

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

OAK HARBOR FREIGHT LINES, INC

and

Cases 19-CA-31797
19-CA-31827
19-CA-31865
19-CA-32001
19-CA-32030
19-CA-32031

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

and

19-CA-31886

TEAMSTERS LOCAL 174

**THIRD ORDER CONSOLIDATING CASES AND
THIRD CONSOLIDATED COMPLAINT**

On September 30, 2009, the Regional Director issued a Second Order Consolidating Cases, and Amended Second Consolidated Complaint and Notice of Hearing in Cases 19-CA-31827, 19-CA-31865, 19-CA-31886, and 19-CA-32001. It has also been charged by Teamsters Locals 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, and 962 (the "Locals"), in Cases 19-CA-31797, 19-CA-32030, and 19-CA-32031, that Oak Harbor Freight Lines, Inc. ("Respondent"), has 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

19-CA-31797, 19-CA-31827, 19-CA-31865, 19-CA-31886, 19-CA-32001, 19-CA-32030, and 19-CA-32031 are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to § 10(b) of the Act and § 102.15 of the Board's Rules and Regulations, issues this Third Consolidated Complaint and alleges as follows:

1.

(a) The Charge in Case 19-CA-31797 was filed by the Locals on March 13, 2009, and was served on Respondent by regular mail on about March 16, 2009.

(b) The Charge in Case 19-CA-31827 was filed by the Locals on March 31, 2009, and was served on Respondent by regular mail on about that date.

(c) The First Amended Charge in Case 19-CA-31827 was filed by the Locals on April 13, 2009, and was served on Respondent by regular mail on about that date.

(d) The Second Amended Charge in Case 19-CA-31827 was filed by the Locals on June 17, 2009, and served on Respondent by regular mail on about that date.

(e) The Charge in Case 19-CA-31865 was filed by the Locals on April 16, 2009, and was served on Respondent by regular mail on about that date.

(f) The Charge in Case 19-CA-31886 was filed by Teamsters Local 174 on April 24, 2009, and was served on Respondent by regular mail on about that date.

(g) The Charge in Case 19-CA-32001 was filed by the Locals on July 9, 2009, and was served on Respondent by regular mail on about that date.

(h) The Charge in Case 19-CA-32030 was filed by the Locals on July 24, 2009, and was served on Respondent by regular mail on about that date.

(i) The First Amended Charge in Case 19-CA-32030 was filed by the Locals on August 6, 2009, and was served on Respondent by regular mail about that date.

(j) The Second Amended Charge in Case 19-CA-32030 was filed by the Locals on September 28, 2009, and was served on Respondent by regular mail on about that date.

(k) The Third Amended Charge in Case 19-CA-32030 was filed by the Locals on November 25, 2009, and was served on Respondent by regular mail on about that date.

(l) The Charge in Case 19-CA-32031 was filed by the Locals on July 24, 2009, and was served on Respondent by regular mail on about that date.

2.

(a) Respondent is a State of Washington corporation with offices and places of business throughout the States of Washington and Oregon, where it is engaged in the business of transportation of freight.

(b) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000 for the transportation of freight from the States of Washington and Oregon directly to points outside the States of Washington and Oregon.

(c) Respondent, during the past twelve months, which period is representative of all material times, in conducting its business operations described above in paragraph 2(a), purchased and received goods valued in excess of \$50,000 at its facilities within the States of Washington and Oregon directly from points outside the States of Washington and Oregon.

(d) Respondent has been at all material times an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

The Locals are each, and have been at all material times, labor organizations within the meaning of § 2(5) of the Act.

4.

(a) The following employees of Respondent (the "Unit"), constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

All truck drivers, helpers, dockmen, warehousemen, checkers, power-lift operators, hostlers, and such other employees as may be presently or hereafter represented by each Local Union, 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 Respondent at its Boise, Idaho, Auburn, Bremerton, Everett, Moses Lake, Mt. Vernon, Olympia, Pasco, Spokane, Wenatchee, and Yakima, Washington, Medford, Portland, and Salem, Oregon locations; but excluding confidential employees, supervisory and professional employees as defined in the Act, employees already covered by a different union contract, office supervisors exercising independent judgment with respect to the responsibility for directing the work or recommending hiring and firing and nonbargaining unit employees.

(b) Included in the Unit set forth above in paragraph 4(a) are office clerical employees (“Clericals”).

