

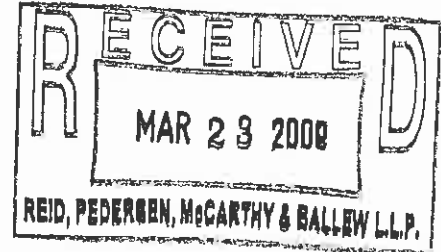


United States Government
NATIONAL LABOR RELATIONS BOARD
Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174-1078

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Agency Web Site: www.nlrb.gov

March 20, 2009

William L. Messenger, Staff Attorney
National Right to Work Legal Defense Foundation
8001 Braddock Rd, Suite 600
Springfield, VA 22151-2110



Re: **Oak Harbor Freight Lines, Inc.**
Cases 19-RD-3812 (Auburn, WA)
3813 (Boise, ID)
3814 (Medford, OR)
3815 (Burlington, WA)
3816 (Pasco, WA)
3817 (Salem, OR)
3818 (Spokane, WA)
3819 (Wenatchee, WA)
3820 (Olympia, WA)
3821 (Auburn, WA)
3822 (Auburn, WA)
3823 (Auburn, WA)
3824 (Auburn, WA)
3825 (Auburn, WA)
3826 (Pasco, WA)
3827 (Yakima, WA)
3828 (Moses Lake, WA)

Dear Mr. Messenger:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, I find that further proceedings are not warranted. In particular, as explained below, I must dismiss the petitions as they are barred by the informal settlement agreement that I approved on January 30, 2009, in Cases 19-CA-31526, 19-CA-31536 and 19-CA-31538.

On February 26, 2009, petitions were filed in Cases 19-RD-3812 through 19-RD-3819; on March 5, 2009, a petition was filed in Case 19-RD-3820; on March 9, 2009, petitions were filed in Cases 19-RD-3821 through 19-RD-3826; and on March 12, 2009, petitions were filed in Cases 19-RD-3827 and 19-RD-3828. These petitions sought decertification elections among groups of employees at various locations of the Oak Harbor Freight Lines, Inc.'s (Employer's) operation including: Auburn, Burlington, Moses Lake, Olympia, Pasco, Spokane, Wenatchee, and Yakima, Washington; Medford and Salem, Oregon; and Boise, Idaho freight terminals; as well as the Employer's Auburn, Washington maintenance and office clerical operations.

The Employer and Teamster Local Unions 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, and 962 have, for many years, bargained one collective bargaining agreement (CBA) covering the above locations (as well as the Bremerton and Everett, Washington and Portland, Oregon freight terminal locations) for the following unit of employees as described in Section 1.03 of the parties' most recent November 2004 to October 31, 2007 CBA:

All truck drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such employees as may be presently or hereafter represented by each Local Union as referenced in Appendices A, B, C, and D, engaged in local pick-up, delivery and assembling of freight, within the jurisdiction of the Local Union and office-clerical and shop employees employed by the Employer excluding however, the classifications set forth immediately below in Section 1.04.

The exclusions listed in Section 1.04 are: confidential employees, supervisory and professional employees, employees covered by an existing union contract not included in the CBA, and non-bargaining unit employees.

Beginning in about September 2007, the Employer and the Locals attempted to negotiate a succeeding agreement. On September 9 and 18, 2008, Local 174 filed unfair labor practice charges in Cases 19-CA-31526, 19-CA-31536, and 19-CA-31538, alleging among other things, that the Employer had unlawfully recognized and dominated an employee committee, made unilateral changes in bidding procedures and dealt directly with employees. The activities took place at the Auburn terminal, the base for about one-third of the bargaining unit employees. On September 22, 2008, bargaining unit employees at all locations commenced striking.

On January 30, 2009, I approved a Settlement Agreement resolving the above-cited charges, a copy of which is attached. Among other provisions, this Agreement contained a provision which required the Employer to recognize and bargain with the Local Teamsters Unions that are party to the CBA over the wages, hours, and working conditions of the unit employees described in the expired CBA. The Settlement Agreement does not contain a standard non-admission clause. It did, however, contain a provision reserving the Employer's right to contest the Region's determination that the strike was an unfair labor practice strike. The Settlement Agreement further required the Employer to post a Notice to Employees for 60 days at all of its unionized terminals in Washington, Oregon, and Idaho, as well as mail a copy of the Notice to all current and former employees, i.e. those employed since September 22, 2008. The Employer began the postings at the terminals on February 4, 5 and 6, 2009. The mailings were made on February 5, 2009.

Since its decision in *Poole Foundry and Machine Co.*, 95 NLRB 34 (1951), the Board has treated a settlement agreement containing an affirmative bargaining provision, such as the bargaining provision contained in the January 30, 2009 Settlement Agreement, as a bar to the filing or processing of petitions that raise a question concerning representation. E.g., *Freedom WLNE-TV, Inc.*, 295 NLRB 634 (1989). The purpose of the bar is to allow the parties to have a period of time for meaningful bargaining to occur in the absence of the destabilizing effects that rival or decertification petitions have on the negotiation process. In short, no question concerning representation may be entertained if the parties are to effectuate the settlement provisions containing an affirmative bargaining obligation. A continued adherence to the *Poole Foundry* settlement bar doctrine was specifically endorsed in the Board's recent decision in *Truserv Corporation*, 349 NLRB No. 23 (2007).

