



International Labor Rights Forum

2001 S Street NW, Suite 420, Washington, DC 20009

REPORT ON THE RIGHT TO ASSOCIATE AT OAK HARBOR FREIGHT LINES, INC.

(Auburn, WA, United States)

NOVEMBER 25, 2008

**REPORT OF INTERNATIONAL LABOR RIGHTS FORUM
OAK HARBOR FREIGHT LINES (AUBURN, WA, UNITED STATES)
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I. Introduction

As few people today are unaware, consumers in the US are connected to workers around the world through a global system of production and distribution of the products we wear, eat and use every day. This system involves networks of vendors, contractors and subcontractors that cross oceans and span continents. ILRF is a non profit advocacy organization that is dedicated to achieving just and humane treatment for workers worldwide at all levels of this global chain of production and distribution. ILRF believes all workers have the right to a safe working environment where they are treated with dignity and respect, and where they can organize freely to defend and promote their rights and interests.

As an organization working principally to research and advocate for workers in the developing world, ILRF has previously documented many instances of labor rights abuse in the production of goods on farms and in factories in developing countries. However, ILRF recognizes that international labor rights violations may occur at the other end of these supply chains, as well -- once these goods have arrived on our shores, but before they reach the local store or market.

The current report was undertaken as a result of a request for action by the International Brotherhood of Teamsters (henceforth Teamsters). In October 2008, Teamsters requested assistance from ILRF and several other allied organizations in the 'anti-sweatshop' movement regarding alleged violations at Oak Harbor Freight Lines in the northwestern US. As many Oak Harbor customers were apparel sector companies with codes of conduct guaranteeing labor rights protections within their supply chains, ILRF was requested to contact Oak Harbor clients in the apparel sector to discuss company responsibility in the arena of labor rights violations among a US supplier in the transport sector.

Lacking independent information on the nature of the violations at Oak Harbor, following this request, ILRF commenced an investigation into the alleged violations and their relationship to internationally recognized worker rights. This report addresses allegations of violations of rights of employees who load, haul and process shipments of freight destined for apparel retailers and other enterprises in the Pacific Northwest. It details the findings and recommendations of a panel of international labor rights experts and social justice leaders convened by the International Labor Rights Forum to investigate allegations of violations of worker rights by Oak Harbor Freight Lines, a trucking firm headquartered in Auburn, WA, that provides over-the-road transportation and delivery services for many commercial clients, among them, apparel retailer Gap,

Inc. The members of the panel include Bama Athreya, Executive Director, International Labor Rights Forum; Lance Compa, Professor, School of Industrial and Labor Relations, Cornell University¹; Benjamin Hensler, Deputy Director and General Counsel, Worker Rights Consortium²; and Rev. Monica Corsaro, Church Council of Greater Seattle. All expenses related to the production of this report were borne by the participants and no outside funding was received.

The panel's investigation was prompted by complaints of labor rights violations by Oak Harbor which were brought to ILRF by the International Brotherhood of Teamsters. Teamster local unions represent approximately 470 Oak Harbor employees at freight terminals in Oregon, Washington and Idaho, as well as at the company's corporate offices. These workers walked off the job on September 22, 2008 asserting unfair labor practices by the company as the reason. Oak Harbor has stated that if the National Labor Relations Board ("NLRB") rules that the action is an economic strike, it will permanently replace the striking workers.³

This development has brought the company's labor relations practices under increased scrutiny, by not only worker rights and social justice advocates, but also its customers. Since the strike began, a number of the company's customers reportedly have stopped shipping with it, including REI, Urban Outfitters, Inc., Maytag Corporation, and the Washington State Liquor Board. Major clients of Oak Harbor including the Gap, Inc. have adopted international labor standards as the basis for their codes of vendor conduct.⁴ The findings of this report may mean that Oak Harbor is violating the codes of vendor conduct for several of its other major customers, as well, including K-Mart/ Sears Holding, JC Penney, Burlington Coat Factory and Zumiez.

Having interviewed current and former Oak Harbor employees, as well as representatives of both Oak Harbor management and the Teamsters, and reviewed an array of relevant documents, the panel concludes that there is substantial credible evidence that Oak Harbor and its agents have engaged in violations of international labor rights standards as defined by the International Labor Organization (ILO). The violations include:

- Use of permanent striker replacements to undermine freedom of association and the right to collective bargaining of Oak Harbor employees (ILO Conventions 87 and 98);
- Unethical and unlawful practices in the recruitment and employment of the replacement workers, including deceptive hiring practices, non-payment of wages

¹ Affiliation listed for identification only

² Affiliation listed for identification only

³ See Oak Harbor Freight Lines, *Questions in the Event of a Strike* (2008) available at <http://www.oakhanswers.com/rep/strike.htm>. If a job action is deemed by the NLRB.. an unfair labor practice strike the employer is required to reinstate striking employees at the time of their return to work even if the employer has hired permanent replacements. See, e.g., *Mastro Plastics Corp. v. NLRB*, [350 U.S. 270](#), 278 (1956).

⁴ See Gap., *Code of Vendor Conduct* (2008), available at http://www.gapinc.com/public/documents/code_vendor_conduct.pdf.

and racial and gender discrimination in work assignment (ILO Conventions 95, 111, 181).

In addition, we conclude that Oak Harbor's decision to eliminate health coverage for its retired employees -- in particular the unilateral cutting off contributions for such coverage during the strike -- while not formally in violation of international labor standards, appears incompatible with the ethical business principles to which the company claims to adhere. We conclude this report by making recommendations of remedial actions that must be taken by Oak Harbor, its agents, and its customers to restore compliance with these standards and principles.

II. Scope of Investigation

ILRF determinations of rights violations are based in jurisprudence regarding core labor rights as defined by the authoritative international body, the ILO, a UN body recognized as the main standard setter for internationally agreed-upon worker rights. In 1998 the ILO identified a small handful of "core" labor rights. These were:

- the right to associate (ILO Convention No. 87);
- the right to organize and bargain collectively (ILO Convention No. 98);
- equal employment opportunity and non-discrimination (ILO Convention Nos. 100 and 111);
- prohibition of forced labor (ILO Convention Nos. 29 and 105); and
- prohibition of child labor (ILO Convention No. 138)

ILRF also undertakes investigations related to non-core rights at work, and discussed within growing international consensus around the concept of 'decent work.' As defined in US trade law, this encompasses protections regarding workers' rights to minimum wages, maximum hours of work, and occupational safety and health. The North American Free Trade Agreement (NAFTA), to which the US is a party, commits more specifically to the protection of the following rights at work:

- 1) freedom of association and protection of the right to organize;
- 2) the right to bargain collectively;
- 3) the right to strike;
- 4) prohibition of forced labor;
- 5) labor protections for children and young persons;

- 6) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;
- 7) elimination of employment discrimination on the basis of such grounds as race, religion, age, sex, or other grounds as determined by each Party's domestic laws;
- 8) equal pay for men and women;
- 9) prevention of occupational injuries and illnesses;
- 10) compensation in cases of occupational injuries and illnesses;
- 11) protection of migrant workers.