(c) At all material times, the Locals have been the designated exclusive collective bargaining representative of the Unit, including the Clericals, and recognized as the representative by Respondent. This recognition has been embodied in successive collective bargaining agreements, the most recent of which was effective from November 1, 2004, through October 31, 2007 (the “Expired Collective Bargaining Agreement”).

(d) At all material times, the Locals, by virtue of § 9(a) of the Act, have been and are the exclusive representatives of the Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

5.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of § 2(11) of the Act, and/or agents within the meaning of § 2(13) of the Act, acting on behalf of Respondent:

Robert R. Braun, Jr.	–	Labor Consultant
Michael Brooks	–	Director of Line Haul
Kevin Kellermann	--	District Manager
Ronald Kieswether	–	Vice President of Operations
Dan VanderPol	--	Director of Maintenance
Kim Cookson	--	Auburn Human Resources Manager
Albert Gonzalez	--	Auburn Terminal Manager
Mike Hobby	--	Auburn Accounts Receivable Manager
William Holt	–	Former Auburn Terminal Manager
Troy Jensen	--	Auburn Pricing Supervisor
Nancy Lemback	--	Auburn Office Manager
Karen Miller	--	Auburn Manager

Chris Plantz	--	Auburn Supervisor
Jennifer Slaten	--	Auburn Billing Supervisor
Ray Slaten	--	Auburn Terminal Operations Manager
Cory Webking	--	Auburn Pricing Analyst
Michael Apodaca	--	Mount Vernon Terminal Manager
Raymond Kenney	--	Portland Dock Manager
Matthew Scudder	--	Portland Terminal Manager
Mahlon Smith	--	Portland Pick Up & Delivery Supervisor
Jason Threlfell	--	Portland Line Haul Manager
Kevin Winborn	--	Portland Pick Up & Delivery Supervisor

6.

(a) On or about October 31, 2007, the Collective Bargaining Agreement between Respondent and the Locals expired (the "Expired Collective Bargaining Agreement").

(b) Pursuant to the Expired Collective Bargaining Agreement, Respondent was required to make monthly contributions to three health and welfare trusts and to a pension fund: Washington Teamsters Welfare Trust ("Welfare Trust"), Retirees Welfare Trust, and Oregon Teamsters Medical Plan ("Oregon Welfare Trust") (collectively, "Health and Welfare Trusts"); and the Western Conference of Teamsters Pension Trust Fund ("Pension Trust").

(c) Contributions made to the Welfare Trust and the Retirees Welfare Trust after the expiration of the Collective Bargaining Agreement were made pursuant to Subscription Agreements.

(d) Contributions made to the Oregon Welfare Trust after the expiration of the Collective Bargaining Agreement were not made pursuant to a Subscription Agreement.

(e) Contributions made to the Pension Trust after the expiration of the Collective Bargaining Agreement were made pursuant to an Employer-Union Certification.

7.

(a) In or around April 2008, Respondent changed the bidding procedure for Auburn Dock Workers without prior notice to Local 174 and/or without affording Local 174 an opportunity to bargain.

(b) On or around July 18, 2008, Respondent created a committee ("Drivers' Committee") at its Auburn terminal for the purposes of dealing with Respondent's employees concerning their terms and conditions of employment.

(c) Through the Drivers' Committee, Respondent solicited grievances from its employees, promised to remedy the grievances and granted benefits to its employees.

(d) On or around September 21, 2008, Respondent, without prior notice to Local 174 and/or without affording Local 174 an opportunity to bargain, changed its past practice of allowing employees at its Auburn terminal to leave work early on Sundays to attend meetings with Local 174.

8.

(a) From on or about September 22, 2008, to February 12, 2009, certain employees of Respondent (the "Strikers") represented by the Locals ceased work concertedly and engaged in a strike.

(b) The strike described above in subparagraph 8(a) was caused by Respondent's unfair labor practices described above in paragraph 7 and/or in support of the employees' economic working conditions.

9.

(a) During the period between September 22 and September 26, 2008, Respondent cancelled its Subscription Agreements and Employer-Union Certification, referred to above in paragraph 6.

(b) Pursuant to an agreement with the Locals entered into on or about October 9, 2008, and intended to last only the duration of the strike referred to above in paragraph 8, Respondent, as of about October 31, 2008:

- (i) ceased making contributions to the Health and Welfare Trusts and Pension Trust;
- (ii) escrowed the contributions to the Pension Trust and Retirees Welfare Trust; and
- (iii) provided coverage under its medical plan to its eligible employees previously covered by the Welfare Trust and Retirees Welfare Trust.