Therefore, relying on the above and specifically the Board's decision in *Poole Foundry* and its progeny, and as the above-cited petitions were filed during the 60-day remedial posting period and prior to the Employer's achieving compliance with the Settlement Agreement in Cases 19-CA-31526, 19-CA-31536, and 19-CA-31538, I shall dismiss the petitions in this matter pursuant to the Board's settlement bar policy to ensure that the parties are provided, *inter alia*, with a meaningful opportunity to meet their bargaining obligations.

Pursuant to the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th St, NW, Washington D.C. 20570. A request for review may also be submitted by electronic filing. See the attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at www.nlr.gov for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under E-Gov on the Board's website.


The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, D.C., by close of business at **5:00 p.m. (ET) on April 3, 2009**. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. This request may **not** be filed by facsimile. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, and a copy of any such request for extension of time should be submitted to this office and to each of the other parties to this proceeding.

An appeal may also be filed electronically by using the E-filing system on the Agency's Website. In order to file an appeal electronically, please go to the Agency's Web site at www.nlr.gov and select the **E-Gov** tab and click on **E-Filing**. Scroll to the *Board Office of the Executive Secretary*. Scroll down to File Documents. Select the type of document you wish to file electronically and you will navigate to detailed instructions on how to file an appeal electronically.

If you file the appeal electronically it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time on the due date**. A failure to timely file an appeal electronically will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, either by mail or by electronic filing.

The request for review and any request for extension of time must include a statement that a copy has been served on this office and on each of the other parties to this proceeding in the same or a faster manner as that utilized in filing the request with the Board.

Sincerely,



James R. Kobe
Acting Regional Director

Enclosures

Re: Oak Harbor Freight Lines Page 4
Case 19-RD-3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3823,
3824, 3825, 3826, 3827, 3828

cc: National Labor Relations Board
Attn: Executive Secretary
1099 14th St NW,
Washington, D.C. 20570

Lisa Pau, Attorney
Teamsters Local 174
14675 Interurban Ave S, Suite 303
Tukwila, WA 98168-4614

Ed Vander Pol, CEO
Oak Harbor Freight Lines, Inc.
1225 37th St NW
Auburn, WA 98001-2417
Mr. Ray Miller
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Federal Way, WA 98023-6245

John M. Payne, Attorney
DAVIS GRIMM PAYNE & MARRA
701 Fifth Ave, Suite 4040
Seattle, WA 98104-7071
Teamsters Local 483
225 N 16th St
Boise, ID 83702-5169

Teamsters Local 962
4480 Rogue Valley Hwy
Central Point, OR 97602-7004

Teamsters Local 483
225 N 16th St
Boise, ID 83702-5169

Teamsters Local 324
2686 Portland Rd NE
Salem, OR 97301-0125

Teamsters Local 690
1912 N Division St
Spokane, WA 99207-2230

Teamsters Local 760
1211 W Lincoln Ave
Yakima, WA 98902-2535

David W. Ballew, Attorney
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Seattle, WA 98119

Teamsters Local 252
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Centralia, WA 98531-4449

Teamsters Local 763
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Tukwila, WA 98168-4617

Teamsters Local 839
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Pasco, WA 99301-4873

James A. McCall, Special Counsel
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Washington, DC 20001-2130

Teamsters Local 231
1700 N State St
Bellingham, WA 98227-0298

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NL REGION 19

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F.02

FORM NLRB-4775
(Revised R18 - 1/07)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF:

Oak Harbor Freight Lines, Inc.

Cases 19-CA-31526, 31536, and 31530

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS.


POSTING OF NOTICE — Upon approval of this Agreement and receipt of the Notices from the Region, which may include Notices in more than one language as deemed appropriate by the Regional Director, the Charged Party will post immediately in conspicuous places in and about its Boise, Idaho, and its Auburn, Bremerton, Everett, Moses Lake, Mt Vernon, Olympia, Pasco, Spokane, Wenatchee, and Yakima, Washington, and its Medford, Portland, and Salem Oregon, plants/offices, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice (and versions in other languages as deemed appropriate by the Regional Director) made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. Upon approval of this Agreement, the Charged Party will also duplicate and mail, at its own expense, a copy of the attached Notice to all current employees and former employees who were employed at any time since September 22, 2008. Such Notices will be signed by a responsible official of the Charged Party, and the date of actual mailing shall be shown thereon. The Charged Party will furnish to the Regional Director written confirmation as to the date of mailing together with a list of names and addresses to whom Notices were mailed.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