ILRF has conducted several past investigations of violations and brought forward numerous cases related to the application of the NAFTA labor standards, including violations of workers' rights in the US.

III. Sources of Evidence:

- Interviews with, and written statements from, current and former Oak Harbor employees;
- Interviews with, and written statements from former employees of Modern Staffing and Security Consultants, Inc. ("MSSC"), a supplier of temporary replacement workers to Oak Harbor during the current strike;
- Interviews with representatives of the International Brotherhood of Teamsters and its local union affiliates in the Auburn, WA area;

Interviews with, and written statements from, the director of labor relations of Oak Harbor; Review of relevant documents, including NLRB and EEOC charges filed against Oak Harbor, Oak Harbor's contract proposals to the Teamsters.

IV. Allegations Assessed in this Report

This report discusses the results of the panel's inquiries concerning three basic questions:

- Has Oak Harbor violated its employees' fundamental rights to freedom of association and collective bargaining through its labor relations practices, leading up to and including the permanent replacement of striking workers?
- Have Oak Harbor and/or MSSC violated internationally-recognized labor rights in the recruitment and employment of replacement workers during the strike?
- Has Oak Harbor violated internationally-recognized labor rights in its treatment of its retired employees?

V. FINDINGS

A. Violation of Rights to Freedom of Association and Collective Bargaining

Oak Harbor management admits that it intends, and has already begun, to permanently replace large numbers of its striking employees. Although replacement of workers who are on strike for economic reasons is permitted under US labor law,⁵ this practice has been widely-recognized, by both domestic and international experts, to violate workers' fundamental rights to freedom of association and collective bargaining.⁶ While permanent replacement of striking workers is in itself a violation of international labor standards, the fact that Oak Harbor's use of permanent replacements has been premeditated and is unjustified by other business considerations, further favors the conclusion that the company's conduct has violated its workers' fundamental rights.

1. Background

Oak Harbor employees have been represented by the Teamsters under collective bargaining agreements between the union and the company for over three decades. Until the current dispute, the company's employees had never gone on strike.⁷ The most recent collective bargaining agreement covering the company's employees expired on October 31, 2007.

After the contract's expiration date, negotiations between the company and the union continued. On September 8 and 18, 2008, the union filed several charges with the National Labor Relations Board ("NLRB") alleging unfair labor practices by the company, a number of which the company subsequently conceded.⁸ On September 22, 2008, employees began the current job action as an unfair labor practice strike aimed at ending these violations.

Oak Harbor's Director of Labor Relations, Bob Braun, has stated that since the strike began, the company has hired roughly 120 permanent employees to replace its striking workers. Although Mr. Braun has termed these new hires "provisional permanent replacements," the company is clear that unless prevented from doing so – either because the NLRB rules the job action an unfair labor practice strike, or because the union is able to negotiate the reinstatement of its members – the company intends these new workers to permanently take the jobs of the striking employees. The regional

⁵ The interpretation of the National Labor Relations Act as permitting permanent replacement of workers engaged in an economic strike is commonly known as the *Mackay* doctrine, following the name of the Supreme Court case where it was first articulated. See *NLRB v. Mackay Radio & Telegraph Co.* [304 U.S. 333](#) (1938).

⁶ See discussion, *infra*, at 7.

⁷ NWCN News, *Teamsters Picket Oak Harbor Freight* (Sept. 23, 2008), available at: http://www.nwcn.com/statenews/washington/stories/NW_092308WAB_teamsters_strike_LJ.a4181734.htm.

⁸ See Charges Against Employer, NLRB Case Nos. 19-CA-31468, 31526, 31536, 31538 (unfair labor practices charges filed by Teamster local unions); Memoranda from Ron Kieswether to "All Teamster Employees" (Octo. 9, 2008) (copies on file with ILRF).

office of the NLRB has not yet issued any determination regarding the union's most recent unfair labor practice charges or, accordingly, the status of the strike.

Should the Board determine that the strike is not an unfair labor practice strike, Oak Harbor's hiring of "provisional permanent replacements" will permit the company to achieve the outcome which employers typically seek by means of this tactic: the union will be forced to try to negotiate its members' return to their jobs; if the employer refuses to permit this, the employees will be out of work until there is an open position for which they are qualified; and permanent replacement employees will be eligible to vote in any election concerning whether to eliminate union representation altogether.

2. Permanent Replacement of Striking Employees Under International Labor Standards and Vendor Codes of Conduct

Workers' right to freedom of association in trade unions is internationally-recognized as a fundamental labor right.⁹ Because permanent replacement of striking employees has the effect of severely undermining freedom of association, this practice, though permitted under US labor law, has been repeatedly criticized by international labor law bodies and human rights authorities. In 1991, the ILO Committee on Freedom of Association, the highest international body charged with interpreting and protecting this right, determined that the practice of permitting permanent replacement of striking employees under US labor law violated workers' right to strike and, therefore, their freedom of association itself.¹⁰ Similarly, in a report published in 2000, Human Rights Watch found that "Employers' power to permanently replace workers in the United States who exercise the right to strike runs counter to international standards recognizing the right to strike as an essential element of freedom of association."¹¹

As a result, Oak Harbor is violating the vendor code of conduct of its major customers including its largest client, Gap, Inc. Gap, Inc. has a Code of Vendor Conduct that, like most multinational apparel company codes, "is based on internationally accepted labor standards, including the International Labour Organization (ILO)'s core conventions and the Universal Declaration of Human Rights."¹² Freedom of association is one of the ILO's "core conventions," recognized as applicable to all employers in all ILO member countries, including the United States.¹³ As Gap's own code recognizes,

⁹ Freedom of association is established as an internationally-recognized labor right in Conventions 87 and 98 of the ILO. *See, e.g.*, ILO, "Freedom of Associations and Effective Recognition of the Right to Collective Bargaining" (2008), *available at*: <http://www.ilo.org/declaration/principles/freedomofassociation/lang--en/index.htm>.