(c) Respondent's actions listed above in paragraph 9(b) are collectively referred to as "Temporary Benefit Changes."

10.

(a) On or about February 12, 2009, and as reiterated on or about February 25, 2009, the Locals' International Vice President, on behalf of all the Locals, made an unconditional written offer to return all striking employees, including Jeff Gibson, Michael Neubauer and Travis Tuttle, to their former or substantially equivalent positions of employment.

(b) On or about February 26, 2009, either in-person or by telephone, the Auburn Terminal drivers, who had engaged in the strike described above in paragraph 8, informed Respondent of their desire to return to their former or substantially equivalent positions of employment.

(c) On or around February 26, 2009, either in-person or by telephone, Auburn Terminal Customer Service Clerk Jonathan Gentry, and Auburn Terminal Customer Service Clerk Amber Dyche, who had engaged in the strike described above in paragraph 8, informed Respondent of their desire to return to their former or substantially equivalent positions.

(d) On or about February 26, 2009, by telephone, Portland employee Michael Neubauer, who had engaged in the strike described above in paragraph 7, informed Respondent of his desire to return to his former or substantially equivalent position of employment.

(e) On or about February 26, 2009, Respondent suspended and, since that time, has failed and refused to reinstate Auburn employee Travis Tuttle to his former or substantially equivalent position of employment.

(f) On or about February 26, 2009, Respondent suspended and, since that time, has failed and refused to reinstate Burlington/Mt. Vernon employee Jeff Gibson to his former or substantially equivalent position of employment.

(g) On or about February 26, 2009, Respondent suspended and, since that time, has failed and refused to reinstate Portland employee Michael Neubauer to his former or substantially equivalent position of employment.

(h) Form on or about February 27, 2009, until April 9, 2009, Respondent reinstated Jonathan Gentry to his former or substantially equivalent position.

(i) Respondent failed and refused to reinstate the following employees to their former positions of employment in a timely manner by delaying their reinstatement to on or about the following dates:

- (i) March 6: Richard Scott Amberson;
- (ii) March 9: Ilya Zvonenko, Doug Gorton, Ray Latham, Ottis Farris, Tim Minerich, Matt Jackson, Charles Adcock, Randy Chapman, Gary Abrahamson, Darren Grimes, and Sean Smith;
- (iii) March 10: Matt Conlee, Mike Wilds, Jerry Alexander, Jake Jones, Kelvin Berg, David Nathe, Ron Nusse, and Ryan Sasnett; and
- (iv) March 11: Andy Carranza, James Wells, Tim Bailey, and Sean Shequin.

(j) On or about the dates set forth opposite their names, the Respondent discharged the following employees:

Travis Tuttle	–	March 16, 2009
Jeff Gibson	–	March 16, 2009
Michael Neubauer	–	April 13, 2009

(k) Respondent suspended and discharged its employees Travis Tuttle, Jeff Gibson, and Michael Neubauer because they assisted the Union and engaged in protected, concerted activities, and to discourage employees from engaging in these activities.

(l) On or about April 9, 2009, Respondent placed Jonathan Gentry on layoff status.

(m) Since on or about April 10, 2009, Respondent failed and refused to reinstate Jonathan Gentry to his former or substantially equivalent position of employment.

(n) On or about June 22, 2009, Respondent reinstated Amber Dyche to her former or substantially equivalent position on a part-time basis.

(o) In about August 2009, Respondent converted Amber Dyche's part-time position to a full-time position.

(p) From on or about February 26, 2009, to about August 2009, on a date better known to Respondent, Respondent failed and refused to reinstate Amber Dyche to her former or substantially equivalent position of employment.

11.

(a) On or about February 26, 2009, by telephone, the following Portland Pick Up & Delivery employees, who had engaged in the strike described above in paragraph 8, informed Respondent of their desire to return to their former or substantially equivalent positions of employment:

Cade Mason
David Smith

David Miller
Timothy West

(b) From on or about February 26, 2009, to about April 6, 2009, Respondent failed and refused to reinstate the employees named above in subparagraph 11(a) to their former or substantially equivalent positions of employment.

12.

(a) On or about February 26, 2009, by telephone, the following Portland Dock employees, who had engaged in the strike described above in paragraph

8, informed Respondent of their desire to return to their former or substantially equivalent positions of employment:

Bryan Croghan
Hoy Lakoy
Robert Steele
Steven Weicuss

Michael Fowlkes, Jr.
Jeramey Pearson
Curtis Walker

(b) Since on or about February 26, 2009, Respondent failed and refused to reinstate the employees named above in subparagraph 12(a) to their former or substantially equivalent positions of employment.

