

## Freight Co. Takes Benefit Plan Violation Case To High Court

By **Vin Gurrieri**

Law360, New York (October 23, 2017, 6:51 PM EDT) -- A freight transporter has asked the U.S. Supreme Court to review whether it flouted federal labor law when it stopped contributing to an employee benefit fund after negotiations with a Teamsters local on a new collective bargaining pact broke down and it unilaterally applied a health plan to returning strikers.

In an Oct. 4 petition for certiorari obtained by Law360 on Friday, Oak Harbor Freight Lines Inc. is challenging a **May ruling** by the D.C. Circuit that upheld the NLRB's 2014 ruling that the company violated the National Labor Relations Act when it stopped making contributions to a benefit fund — the Oregon Warehouseman's Trust — as it was required to do under an expired collective bargaining agreement.

The D.C. Circuit's ruling also upheld the board's determination that Oak Harbor didn't violate the NLRA when it stopped making contributions to three other health and pension funds — the Washington Teamsters Welfare Trust, the Retirees Welfare Trust and the Western Conference of Teamsters Pension Trust Fund.

The top question presented by Oak Harbor to the justices was whether employers can implement a temporary medical plan following good faith bargaining pending resolution of a full collective bargaining agreement under the legal principles of so-called economic exigencies.

Contrary to the rulings by the D.C. Circuit and the NLRB, Oak Harbor said federal law on economic exigencies — which allow employers to impose interim measures pending resolution of full contract negotiations — allowed the company to place returning strikers on its company medical plan.

"This issue presents an important question of federal law concerning bargaining obligations and an employer's ability to implement time-sensitive proposals while ongoing contract negotiations continue," the cert petition said. "This case presents a prime opportunity to address parties' bargaining obligations when facing economic exigencies. The question at issue here has not been, but should be, decided by this court."

Oak Harbor also told the justices that the circuit courts are split over the test for demonstrating economic exigency and that the high court is needed to end any confusion on the issue.

Oak Harbor is a freight transportation company that operates throughout the Pacific Northwest. For at least the past 25 years, local Teamsters unions have represented Oak Harbor employees who are based in Washington, Oregon and Idaho under a single CBA.

The latest collective bargaining agreement between the parties, which expired on Oct. 31, 2007, required Oak Harbor to make monthly contributions to four so-called Taft-Hartley trusts for employee health benefits and pensions, and set the contribution rate for each trust.

When the CBA expired and no new agreement was reached after a year, union employees went on strike. After Oak Harbor subsequently stopped making contributions to the trusts and after Oak Harbor unilaterally imposed its medical plan on returning workers when the strike ended in early 2009, the union filed unfair labor practice charges.

In its 2014 decision, the NLRB ruled that the union had waived its right to bargain over the cancellation of contributions to three of the trusts in the trusts' subscription agreements. Oak Harbor, however, had flouted the NLRA by not continuing payments to the fourth trust, according to the board ruling.

The labor board also ruled that Oak Harbor's unilateral imposition of its medical plan after the strike ended violated the NLRA.

In one part of its ruling, the D.C. Circuit said the NLRB correctly found that the union waived its ability to challenge Oak Harbor's decision to stop contributing to three of the funds through so-called subscription agreements to those funds that contained cancellation provisions that the company could exercise.

But as to the fourth trust — the Oregon Warehouseman's Trust — the panel ruled that Oak Harbor couldn't prove that a similar subscription agreement existed as it did for the other three trusts that would allow it to cancel its contributions.

Beyond the economic exigency question in its cert petition, Oak Harbor said the D.C. Circuit's ruling contradicts the high court's precedent on so-called equitable estoppel.

Oak Harbor said the union "acted consistently with its own understanding and belief" that the subscription agreement existed for the Oregon Trust and never challenged the existence of the Oregon Trust subscription agreement until after Oak Harbor canceled its contributions.

"Despite these facts, the board and [D.C. Circuit] rejected Oak Harbor's arguments that the union should be estopped from belatedly challenging the existence of the Oregon subscription agreement," the cert petition said. "In so holding, the court of appeals applied an incorrect standard for assessing equitable estoppel."

Additionally, Oak Harbor argued that the NLRB overstepped its bounds when it offered its own interpretation of a 2008 agreement on temporary benefits between the company and the union — an interpretation Oak Harbor says flouted the terms of the deal the parties had agreed upon.

"The court of appeals rubber-stamped the board's improper alteration of the parties' temporary benefits agreement," the cert petition said. "The parties expressly agreed to an interim benefits arrangement, pending the outcome of both the strike and full labor agreement negotiations. Instead of enforcing this agreement, the board impermissibly substituted its own interpretation of the agreement to limit its duration to the strike."

Representatives for Oak Harbor and the union were not immediately available for comment.

Oak Harbor is represented by Peter N. Kirsanow of Benesch Friedlander Coplan & Aronoff LLP, and John M. Payne and Selena C. Smith of Davis Grimm Payne & Marra Inc.

The NLRB is represented by Solicitor General Noel Francisco.

The Teamsters are represented by Thomas Anthony Leahy of Reid McCarthy Ballew & Leahy LLP.

The case is Oak Harbor Freight Lines Inc. v. NLRB, case number 17-531, in the U.S. Supreme Court.

--Editing by Orlando Lorenzo.