¹⁰ "The right to strike . . . is not really guaranteed when a worker who exercises it legally runs the risk of seeing his or her job taken up permanently by another worker just as legally." International Labor Organization, Committee on Freedom of Association, *Complaint against the Government of the United States presented by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)*, Report No. 278, Case No. 1543 (1991).

¹¹ Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* 38 (2000).

¹² *Code of Vendor Conduct*, *supra*, at n. 2.

¹³ *See* ILO Declaration on Fundamental Principles and Rights at Work (1998), *available at*: <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

freedom of association requires that an employer must not “threaten, penalize, restrict or interfere with workers’ lawful efforts to join associations of their choosing or to bargain collectively.”¹⁴ Permanent replacement of striking workers is incompatible with this requirement, because it threatens workers with the ultimate employer penalty – the loss of employment itself.

3. Oak Harbor’s Permanent Replacement of Striking Employees

Although permanent replacement of strikers is a violation of international labor standards, an argument typically made in favor of permitting the practice is that an employer confronted by an indefinite strike by workers possessing specialized skills might find that, in order to keep its business in operation, it needs to offer permanent positions to replacement employees.¹⁵ Oak Harbor has presented no evidence to show that this is the case in the current dispute. The available evidence shows that Oak Harbor made its decision to permanently replace workers in case of a strike long before the strike began, conducted its labor relations in a manner calculated to provoke a strike and permanently replaced employees without relation to its actual business needs.

a. Premeditation

Evidence indicates that Oak Harbor made a decision to permanently replace its employees well before the current round of collective bargaining began. A representative of the Teamsters stated that in a meeting with Oak Harbor management in 2007, company Co-President David Vander Pol informed him that in preparation for the upcoming round of negotiations later that year, the owners had met earlier with management from several shipping companies on the East Coast that had successfully defeated Teamster strikes and eliminated the union from their operations. According to Hobart, Vander Pol indicated that the company was prepared to pursue this option.

Similarly, a former recruiter of truck drivers for Modern Staffing and Security Consultants, Inc. (“MSSC”), a company that is now supplying replacement workers for Oak Harbor, stated that in late 2006 he was told by MSSC President James Rexroat, that MSSC would be hiring truck drivers to work during a upcoming strike for a “client” in the Pacific Northwest. Mr. Rexroat informed the recruiter that the client was trying to “get rid of the union” and that “[s]ome of the jobs would be permanent jobs . . . for the client.” As subsequent events revealed, the client Rexroat discussed was Oak Harbor. Although the collective bargaining agreement with the Teamsters did, in fact, expire in October 2007, employees continued working without a contract until the strike began in September 2008.

MSSC’s efforts to recruit replacement drivers for Oak Harbor also suggest that the latter’s prior intent was to permanently replace its workforce. On May 20, 2008, four

¹⁴ *Code of Vendor Conduct*, *supra*, at n. 2.

¹⁵ See generally, Jeffrey Sherman, *The Striker Replacement Doctrine as Seen by a Management Attorney*, Perspectives on Work (LERA, 2006), available at: <http://www.lera.uiuc.edu/Pubs/Perspectives/onlinecompanion/Fall06-Sherman.htm>.

months before the strike began, Mr. Rexroat posted a job listing on Craigslist for “CDL A Drivers . . . (Washington State)” which stated that the “[p]roject is temp[orary] to perm[anent] and 90% of our staff will be retained full time.” Drivers were requested to respond to the website of a company named Pacific Transport Services, LLC.¹⁶ As of this date, a posting for “Class A CDL Drivers Pacific Northwest” is the only job opening listed on that site. Elsewhere on the site, it states that “91% of our Drivers are hired directly by our Clients within one year.”¹⁷ The evidence from multiple sources suggests that, as early as prior to the beginning of the strike, it was Oak Harbor’s plan to permanently replace its employees.

b. Provocation

Substantial evidence also supports the conclusion that, during the current round of contract negotiations, Oak Harbor intentionally provoked a strike by proposing changes to employees’ wages, benefits and working conditions that would be unacceptable to the union and its members. Taking this approach in negotiations seems to have been the result of a prior decision made by the company.

Notably, the bargaining process which led to the current strike has been the first one at which management has been represented throughout the negotiations by labor relations attorney John Payne of the Seattle firm of Davis, Grimm, Payne and Marra. Teamster local union representatives indicated that Mr. Payne is well-known in the Seattle area for his previous representation of employers who have engaged in violations of employees’ right to association. Such violations reportedly have included contract negotiations that result in strikes where employees are permanently replaced, and employer campaigns to prevent workers from establishing union representation in the first place.¹⁸ The firm’s website confirms that its practice includes “renegotiating a labor contract to restore corporate profitability” and “[t]raining managers and supervisors in such areas as . . . union avoidance.”¹⁹

Companies, like workers, have the right to select their own representatives in collective bargaining, whomever these representatives may be. However, these choices often reveal an employer’s intent in dealing with its workers – just as employees’ choice of their own collective bargaining representatives may indicate a more conciliatory or more assertive approach to dealing with management.²⁰ In previous negotiations with its employees, Oak Harbor was primarily represented by company Labor Relations Director

¹⁶ Email posting at <http://houston.craigslist.org/ltrp/688492632.html>, reply to jrex132003@yahoo.com (May 20, 2008) (copy on file with ILRF). Pacific Transport Services LLC appears to be a non-existent company used as a shell by Mr. Rexroat. *See discussion, infra*, at 15.

¹⁷ *See* <http://www.ptsdrierservices.com/>.

¹⁸ *See* Int’l Union of Operating Engineers Local 302, “Updates of IUOE 302 Concrete Pumpers Negotiations (2007) (describing contract offer presented to union by John Payne as a “slap in the face”), available at <http://www.iuoe302.org/07-Pumpers-Updates-running.pdf>.

¹⁹ Davis, Grimm, Payne and Marra, firm website (2008), available at <http://www.dgpmllaw.com/index.html> and <http://www.dgpmllaw.com/practice-overview.html>.

²⁰ For example, an ‘in-house’ union of employees at a particular firm may affiliate with an international union in order to have greater strength in bargaining with the employer.

Bob Braun. The leading role taken in this round of bargaining by Mr. Payne apparently represents a decision by the company to adopt a more confrontational approach.