13.

(a) On or around February 26, 2009, the following Portland Dock employees, who had engaged in the strike described above in paragraph 8, informed Respondent of their desire to return to their former or substantially equivalent positions:

Ricardo Alvarado
Douglas Beatty
Gromyko Soyan

(b) Since on or about February 26, 2009, Respondent failed and refused to reinstate the employees named above in subparagraph 13(a) to their former or substantially equivalent positions of employment.

14.

(a) On or about February 26, 2009, by telephone, the following Portland Line Haul employees, who had engaged in the strike described above in paragraph 8, informed Respondent of their desire to return to their former or substantially equivalent positions of employment:

Bryon Akins
Michael Fuller

David Buchanan
Raymond Hughes

(b) From on or about February 26, 2009, to about April 6, 2009, Respondent failed and refused to reinstate the employees named above in subparagraph 14(a) to their former or substantially equivalent positions of employment.

15.

(a) On or about February 26, 2009, by telephone, Portland Line Haul employee David Schuster, who engaged in the strike described above in paragraph 8, informed Respondent of his desire to return to his former or substantially equivalent position of employment.

(b) From on or about February 26, 2009, to on or about March 28, 2009, Respondent failed and refused to reinstate employee Schuster to his former or substantially equivalent position of employment.

16.

(a) On or about the dates set forth opposite their names, the following Portland Line Haul employees, who had engaged in the strike described above in paragraph 8, informed Respondent of their desire to return to their former or substantially equivalent positions of employment:

Greg McDaniel	–	February 26, 2009
Melvin Vietzke	–	March 2, 2009
Brian Scanlon	–	March 17, 2009

(b) Since on or about the dates listed above, Respondent has failed and refused to reinstate the employees named above in subparagraph 16(a) to their former or substantially equivalent positions of employment.

17.

(a) On or about March 6, 2009, by telephone, Portland Line Haul employee Randy Slaughter, who engaged in the strike described above in paragraph 8, informed Respondent of his desire to return to his former or substantially equivalent position of employment.

(b) From on or about March 6, 2009, to on or about April 9, 2009, Respondent failed and refused to reinstate employee Slaughter to his former or substantially equivalent position of employment.

18.

(a) In or around January 2009, on a date better known to Respondent, the Respondent transferred Unit Line Haul employee work from its Portland Terminal to a non-union terminal in or around Redding, California.

(b) On or about February 26, 2009, after the Locals' unconditional offer for the strikers to return to work, Respondent failed to apply the terms of the expired Collective Bargaining Agreement as it related to the Health and Welfare Trusts and Pension Trust described in paragraph 6 and, instead, unilaterally applied the Temporary Benefit Changes described above in paragraph 9 to its Unit employees, including returning strikers.

(c) The subjects set forth above in paragraphs 18(a) and (b) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in paragraphs 18(a) and (b) without prior notice to the Locals and/or without affording the

Locals an opportunity to bargain with Respondent with respect to this conduct and/or the effects of this conduct.

19.

(a) On August 26, 2009, Local 763, by letter, requested that Respondent furnish Local 763 with information concerning the names and hire dates for Billers at the Spokane and Portland terminals and a copy of the FRQ758RD report (showing the identity of who performed billing work, for what terminal they performed billing work, and the number of bills they entered into th system) from February 25, 2009, to August 28, 2009, for the processing of a sub-contracting grievance.

(b) On September 30, 2009, Local 763, by letter, requested that Respondent furnish Local 763 with the following information: 1) billing work performed by non-union Billers at the Spokane and Portland terminals for the dates February 26, 2009, to October 1, 2009; 2) A complete copy of the FRQ758RD report for all Billing Centers from February 26, 2009, to October 1, 2009; and 3) Names and hire dates for Billers at the Spokane and Portland terminals for the investigation and processing of a sub-contracting grievance, among other reasons.

(c) On October 23, 2009, Local 763, by letter, requested that Respondent furnish Local 763 with the following information: 1) billing work performed by non-union Billers at the Spokane and Portland terminals for the dates February 26, 2009, to the present; 2) a complete copy of the FRQ758RD report for all Billing Centers from February 26, 2009, to the present; and 3) names and hire dates for Billers at the Spokane and Portland terminals for the investigation and processing of a sub-contracting grievance, among other reasons.

(d) The information requested by Local 763, as described above in paragraphs 19(a) through (c), is necessary for, and relevant to, Local 763's performance of its duties as the exclusive collective-bargaining representative of the Clerical Unit.

