old that no one else will hire."

Doug Farrell, who runs the gate attendant business Loma Rentals in North Texas, said the Department of Labor launched an investigation into its practices 60 days ago.

"We've been monitoring this very closely. ... This is something that has a magnitude of making or breaking a company," he said.

Will Sciba, an attorney and shareholder with area law firm Cole, Cole and Easley, said he saw both sides' points. He said most people do not know they are running afoul of the Fair Labor Standards Act, which was initially designed as a hiring incentive.

"And that's still an important mission," Sciba said.