Mr. Braun stated that Mr. Payne had previously been involved in the company's contract negotiations after the union had taken a strike vote. Mr. Braun acknowledged, however, that this was the first contract negotiation between the parties in which Mr. Payne had represented Oak Harbor *prior* to any strike vote being taken by the employees. Mr. Braun also indicated that the company's decision to involve Mr. Payne was made in response to the union's actions in previous negotiations where its members had taken a vote to strike after union officials had reached a tentative settlement with the company.

i. Original Contract Proposals

The company's original contract proposals to the Teamsters, in both their breadth and substance, suggest an intention on Oak Harbor's part to avoid, rather than reach, a settlement with the union. The company's original contract proposals, which were presented to the union on October 16, 2007 contain amendments to the text of *100 different sections* of the previous agreement.²¹ This is an astonishing figure considering that the agreement is a 'mature' one, being the product of over three decades of negotiations between the parties.

While the essence of collective bargaining is that parties are free to propose new terms and revisions to an agreement, the presentation of so many new demands is highly unusual in a situation where there is a longstanding collective bargaining relationship and suggests an inclination toward conflict by the company. At the very least, the sheer number of new proposals indicates a willingness to make the bargaining process more difficult. In addition, a lengthy list of demands may make the bargaining process more time consuming, increasing the chances that negotiations will extend past the expiration of the previous agreement, and, thus, that employees will be put in the situation -- as here -- of having to work without a contract. As discussed, this was, in fact, the result that Oak Harbor achieved.

Moreover, the company proposed significant changes which would have the effect of undermining the union's overall effectiveness in the workplace, and are particularly noteworthy in the context of the longstanding collective bargaining agreement. For example, the company proposed: (1) division of the employer's unionized operation into separate bargaining units in which each local union's negotiating power would be greatly diminished; (2) elimination of language addressing successorship in the event of a sale of operations; (3) elimination of payroll deduction of union dues and voluntary union PAC contributions, requiring the union to collect these sums itself from employees; (4) expansion of the contract's "no strike" clause to prohibit unfair labor

²¹ See Agreement by and between Oak Harbor Freight Lines, Inc. and Teamster Local Unions Nos. 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, & 962 (contract proposal presented by company, Aug. 16, 2007) (copy on file with ILRF).

practice strikes; and, (5) an eight-year term, during which the union would have no opportunity to bargain improvements or recoup concessions.²²

These proposals all had been withdrawn by the company by the time the company presented its “last, best and final offer” to the union on September 22, 2008.²³ However, the fact that the company proposed, and forced the union to go through the process of responding to, these terms, coupled with evidence related to intent to recruit permanent replacements, suggest management’s willingness to create an unnecessarily confrontational atmosphere. All these withdrawn proposals concerned items that were of *no economic value* to the employer from a purely business standpoint, but represented fundamental attacks on employees’ ongoing ability to exercise the right of freedom of association. They placed in question the ability of employees to bargain together across worksites, to preserve previously-bargained contractual rights after a change in ownership, to have their union represent them in a financially viable manner, and to collectively protest violations of their legal rights.

ii. Current Contract Proposals

Finally, while the contractual issues that are still outstanding principally concern economic issues -- mostly pertaining to employee benefits -- the changes the company is demanding are no less sweeping. These demands include: (1) the wholesale elimination of paid sick-leave; (2) elimination of employer contributions for retiree health coverage;²⁴ and (3) freezing of retirement plan contribution levels.

Oak Harbor has not indicated why these changes are necessary from a business standpoint.. While Oak Harbor is a privately-held company, all indications are that, prior to the current strike, its business was profitable, as the company has expanded dramatically in recent years by opening and acquiring terminals outside the Pacific Northwest.²⁵ The company has proposed that some of the cost savings from reducing benefit costs go into salary increases,²⁶ however, management has not indicated that it believes the company’s salaries are not sufficiently competitive. In the absence of any such justification from Oak Harbor, the nature and extent of its contract demands support the possibility that management’s intention has been to provoke a strike whereby it could permanently replace its unionized employees.

²² See *id.*

²³ Letter from John Payne to Al Hobart (Sept. 22, 2008) (copy on file with ILRF).

²⁴ The company proposes to make such contributions at a reduced level for two years, after which they would be eliminated altogether. As an alternative, the company proposes that the cost of any continued contributions be deducted from the total compensation package of current employees. See Agreement by and between Oak Harbor Freight Lines, Inc. and Teamster Local Unions Nos. 81, 174, 231, 252, 324, 483, 589, 690, 760, 763, 839, & 962 at 91-92 (contract proposal presented by company, Sept. 22, 2008) (“Sept. 22, 2008 Proposal”) (copy on file with ILRF).

²⁵ See, e.g., Oak Harbor Freight Lines, “New Fontana[,] [California] Terminal,” (announcing opening of second Southern California terminal in December 2007) *available at*: <http://www.oakh.com/>.

²⁶ See, e.g., Sept. 22, 2008 Proposal at 28.

c. Coercion

Substantial evidence also supports the conclusion that Oak Harbor has attempted to use permanent replacement of strikers as a means of coercing employees to give concessions in bargaining, to withdraw from the union and to return to work by crossing the union's picket line. In the year leading up to the strike, the company regularly sent to employees' homes, and held captive audience meetings where employees were required to view, DVDs that presented the company's position on key issues in collective bargaining. These DVDs are the subject of an unfair labor practice charge alleging that they constituted an attempt to circumvent the union as collective bargaining representative.²⁷

In at least one of the DVDs sent to workers' homes, Oak Harbor's Ed Vander Pol reportedly stated that, if employees engaged in a strike, the company was prepared to replace them. In addition, at mandatory workplace meetings, Oak Harbor management distributed form letters that employees were informed they could sign and send to the union in order to become "core members" so they could "work during the strike."²⁸ In conduct which was the subject of another unfair labor practice charge, management representatives also reportedly asked workers whether or not they would strike.²⁹ Finally, Oak Harbor posted the following question-and-answer on its website:

Q17. If I strike, am I guaranteed reinstatement after the strike?

A17. If there is an economic strike, Oak Harbor intends to hire permanent strike replacements. When the strike ends, permanent strike replacements keep the jobs. Strikers who seek reinstatement are placed on a preferential recall list, and they are reinstated as vacancies arise.³⁰

In all these instances, the threat of permanent replacement severely undermines workers' rights to freedom of association and collective bargaining. Employees have described the company's practices as an attempt to "bully ... employees" and "go after [our famil[ies]]" in order to intimidate them. It is precisely because the use of permanent replacements gives employers this coercive power that the practice has been found to be incompatible with respect for the fundamental labor rights of freedom of association and collective bargaining.

d. Oak Harbor's Position on Permanent Replacement of Striking Employees

Oak Harbor has provided no business-related justification for why it has opted to permanently replace its striking employees, rather than operate with temporary workers,

²⁷ See Amended Charge Against Employer, NLRB Case No. 19-CA-31468 (Sept. 18, 2008).