(e) Since on or about August 26, 2009, Respondent has failed, refused and/or delayed in furnishing Local 763 with the requested information described above in paragraphs 19(a) through (c).

20.

By the conduct described above in paragraphs 10 through 18(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.

21.

By the conduct described above in paragraphs 18 and 19, Respondent has been failing and refusing to bargain collectively with the exclusive collective bargaining representative of its employees in violation of §§ 8(a)(1) and (5) of the Act.

22.

By the acts described above in paragraphs 10 through 21, Respondent has engaged in unfair labor practices affecting commerce within the meaning of §§ 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 18(a), (c) and (d), the General Counsel seeks an Order requiring Respondent to restore the work performed by Respondent's Portland Line Haul

employees 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 18 (b), (c), and (d), the General Counsel seeks an Order requiring that Respondent promptly sign, retroactive to February 26, 2009: Subscription Agreements for the Welfare Trust and Retirees Welfare Trust; an Employer-Union Certification for the Pension Trust; and an appropriate, comparable agreement covering the Oregon Welfare Trust. Further, Counsel for the General Counsel seeks reimbursement by Respondent to the Health and Welfare Trusts and to the Pension Trust for any contributions which would have been made since February 26, 2009, as well as to all Unit 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 10 through 18, the General Counsel seeks an Order requiring Respondent pay, *inter alia*, quarterly compound interest on any back pay or monetary remedies ordered in this case.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations; it must file an Answer to the Third Consolidated

Complaint. The Answer must be **received by this office on or before January 4, 2010, or postmarked on or before January 3, 2010.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **E-Gov tab**, select **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of § 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the the Third Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT, beginning on **March 23, 2010, 9:00 a.m.** at **Jackson Federal Building, 915 Second Avenue, Room 2948, Seattle, Washington,** and on consecutive days thereafter until concluded in **Portland, Oregon,** on agreed-upon dates, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Third Consolidated Complaint. The procedures to be followed at the 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.

DATED at Seattle, Washington, this 18th day of December, 2009.



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

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 19-CA-31797 et al

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL:

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Teamsters Local 174
Attn: Lisa Pau, Staff Attorney
14675 Interurban Ave S., Suite 303
Tukwila, WA 98168

Teamsters Local 483
225 N. 16th, Ste. 112
Boise, ID 83702

Teamsters Local 589
632 5th St., Ste. 4
Bremerton, WA 98337

Teamsters Local 252
119-1/2 N. Capitol Way
Olympia, WA 98501-1018

Teamsters Local 690
1912 N. Division Street
Spokane, WA 99207-2271

Teamsters Local 760
1211 Lincoln Avenue
Yakima, WA 98902

Teamsters Local 763
14675 Interurban Ave. S., Ste. 305
Tukwila, WA 98168

Teamsters Local 839
1103 W. Sylvester Ave.
Pasco, WA 99301

Teamsters Local 962
4480 Rogue Valley Highway
Central Point, OR 97502

Int'l. Brotherhood of Teamsters
Attn: Michael C. Murphy
25 Louisiana Avenue, N. W.
Washington, D. C. 20001

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 19-CA-31797 et al

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL:

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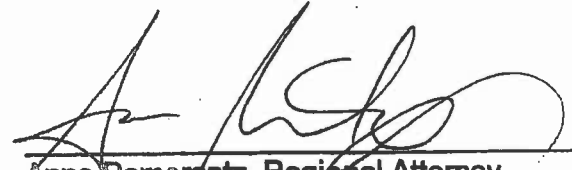
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IMPORTANT NOTICE

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing on that date, a motion to change the date of hearing should be made within ten (10) days from the issuance of the Complaint. Thereafter, the Regional Office will assume that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Also, note the attached new Rules pertaining to continuances.

All parties are encouraged to explore fully the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and personnel resources for all parties. The Board agent assigned to this case will be happy to discuss settlement at any mutually convenient time.



Anne Pomerantz, Regional Attorney
National Labor Relations Board, Region 19
2948 Jackson Federal Building
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Seattle, Washington 98174

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rescheduling Unfair Labor Practice Hearings

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board issues a final rule permanently implementing its recent experimental modification of the procedures for rescheduling unfair labor practice hearings. The procedures are permanently modified so that the authority to reschedule hearings is transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTAL INFORMATION: On August 1, 1988, the National Labor Relations Board implemented a one-year experiment in all of its Regional Offices whereby the authority to reschedule unfair labor practice hearings was transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges. (See 53 FR 28348). The experiment was subsequently extended until November 30, 1989 (see 54 FR 31392), and a comment period was provided until October 2, 1989 (see 54 FR 37039).

