

**REPLY BRIEF OF PETITIONER  
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**NLRB CHARGE AGAINST AN EMPLOYER,  
CASE NO. 19-CA-31797—RELEVANT EXCERPT**

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. . . ULP against oak Harbor Freight Lines by IBT Locals 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, 962 (“the Union”) filed MARCH 13, 2009

**BASIS OF CHARGE**

On September 22, 2008, the Oak Harbor bargaining unit commenced an unfair labor practice strike. Prior to the strike, the Employer made contributions into several Taft-Hartley benefits trusts to supply health and welfare, pension and retiree health and welfare benefits, consistent with the terms of the expired collective bargaining agreement between Oak Harbor and the Union. By memoranda dated September 23, 2008, the Company, through its counsel, John Payne, unilaterally terminated the Employer’s participation in the Taft-Hartley benefits trusts. The Company did so despite that the parties were not at impasse.

By letter dated February 12, 2009, the Union’s lead spokesperson in collective bargaining, J. Allen Hobart, International Vice President of the International Brotherhood of Teamsters and President of Joint Council 28 of the Teamsters, made an unconditional offer to return to work on behalf of all bargaining unit members.

By the following conduct, among other conduct, the Company has restrained and coerced employees in the exercise of their rights, discriminated against employees on the basis of the exercise of those rights in order to discourage membership in the Union, and failed to fulfill its duty to bargain in good faith:

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1. The Company has returned ULP strikers to work under unilaterally implemented terms in advance of overall good faith bargaining impasse. Specifically, the Company has violated the status quo by terminating its contributions to the health and welfare, pension, and retiree health and welfare Taft-Hartley benefit funds to which it contributed prior to the start of the ULP strike.
2. The Company has not reinstated the ULP strikers in compliance with the governing status quo and the law. Specifically, the Company has retained replacement workers hired during the strike while ULP strikers remain on layoff; retained junior employees who crossed the picket line in preference to senior ULP strikers; and returned junior strikers to work while senior strikers remain on layoff, all in contravention of the applicable status quo and the law.
3. The Company has refused to reinstate numerous ULP strikers, contending in a February 17, 2009 letter that there are no vacancies for them “due to reduced business resulting from the Union’s strike . . . .” To the extent the Company has suffered a reduction in business . . .

**REGION 19 NATIONAL LABOR  
RELATIONS BOARD FOURTH ORDER  
CONSOLIDATING CASES, FOURTH AMENDED  
CONSOLIDATED COMPLAINT, AND NOTICE OF  
HEARING—RELEVANT EXCERPTS  
(MAY 24, 2010)**

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD REGION 19

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OAK HARBOR FREIGHT LINES, INC,

and

TEAMSTERS LOCALS 81, 174, 231, 252, 324,483,  
589, 690, 760, 763, 839, and 962,

and

TEAMSTERS LOCAL 174.

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Cases. 19-CA-31797, 19-CA-31827,  
19-CA-31865, 19-CA-32001, 19-CA-32030,  
19-CA-32031, 19-CA-31526, 19-CA-31536,  
19-CA-31538, 19-CA-31886

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On December 18, 2009, the Regional Director issued a Third Order Consolidating Cases, Amended Third Consolidated Complaint and Notice of Hearing in Cases 19-CA-31797, 19-CA-31827, 19-CA-31865, 19-CA-31886, 19-CA-32001, 19-CA-32030, and 19-CA-32031. It had also been charged by Teamsters Local 174 in Cases 19-CA-31526, 19-CA-31536, and 19-CA-

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31538 that Oak Harbor Freight Lines, Inc. (“Respondent”), had been engaging in further unfair labor practices as set forth in the National Labor Relations Act (the “Act”), 29 U.S.C. § 151, *et seq.*

Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to § 102.33 of the Rules and Regulations of the National Labor Relations Board (the “Board”), ORDERS that Cases . . .

[ . . . ]

(iv) April 23: Douglas Beatty; and

(v) May 8: Gromyko Soyan.

(b) From on or about February 26, 2009, to on or about the following dates, although re-employed in non-substantially equivalent positions, Respondent failed to reinstate the following striking and/or sympathy striking employees employed within the jurisdiction of Local 81 to their former or substantially equivalent positions of employment:

(i) April 6: Bryon Akins, David Buchanan, Michael Fuller, Raymond Hughes, Cade Mason, David Miller, David Smith, and Timothy West; and

(ii) On about July 30, the precise date better known to Respondent: Ricardo Alvarado, Douglas Beatty, Bryan Croghan, Michael Fowikes, Jr., Hoy Lakoy, Jeramey Pearson, Gromyko Soyan, Robert Steele, Curtis Walker, and Steven Weicuss.