²⁸ According to Oak Harbor's labor relations director, the purpose of such a letter is to establish that the employee, as a "core member," has union dues deducted in order to satisfy the requirements of the collective bargaining agreement but is not bound by the union's by-laws and the decisions of its membership – such as a strike vote.

²⁹ See Charge Against Employer, NLRB Case No. 19-CA-31538 (Sept. 18, 2008).

³⁰ See *Questions in the Event of a Strike*, *supra*, at n. 1.

aside from the fact that, under US labor law, it can (unless the action is ruled an unfair labor practice strike by the NLRB). As discussed, there is substantial evidence that the company's decision to do so was made well before the strike began, and, therefore, was not made in response to any economic exigency created by the strike. Moreover, the company has termed *all* 120 of its hires since the strike began as provisional permanent replacements, indicating that the step of offering permanent positions to new hires was not taken simply in order to fill specific positions where temporary replacements were unavailable or unaffordable. Finally, the company's labor relations director has stated that the company has previously, and continues, to contract with temporary staffing firms to supply workers to fill jobs in the same classifications on a temporary basis, so there is no assertion that *only* permanent employees can perform the jobs in question.

The justification advanced by Oak Harbor's Labor Relations Director for permanent replacing striking employees is that the company owes an ethical duty to its non-union and non-striking employees to remain in operation during the strike so that these employees may work. Moreover, he argues, dismissing new hires to accommodate striking employees after the dispute is resolved would unfairly privilege the right of the striker over the new employee.

However, in ILRF's view, it is simply unreasonable to claim that, as a matter of business principle, replacement workers' *expectations* of continued employment should be given equal weight as the *fundamental rights* of existing, and in many cases longtime, employees. The worker who is hired during a strike should be the first to realize that unless and until the dispute ends with that employee being covered by a new collective bargaining agreement negotiated by the union, his or her employment status as a non-union employee is at-will. Therefore, absent an agreement made to the contrary between the employer and replacement worker, an employer has no absolute *duty* to provide replacement workers with continued employment.

Oak Harbor has not even given its new hires the status of 'permanent' at-will employment. The company's claim is, instead, that replacement employees have been hired as "provisional permanent employees" whose ongoing employment is contingent on not only the NLRB's determinations, but also the company's own negotiations with the union. The company has presumably taken this step to avoid any liability to these new hires if it dismisses them following either a Board ruling that the action is an unfair labor practice strike, or a settlement with the union reinstating its members.³¹ This suggests the replacement workers are simply bargaining chips against which the company will make the union negotiate for its members' jobs. Such actions are incompatible with respect for freedom of association and collective bargaining.

B. Treatment of Temporary Replacement Workers

As previously mentioned, Oak Harbor has contracted with the firm Modern Staffing and Security Consultants, Inc. ("MSSC") to supply it with temporary

³¹ An employer may avoid liability to permanent replacements it dismisses after a strike through this type of arrangement. *See, e.g., Belknap, Inc. v. Hale*, 463 U.S. 491, 503 (1983).

replacement employees who are working at Oak Harbor during the strike as truck drivers, dock workers and security guards. There is substantial credible evidence that MSSC has violated some of these workers' rights under both state employment regulations and internationally-recognized workers' rights by failing to pay them in the manner promised and required by law. In addition to these pay violations, there is also significant evidence that MSSC has engaged in discriminatory and retaliatory treatment of its employees working at Oak Harbor. In particular, MSSC appears to have terminated replacement employees because they protested its pay violations, again contrary to local laws and international standards. Finally there is some evidence that African-American and female employees working for MSSC at Oak Harbor have suffered discrimination in their work assignments on the basis of race and gender, conduct which also clearly violates both domestic law and international labor standards.

Oak Harbor claims to lack any knowledge of these violations, and to have performed "extensive due diligence" regarding the past business practices of MSSC before contracting with it.³² However, in at least one of its aspects -- the treatment of minority and female drivers -- there is anecdotal evidence to suggest that MSSC's practices during the strike reflect an attempt to cater to the preferences, if not actual directives, of Oak Harbor management. If this is the case, Oak Harbor potentially may be held responsible for such discriminatory acts, even if it is MSSC that has actually carried them out.³³

1. Modern Staffing and Security Consultants, Inc.

MSSC is a privately-held firm headquartered in Sarasota, Florida which specializes solely in the recruitment and supply of replacement workers during strikes.³⁴ The company appears to operate, under other names, shell companies which recruit replacement workers to perform specific jobs during strikes, including Strike Nurse USA, Inc. (health care), Pacific Transport Services, LLC ("PTS") (trucking), and Modern Security Services, Inc. (strike security services).³⁵

As noted, MSSC has conducted its recruitment for replacement drivers for Oak Harbor through the PTS website. MSSC's recruitment practices appear to be deliberately deceptive. First, MSSC's own website states that the company "has no immediate job openings."³⁶ Once recruited, however, replacement drivers are paid by Modern Security

³² Email message from Bob Braun to Ben Hensler (Nov. 11, 2008).

³³ See EEOC Office of Legal Counsel, "Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms," EEOC Notice No. 915.002 (Dec. 3, 1997).

³⁴ See MSSC company website, at: <http://www.modernstaffingandsecurity.com/index.php>.

³⁵ For example, Strike Nurse USA's webpage refers to MSSC as its "parent company," and the job application on PTS's website indicates that its copyright belongs to Strike Nurse USA. See company websites, at: <http://strikenurseusa.com/>; and <http://www.ptsdrierservices.com/sitebuildercontent/sitebuilderfiles/combined.pdf>.

³⁶ See <http://www.modernstaffingandsecurity.com/jobs.php>.

Services, Inc., a subsidiary advertised on the MSSC website, rather than by PTS.³⁷ Second, the job posting on the PTS website gives no indication that the position being advertised is for employment as a replacement worker during a strike.³⁸

Third, although the company's website describes it as having "been a family-owned and operated business for over fifty years" and having "grown from two to three hundred and seventeen employees over the years,"³⁹ it is unclear whether PTS is actually a real company at all. Although the website contains photographs of office staff, and a page with "directions" to its office,⁴⁰ the location of the corporate address listed is actually a United Parcel Service office in San Francisco which rents mailboxes -- not a physical office space.⁴¹ Moreover, no limited liability company with that name is actually registered with the State of California.⁴² In sum, although MSSC attempts to give the appearance to applicants that they will be working for an established firm in the transportation industry, in reality they are employed by a company whose sole business is supplying replacement workers during strikes.