The Board received comments by the Acting Associate General Counsel, from the Deputy Chief Administrative Law Judge, and from several private law firms or attorneys that practice before the Agency. Each are summarized below.

Acting Associate General Counsel

The comments by Acting Associate General Counsel William G. Stack indicated that, although most of the Regional Offices opposed the experimental rescheduling system, the data which they had accumulated during the experimental period showed that the experiment had actually had "minimal

impact" on their case processing. Thus, given the Board's expressed concern about the public's perception of the fairness of the old system, the Acting Associate General Counsel concluded that "permanently instituting the new system may create a more favorable image of the Agency with little, if any, adverse affect on casehandling."

Deputy Chief Administrative Law Judge

The comments from Deputy Chief Administrative Law Judge David S. Davidson indicated that while the experimental procedure had "somewhat increased" the workload of the administrative law judges, "most of the [rescheduling] requests require little time for disposition, and continuation of the procedure would present no problem" for the judges. However, noting that a postponement was virtually automatic in cases where there was no objection to the request, the Deputy Chief Administrative Law Judge suggested that an additional exception might be allowed to permit the Regional Directors to reschedule the hearing in such cases. Such an exception, the Deputy Chief Administrative Law Judge concluded, "would significantly reduce the number of requests coming to [the administrative law judges] and should have little impact on public perception of fairness."

Private Practitioners

Four comments were received from private law firms or attorneys that practice before the Agency. Two of these comments, from Edward Miller, former NLRB chairman and now Senior Counsel of Pope, Ballard, Shepard & Fowle, Ltd., and from Dean Denlinger of Denlinger, Rosenthal & Greenberg, were submitted at the outset of the experiment. Former Chairman Miller indicated that, although he had some concerns about how some of the exceptions would be applied, he was supportive of the experiment. Denlinger indicated that he generally supported the changes in the experimental procedure and recommended that the changes be made permanent, but urged that the exceptions in the experimental rule be eliminated and that all decisions concerning the rescheduling of hearings be made by the administrative law judges. The two other comments were submitted by G. Roger King of Bricker & Eckler, and Fred F. Holroyd of Holroyd, Yost & Merial. G. Roger King indicated that Bricker & Eckler was supportive of the experimental procedure, and recommended that the experiment "be made permanent." Fred F. Holroyd indicated that while he was also

supportive of changing the old procedure, he could see "no difference in the actual practice from the old system to the new," and recommended that the authority to reschedule hearings be transferred to the administrative law judges without exception.

Having considered all of the above comments, the Board has decided to make the experimental rescheduling procedure permanent. Virtually all of the comments indicate that the experimental procedure will help at least in some degree to change the apparent public perception of unfairness in this area. Accordingly, we conclude that the experimental procedure will serve its stated purpose and should be permanently implemented in a final rule.

We will, however, make one change in the experimental procedure, in agreement with Deputy Chief Administrative Law Judge Davidson, we see no reason not to permit the Regional Directors to continue to reschedule hearings in those instances where there is no objection. Accordingly, we will incorporate this change into the final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Board certifies that the rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, labor management relations. Accordingly, 29 CFR part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 181, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Sections 102.16 and 102.24(e) are revised to read as follows:

§ 102.16 Hearing; change of date or place.

(a) Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held, except that the authority of the Regional Director to extend the date of a hearing shall be limited to the following circumstances:

(1) Where all parties agree or no party objects to extension of the date of hearing;

(2) Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

(b) Where in circumstances other than those set forth in subsection (a) of this section, motions to reschedule the hearing should be filed with the Division of Judges in accordance with section 102.24(a). When a motion to reschedule has been granted, the Regional Director issuing the complaint shall retain the authority to order a new date for hearing and retain the responsibility to make the necessary arrangements for conducting such hearing, including its location and the transcription of the proceedings.

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; summary judgment procedures

(a) All motions under § 102.22 and 102.23 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for summary judgment or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the deputy chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All

motions filed with a Regional Director or an administrative law judge as set forth above shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for summary judgment or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in these rules, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

Dated, Washington, DC, December 1, 1989.
By direction of the Board.

John C. Truesdale,
Executive Secretary, National Labor
Relations Board.

[FR Doc. 89-29172 Filed 12-12-89; 8:45 am]
BILLING CODE 7549-01-M