(c) Since about the dates listed opposite their names, Respondent has failed and refused to reinstate the following striking and/or sympathy striking em-

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ployees employed within the jurisdiction of Local 81 to their former or substantially equivalent positions of employment:

- (i) February 26: Greg McDaniel;
- (ii) March 2: Melvin Vietzke; and
- (iii) March 17: Brian Scanlon.

### 13.

(a) On or about February 26, 2009, after the Locals' unconditional offer for the strikers and/or sympathy strikers to return to work, Respondent failed to apply the terms of the Expired CBA as it related to the Employee Benefit Trust Funds and the Pension Trust, and, instead, applied the Temporary Benefit Changes to the single Unit and/or Units of employees, including returning strikers and/or sympathy strikers.

(b) On or about February 26, 2009, Respondent failed to restore the single Unit and/or the Units' Portland Line Haul work ("Portland Line Haul work") it had transferred in or around January 2009, on a date better known to Respondent, from its Portland Terminal to a non-union terminal in or around Redding, California.

(c) The subjects set forth above in paragraphs 13(a) and 13(b) relate to wages, hours, and other terms and conditions of employment of the single Unit and/or Units and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in paragraphs 13(a) and 13(b) without prior notice to any of the Locals and/or without affording any of the Locals an opportunity to bargain with Res-

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pondent with respect to this conduct and/or the effects of this conduct.

### 14.

By the conduct described above in paragraphs 7(a) and 7(b), Respondent had dominated and interfered with the formation and administration of, and had rendered unlawful assistance and support to a labor organization in violation of §§ 8(a)(1) and (2) of the Act.

### 15.

By the conduct described above in paragraphs 11(b)-(i), 12, and 13(a), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of §§ 8(a)(3) and (1) of the Act.

[ . . . ]

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 13(b), (c), and (d), the General Counsel seeks an Order requiring Respondent to restore the Portland Line Haul work that was moved to California, and to reinstate and make whole the affected employees who were not reinstated by Respondent and/or who were laid off as alleged herein. If said restoration and maintenance of the status quo ante is not possible, General Counsel seeks to have Respondent make whole and reinstate said affected employees to substantially equivalent positions, without any loss in remuneration or seniority.

WHEREFORE, as part of the remedy for the unfair labor practice alleged above in paragraphs 13 (a), (c),

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and (d), the General Counsel seeks an Order requiring that Respondent promptly sign, retroactive to February 26, 2009: Subscription Agreements for the Washington Teamsters Welfare Trust and the Retirees Welfare Trust; Employer-Union Certifications for the Western Conference of Teamsters Pension Trust; and an appropriate, comparable agreement covering the Oregon Warehouseman (a.k.a. 206) Trust. Further, Counsel for the General Counsel seeks reimbursement by Respondent to the Employee Benefit Trust Funds and to the Pension Trust for any contributions which would have been made since February 26, 2009, as well as to the single Unit and/or all Units of employees for medical expenses accrued since February 26, 2009, that were not covered by Respondent's medical plan but would have been covered under the Health and Welfare Trusts.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 11, 12, 13 and 15, the General Counsel seeks an Order requiring . . .

[ . . . ]

. . . hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.



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DATED at Seattle, Washington, this 24th day of  
May, 2010.

/s/ Richard L. Ahearn  
Regional Director  
National Labor Relations Board,  
Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

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**LETTER FROM J. BUCKLEY  
(DECEMBER 5, 2008)**

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Via Fax 206-622-9927 and U.S. Mail

John M. Payne  
Davis Grimm Payne & Marra  
701 Fifth Avenue, Suite 4040  
Seattle, WA 98104

Re: Teamsters Local 206 Employers Trust/Oak  
Harbor Freight Lines

Dear Mr. Payne:

I represent Teamsters Local 206 Employers Trust. Northwest Administrators has informed me that they received a November 2008 employer contribution report with contributions paid on four employees for November coverage.

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My understanding of the Trust and Northwest Administrator's has been that your client implemented a company health plan for all crossover employees in Oregon and Washington. Apparently, the four employees listed on the contribution report are crossover employees.

I have asked Northwest Administrators to hold crediting of the contributions in abeyance until Oak Harbor Freight Lines provides the following information. Did Oak Harbor implement its own self insured health plan for all crossover employees in Oregon and Washington? Are there are any crossover employees from Oregon currently employed at Oak Harbor who are not listed on the November 2008 report? What basis is there, if any, for the employer making contributions on some employees and not on others? Please provide us with your immediate response.

Very truly yours,

CARNEY, BUCKLEY, HAYS,  
MARSH & GIBSON

/s/ Jerome B. Buckley, Jr.

JBB:mp

cc: Linda Philbrick (via fax and U.S. Mail)