Oak Harbor claims to have given extensive due diligence to MSSC's business practices during the period leading up to the strike. As MSSC's primary responsibility to Oak Harbor is to recruit employees to drive its trucks during the dispute such diligence should include oversight of the recruiting process. Because the falsity of the statements MSSC makes are so obvious, it is reasonable to conclude that Oak Harbor either knew, or should have known, of the deceptive nature of the recruitment process.

2. Modern Staffing President James Rexroat

According to court and law enforcement records, MSSC President James Rexroat has a history of guilty and no contest pleas to, and probation for, multiple offenses, including writing worthless checks.⁴³ In addition, Mr. Rexroat personally has been the subject of multiple federal and state tax liens, multiple real estate foreclosures and ten separate civil judgments, totaling nearly two million dollars.⁴⁴ Oak Harbor claims to lack

³⁷ See Modern Security Services, Inc. pay-stub for wages paid to replacement driver (October 17, 2008) (on file with ILRF).

³⁸ See PTS company website, at: <http://www.ptsdriverservices.com/id25.html>.

³⁹ <http://www.ptsdriverservices.com/id1.html>.

⁴⁰ The page is "under construction." <http://www.ptsdriverservices.com/id13.html>.

⁴¹ The same physical address also appears on pay checks issued by Modern Security Services, Inc. Interestingly, the address of MSSC's main "corporate office" in Florida is also that of a UPS store.

⁴² MSSC subsidiary Modern Security Services, Inc., is also registered in California at this address.

⁴³ See *State v. Rexroat*, No. 01-CF-011801 (Fla. Cir. Ct., Sept. 4, 2002) (guilty plea to worthless check charge, sentenced to probation); *State v. Rexroat* 02-CM-001353 (Fla. Hillsborough County Ct., Mar. 11, 2002) (no contest pleas to misdemeanor sex offenses); *State v. Rexroat*, Nos. 99-CF-005466 005479 (Fla. Pinellas County Ct., Apr. 6, 1999) (no contest pleas to worthless check and failure to pay taxes charges).

⁴⁴ See, e.g., IRS Notice of Tax Lien No. 306116506 (filed with Clerk's Office, Pinellas County, Fla., July 28, 2006); *Cosmopolitan Private Security, Inc. v. Modern Security Services, Inc.*, No. CG05 437687 (Cal. Super. Ct., Apr. 21, 2005) (Clerk's judgment in action on contract brought against Modern Security and James and Bryan Rexroat as co-defendants); Fl. Dept. of Revenue Warrant (filed with Clerk's Office, Pinellas County, Fla., Jan. 7, 2000); *Bank of NY v. Rexroat*, No. 98-9405-CI-21 (Fl. Cir. Ct., Apr. 15, 1999) (foreclosure judgment).

any knowledge of this information and suggests that it was unnecessary for the company to have made an inquiry of this nature regarding Mr. Rexroat.

While this may be a reasonable position in a business situation involving well-known and established business partners, MSSC is a family business for which Mr. Rexroat apparently serves as President, Secretary and Treasurer and which apparently lacks an actual corporate office.⁴⁵ Given the size and nature of that enterprise, the judgment of Oak Harbor in failing to investigate Mr. Rexroat's record is certainly open to question. Nevertheless, Oak Harbor has hired Mr. Rexroat as recruiter, manager and paymaster for its temporary replacement workforce during the strike.

Oak Harbor, in fact, *does* require a criminal background check of all *its* job applicants.⁴⁶ Given the responsibilities which Oak Harbor has entrusted to Mr. Rexroat, it seems reasonable that "extensive due diligence"⁴⁷ would involve at least an inquiry into his personal business and financial practices and the truthfulness of his representations. Oak Harbor knew, or should have known, that Mr. Rexroat has a history of both false representations and failure to make legally and contractually required payments.

3. Non-Payment of Wages to, and Retaliatory Termination of, Temporary Replacement Workers

There is substantial credible evidence that truck drivers recruited and employed by MSSC as temporary replacement employees during the strike at Oak Harbor were not paid the wages they were promised by MSSC for the time they worked in the period required by law. Washington, Oregon and Idaho laws all require that employees be paid in full for hours previously worked on each regular payday.⁴⁸ If an employee quits or is terminated, the employer must pay him or her any wages owed, at the very latest, by the following payday.⁴⁹ Regular and timely payment of wages, including final wages, in accordance with the prior contractual arrangements between employer and employees is protected by Convention 95 of the ILO.

The "PTS" job listings used by MSSC to recruit truck drivers to work as temporary replacements during promised a pay scale of either \$1500-2000 per week including overtime, or twenty dollars per hour with a minimum of sixty hours pay per week guaranteed and a thirty-five dollar per day per diem. The latter formula works out to a minimum salary of \$1445 per week. Some former drivers also report that when they were hired by MMSC, shortly before the strike began, they were verbally promised a rate of \$2000 per week.

⁴⁵ MSSC, Amendment to Articles of Incorporation (May 23, 2006), *available at*: <http://www.sunbiz.org/pdf/50748075.pdf>. Although MSSC's website claims that the firm has "fully staffed corporate offices" in San Francisco and Tampa, MSSC is not registered to do business in California and the addresses listed in California and Florida both belong to UPS stores.

⁴⁶ See Oak Harbor Freight Lines, *Online Application Form*, at: <https://intelliapp.driverapponline.com/c/oakh>.

⁴⁷ See Braun email, *supra*, at n. 32.

⁴⁸ See Idaho Code Ann. § 45-608; Or. Rev. Stat. § 652.120; Wash. Admin. Code 296-128-035.

⁴⁹ See Idaho Code Ann. § 45-606; Or. Rev. Stat. § 652.140; Wash. Rev. Code § 49.48.010.

Several former employees of MSSC who worked as truck drivers for Oak Harbor during the strike report being paid far less than this minimum amount. In one case, the employee reported receiving, over a period of five weeks, less than half the promised minimum. Nearly all of these former employees also reported that they were dismissed by MSSC and sent home shortly after having complained to MSSC's on-site supervisors about the company's failure to pay the promised rate. In some cases, no reason was given for the termination. In at least one other, the driver was told he had been fired because of his "attitude." Idaho, Oregon and Washington laws make it unlawful for an employer to retaliate against an employee for lodging a complaint concerning nonpayment of wages.⁵⁰

Some of these employees also reported that, after having been dismissed by MSSC, they did not receive a final paycheck or received one for less than the promised minimum, even though they had been dismissed before end of the previous pay period. In addition, at least one of these drivers reported having difficulty finding a business or bank which would accept the check.