STRIKE STATUS — The Parties acknowledge that Region 19's position is that the strike at all the Charged Party's terminals by the bargaining unit employees which commenced on September 22, 2008, and continues to date, has been at material times an unfair labor practice strike and that the Charged Party would therefore be obligated, prior to full compliance of these cases, to reinstate qualified strikers, following their unconditional offer to return to work. The Charged Party, however, disagrees with the Region's position that the strike is an unfair labor practice strike. Furthermore, the Charged Party contends that if this was an unfair labor practice strike at the outset, it was converted to an economic strike immediately following the Charged Party's October 9, 2008 repudiation letters. Accordingly, in the event that the status of the strike arises as an issue during the period prior to full compliance of the cases, this settlement agreement shall not be a bar to an allegation that the Charged Party unlawfully refused reinstatement of striking employees nor to the issuance of a complaint on such charges. In such circumstances, either party may use any evidence obtained at any stage in the above-captioned cases for any relevant purpose in the litigation of any charges concerning reinstatement of strikers. This includes seeking any appropriate remedy in connection with the charges. Further, any Judge, the Board and the courts shall not be precluded from making any findings of fact and/or conclusions of law related to the underlying charges, the alleged cause of the strike, the alleged repudiations and alleged conversion of the strike and any issue concerning reinstatement of the strikers during the period prior to full compliance of the cases as required by the terms of this settlement agreement.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), and does not constitute a settlement of any other case(s) or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a Judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. By entering into this Settlement Agreement the Charged Party does not admit that it has violated the National Labor Relations Act.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement shall be null and void if the General Counsel does not sustain the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

Initial:  Date: 1/28/09

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REGION 19

206 220 5305

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PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above captioned case(s).

Charged Party Oak Harbor Freight Lines, Inc.		Charging Party Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters	
By: Name and Title <i>Ch. M. Payne, attorney</i>	Date <i>1/28/09</i>	By Name and Title	Date
Recommended By: <i>Dr. Sumbay/Husky</i>	Date <i>1/30/09</i>	Approved By: <i>Richard L. O'Leary</i>	Date <i>1/30/09</i>
Board Agent		Regional Director	

NOTICE TO



POSTED PURSUANT TO / APPROVED BY A REG NATIONAL LABOR RELATIONS BOARD

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT interfere with your free exercise of these rights.

WE WILL NOT form, dominate, administer, or support the Auburn Drivers Committee or any other labor organization that is not the properly recognized or certified representative of our employees.

WE WILL NOT tell you that we intend to form the Auburn Drivers Committee or similar labor organizations or suggest to you or encourage you to form, participate in or cooperate with such committees to deal with management concerning terms and conditions of employment.

WE WILL withdraw all recognition from, and completely disestablish the Auburn Drivers Committee, and refrain from recognizing other similar employee committees as representative of any of our employees for the purpose of dealing with us concerning wages, grievances, rates of pay, or other conditions of employment.

WE WILL NOT use the Drivers Committee to find out what your grievances are.

WE WILL NOT use the Drivers Committee to remedy your grievances.

WE WILL NOT use the Drivers Committee to promise and grant you extra benefits.

WE WILL NOT use the Drivers Committee to bypass the Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters (the Union) and bargain directly with you about your working conditions.

WE WILL NOT make unilateral changes to our Auburn dock workers' bidding procedure without first bargaining with the Union about the change.

The National Labor Relations Board is an independent Federal agency created in 1935 to en employees want union representation and it investigates and remedies unfair labor practice charge or election petition, you may speak confidentially to any agent with the Board's Region:

THIS IS AN OFFICIAL NOTIC

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MI THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFF


EMPLOYEES

SETTLEMENT AGREEMENT REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD AGENCY OF THE UNITED STATES GOVERNMENT



- WE WILL NOT** unilaterally change our past practice at Auburn of allowing you to leave work on Sundays to attend Union meetings.
- WE WILL NOT** in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- WE WILL** recognize the Local Teamsters Unions which are party to our Agreement which expired by its terms on October 31, 2007, covering the unit described in Section 1 of the Agreement, as your sole and exclusive representative of certain of our employees, and, upon request, bargain with those unions for purposes of negotiating your wages, hours, and working conditions.
- WE WILL** inform the affected Auburn dock workers that they can bid start times off the Auburn drivers' seniority list.
- WE WILL** upon request, offer to bargain with the Union about changes to our Auburn dock workers' bidding procedure.
- WE WILL** inform our Auburn employees, per our past practice, that they are allowed to leave work on Sundays to attend Union meetings.
- WE WILL** upon request, offer to bargain with the Union about our past practice that employees are allowed to leave work on Sundays to attend Union meetings.

Oak Harbor Freight Lines, Inc.
(Employer)

By: 
(Title)

Date: FEB 05 2009

Cases 19-CA-31526, 19-CA-31536, and 19-CA-31538

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

915 Second Ave., 29th Floor Telephone: (206) 220-6300
Seattle, WA 98174 Hours of Operation: 8:15 a.m. to 4:45 p.m.

enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

AND MUST NOT BE DEFACED BY ANYONE.

DO NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS AGREEMENT SHOULD BE REFERRED TO THE NATIONAL LABOR RELATIONS BOARD'S COMPLIANCE OFFICER.