4. Discrimination Against African-American and Female Temporary Employees

Many of the temporary replacement workers recruited by MSSC to work on the strike are African-American drivers, a large number of whom are from the Southeastern US. The panel received consistent reports, from multiple sources, that some of these drivers have complained of receiving inferior work assignments on account of their race. Such acts of discrimination violate not only Title VII, but also ILO Convention 111, another "core" labor standard.⁵¹ In one particularly extreme case, one African-American driver reportedly was terminated and sent home after he refused an order to load a personal item belonging to a white driver onto the latter's truck. Other African-American drivers reportedly complained that they were being given dirtier and more physically demanding delivery assignments than were their white counterparts.

Finally, and perhaps most significantly, a group of five African-American female drivers who were recruited by MSSC to operate tractor-trailers, were reassigned from Auburn to Portland, where they were assigned to drive passenger vans transporting other replacement workers instead of driving trucks. These African-American women – who were the *only* African-American women drivers at the Auburn facility -- all had been originally hired as truck drivers.

Although the women reportedly did not receive a cut in pay, the transfer and reassignment was clearly a demotion. Driving a passenger van is a less prestigious job than driving a tractor-trailer. The reassignment meant that these African-American women would not be entrusted with driving Oak Harbor equipment, handling Oak Harbor freight, or interacting with Oak Harbor customers -- and, moreover, that *no* African-American woman would be performing these tasks for the company at the struck

⁵⁰ See Idaho Code Ann. § 45-613; Or. Rev. Stat. § 652.355; Wash. Rev. Code § 49.46.100.

⁵¹ See <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>.

terminals the strike. The incident is consistent with a broader pattern noted by multiple observers, that as black temporary drivers have been dismissed and sent home and the company has hired white drivers as permanent replacements, the driver workforce at Oak Harbor during the strike has become steadily more white.

Oak Harbor, again, claims to have no knowledge of these particular incidents, and maintains that the company operates on a non-discriminatory basis. The company acknowledges that it historically has had very few black or women drivers, though it claims this has been a product of the demographics of the available pool of licensed and qualified applicants rather than of discriminatory intent on the company's part. Oak Harbor's assertions are belied, however, by information received from longtime employees concerning the company's treatment of female and minority drivers.

Longtime employees indicate that the company has employed no more than four African-Americans and four women as drivers in its Pacific Northwest operations over the past ten years, in a company whose total workforce of 720 drivers. Historically, longtime African-American employees report, the company has tended to assign black drivers to dirtier and more physically strenuous deliveries over their white counterparts.

This past record of disparate treatment appears to exist in regard to women drivers as well. It has been reported that in previous years some Oak Harbor managers made comments to the effect that truck-driving was not an appropriate job for women. More recently, the company has become the subject of a charge now pending with the EEOC and the Washington State Human Rights Commission that concerns an incident in 2007 where one of the company's only female drivers was physically grabbed by a male manager for attempting to leave a company meeting; and the subsequent termination of the driver on what were, reportedly, pretextual grounds.⁵² Oak Harbor denies that the termination was retaliatory, states that it hired an outside investigator to look into the incident, and reports that it disciplined the manager involved – though he continues to serve in the same position at the company.

Given this context, it is all the more important that Oak Harbor management not allow the treatment of minority and female temporary workers during the strike to reinforce the impression that the company currently pursues discriminatory practices. This is the case regardless of whether it is Oak Harbor or MSSC whose managers have been responsible for the disparate treatment of temporary replacement employees that has been reported during the strike. Under US employment discrimination laws, both a staffing company and its client can face potential liability if a temporary employee performing work for the client is discriminated against on account of race or gender.⁵³ From the standpoint of ethical business practices, Oak Harbor, as the company which hired MSSC to recruit and manage this temporary workforce, has a special responsibility to ensure that such discriminatory conduct is immediately corrected and that no recurrences of it are permitted.

⁵² Charge of Discrimination Presented to EEOC and Wash. State Human Rights Comm'n, Charge No. 551-2008-02246 (Sept. 22, 2008) (copy on file with ILRF).

⁵³ See, *supra*, at 15 and n. 33.

5. Oak Harbor's Position on the Treatment of Temporary Employees

Oak Harbor Labor Relations Director Braun has stated that the company has received no complaints of wage violations, discrimination, or retaliation from MSSC employees working on the strike. Braun has indicated that the company is willing to investigate any such claims that are brought to its attention by a worker. One reason this may not have happened, however, may be that drivers reasonably fear that MSSC will terminate and send them home if they raise any of these issues. While working during the strike, these drivers are dependent upon MSSC for not only employment and pay, but also their lodging and eventual transportation home. It is not surprising that allegations of non-payment of wages and retaliation for complaints about unpaid wages should surface after a replacement worker is dismissed and sent home.

When a temporary staffing company fails to pay its temporary workers legally-owed wages, legal liability can extend past the staffing company itself to the firm for which the work was performed, if the latter is considered a “joint employer.”⁵⁴ Without stating a legal conclusion regarding Oak Harbor's status as a joint employer of the temporary replacement employees in this strike, it is worth noting that state laws may provide for liability for unpaid wages on this basis.⁵⁵ As a matter of both business ethics and legal prudence, Oak Harbor must take a proactive approach to the issue of MSSC's treatment of these temporary employees.

C. Retiree Health Coverage

While this is not an issue treated directly in international labor standards or the ‘decent work’ agenda, in the context of community relations and corporate citizenship it is a notable one. Therefore the ILRF panel has conducted interviews and provides analysis on the effects of contract proposals on retirees.

The issue of health coverage for the Oak Harbor's retired employees has become an important one in regard to both the immediate impact of the strike and collective bargaining between the company and the union. The Oak Harbor's “last, best and final” offer to the union included a proposal to either phase-out entirely retiree health coverage or shift the costs of this coverage from the company to the current employees.⁵⁶ The issue has gained added urgency during the strike with the company's decision to halt contributions to the union's health and welfare trusts,⁵⁷ a move which has directly resulted in large increases in health care premiums for retirees. Oak Harbor's treatment of its retirees has thus caused both immediate and future threats of significant hardship.

Upon retirement Oak Harbor employees may continue coverage under union health and welfare plans by paying a portion of the monthly premium. Until the

⁵⁴ See, e.g., *Zheng v. Liberty Apparel Co.*, 355 F.3d 61 (2d Cir. 2003).

⁵⁵ See, e.g., *Matter of Freitag*, Or. Bureau of Labor and Indus. Case Nos. 77-06 & 65-06 (2007)..

⁵⁶ See Sept. 22, 2008 Proposal at 91-92.

⁵⁷ See Letter from John Payne to Teamster Local Union Officers (Sept. 23, 2008).

company's September 23 announcement of its intent to cancel contributions, Oak Harbor paid the remainder of the premium. This coverage is of vital importance to some retirees, both because decades of physically-demanding work in the trucking industry has left them with significant health problems, and because given these or other pre-existing conditions that they or their spouses may have, these retirees lack affordable alternatives for securing adequate replacement coverage. For example, one retired employee has stated, "Without this insurance my wife who has multiple sclerosis won't be able to get picked up by any other insurance company. Just one of her medications alone is \$1,400 a month."

There is a strong perception among some retirees that the company's contribution to this coverage is a benefit that they have earned from their years of service to the company. It was their expectation, these retirees say, that Oak Harbor, as a family-run firm, would "take care of them" in retirement -- in particular, because, in certain previous years, they report, employees accepted lower wage increases in order to support the company's growth and expansion.

1. Oak Harbor's Contract Proposals

As noted, Oak Harbor has made two alternative proposals concerning retiree health benefits to the union, both of which would ultimately result in the company cutting-off any contribution to the cost of its retirees' health insurance. One option the company has proposed is for the cost of retiree health coverage to be taken directly out of the overall compensation package of the existing workforce.⁵⁸ This proposal simply would shift costs of retiree health coverage from the company to current employees. As is widely-recognized, employees in the current economy are already seeing their salaries stagnate due to increases in the cost of *their own* health coverage.⁵⁹

The other option presented by the company would involve Oak Harbor continuing to make a contribution which would be capped at \$333 per month; this would, in most cases, subsidize a significant portion of the resulting increases in premiums for the union plans.⁶⁰ However the contribution would phase out over two years, at which point the retiree would be forced to shoulder the entire burden of coverage.

2. Oak Harbor's Cut-Off of Retiree Health Contributions During Strike

On the day after the current strike began, Oak Harbor gave notice to the Teamster health and welfare funds that the company was ceasing to make contributions for coverage for either retirees or current employees.⁶¹ The result of this cut-off is that retirees are immediately facing increases that would eventually occur under the

⁵⁸ See Sept. 22, 2008 Proposal at 92.

⁵⁹ See, e.g., Michael Fletcher, "Rising Health Costs Cut Into Wages," *Washington Post* A1 (Mar. 24, 2008), available at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/23/AR2008032301770.html>.

⁶⁰ See Sept. 22, 2008 Proposal at 91.

⁶¹ See Letter from John Payne (Sept. 23, 2008).

company's proposal but without the two year period of partial company contributions to cushion the blow.

As articulated by Oak Harbor's Bob Braun, the company believes that the union funds have received sufficient contributions for retiree coverage in the past from Oak Harbor to enable them continue to provide coverage in the future without additional contributions by the company. He claims this is because the company in the past made such contributions on behalf of all employees, even though some of them did not elect to continue health coverage through the funds.

VI. Recommendations

In light of the findings detailed above, the ILRF recommends that Oak Harbor take the following remedial actions, without delay.

A. Unfair Labor Practices

The ILRF recommends that Oak Harbor cease all unfair labor practices and take all steps required by the NLRB for their remediation.

B. Collective Bargaining

The ILRF recommends that Oak Harbor and the Teamster local unions representing its employees bargain in good faith to reach a resolution to the strike that is in conformity with international labor standards, including respect for the right to strike as a key element of freedom of association and collective bargaining.

C. Permanent Replacement of Strikers

The ILRF recommends that Oak Harbor take the following remedial actions, without delay:

- Immediately inform the union and pledge to all employees that the company will not attempt to permanently replace any employee engaged in a lawful strike without first offering that employee the opportunity to return to work after the resolution of the dispute.
- Include a notice in any job posting, and inform all job applicants during the duration of the strike, that the employment of any person in a position ordinarily occupied by a currently striking employee is on temporary basis and is contingent upon that striking employee declining to return this position after the strike is resolved.
- Release a public statement indicating the above.

D. Employment of Temporary Replacement Employees

The ILRF recommends that Oak Harbor take the following remedial actions without delay:

- Require MSSC to immediately correct all notices and job postings recruiting employees for work at Oak Harbor to reflect accurately and consistently the actual employer, the actual rate of pay to be received, and the fact that the work is to be performed on a purely temporary basis during a strike by regular employees.
- Require MSSC to disclose the wage arrangements under which all temporary employees working at Oak Harbor were recruited.
- Give written and verbal notice to all temporary workers currently and previously employed by MSSC at Oak Harbor of their right to timely receive all wages at the rate which was offered to them at the time of recruitment; *and* offer to make them whole for any outstanding wages promised to them at the time of their recruitment that have not been paid for work at Oak Harbor.
- Give written and verbal notice to all temporary workers currently or previously employed by MSSC at Oak Harbor that retaliation against such employees for complaints regarding failure to timely pay wages promised to them at the time of their recruitment is illegal and will not be tolerated by Oak Harbor; and require MSSC to make whole and offer reinstatement to any employees who have experienced such retaliation.
- Give written and verbal notice to all temporary workers currently or previously employed by MSSC at Oak Harbor that discrimination against such employees by either MSSC or Oak Harbor management on the basis of race, sex and all other grounds prohibited by state and federal law -- including but not limited to, discrimination in job assignment and location -- will not be tolerated; establish a confidential hotline by which MSSC employees may submit complaints of such discrimination to an independent monitor/ombudsperson engaged by Oak Harbor for this purpose; require MSSC to immediately remediate any such incidents of discrimination and make whole, and/or offer reinstatement to, any employees who have experienced such discrimination.

E. Health Coverage for Retired Employees:

The ILRF recommends that Oak Harbor immediately take the following remedial actions:

- Rescind and retract its communication of September 23, 2008 discontinuing contributions to Teamster health and welfare funds on behalf of retired Oak Harbor employees.

- Make any contributions to Teamster health and welfare funds that are necessary to reinstate and continue coverage for enrolled retired Oak Harbor employees.
- Bargain in good faith with Teamster local unions to reach a collective bargain settlement that encompasses the issue of benefits for Oak Harbor retirees.