GOLDBERG AND WEINBERGER LLP
Attorneys at Law
630 Third Avenue, 18th Floor
New York, New York 10017
TEL: (212) 867-9595
FAX: (212) 949-1857

Lewis Goldberg (N.Y., CT. & N.J.)
Stuart Weinberger (N.Y. & N.J.)

September 13, 2010

Mr. Lester Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Regarding: County Waste of Ulster, LLC

Case No.: 2-CA-37437 and 2-RC-22858

Dear Mr. Heltzer:

Our firm represents County Waste of Ulster, LLC ("County Waste" or "Employer"). County Waste has requested that the National Labor Relations Board ("Board") reconsider, re-hear or re-open its decision made on August 10, 2010 (355 NLRB No. 64). On September 9, 2010, General Counsel has submitted opposition claiming that County Waste has made this motion only "to delay this matter without good cause." This letter is submitted in response to General Counsel's letter of September 9th. The Acting General Counsel's assertion that County Waste made this motion "to delay without good cause" is unjustifiableand is unwarranted. Many of the Acting General Counsel's assertions are contradicted by the facts. Moreover, for the reasons stated in its letter of September 7, 2010, the Board must reconsider, re-open and/or re-consider its decision of August 10th.

One of the reasons that County Waste made the request to reconsider, re-open and re-hear is that when the Board decided 355 NLRB No. 64, re- affirming its earlier decision in 353 NLRB No. 89,the Board failed to address another decision that it had issued in 354 NLRB No. 54. The decision in 354 NLRB No. 54 was the result of the remand of the Section 8(a)(1) claim by the Board in 353 NLRB No.89 involving the granting of a bonus which was found to be a violation by the ALJ despite that this allegation had not been alleged or claimed by General Counsel and was not litigated. After the case was remanded to the ALJ, the ALJ stated that he would include certain documents in the record. The ALJ failed to include these documents in the record. The Employer then filed exceptions to the ALJ's decision to the Board. The Board denied County Waste exceptions in 354 NLRB No. 54.

Acting General Counsel stated in the September 9th letter that it can "fathom" no reason why County Waste would raise this issue of the prior decision in 354 NLRB No. 54 when the Board dismissed the 8(a)(1) allegation. Apparently in Acting General Counsel's haste to write the letter, the Acting General Counsel failed to review this decision. The gravamen of the decision in 354 NLRB No. 54 involved the issue of placing documents in the record rather than the dismissal of the 8(a)(1) claim. It is difficult for County Waste to "fathom" why General Counsel opposed in the first place having the documents in the record and now why General Counsel has misstated to the Board what the real issue was in 354 NLRB No. 54. As County Waste stated in its exceptions, the documents should have been placed in the record because these documents would surely cast doubt on any claim that the election should be overturned on the basis of the granting of the bonus, which was one of the two predicates for the Board directing a second election.

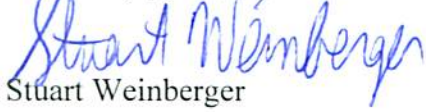
The Employer also asked for reconsideration, re-opening and re-hearing because the Board may have considered the RC case in its decision on August 10th. In its request for the Board to review the matter again in its September 7th letter, County Waste stated that the remand from the Second Circuit involved the Section 8(a)(2) allegation, the Executive Secretary's letter stated that the Board was considering the CA case, and the RC case had been split from the CA case. In addition, County Waste stated that if the Board did intend to review the RC case, it should review the matter again, particularly in light of the fact that the finding of the granting of the bonus as an election objection is not consistent with the determination that the Section 8(a)(1) claim may not have been litigated.

In response to County Waste's second basis reconsideration, re-opening and re-hearing, the Acting General Counsel's response, in part, is a claim that County Waste does know that representational issues are not before the Second Circuit so that the letter from the Executive Secretary indicating that the case would be reconsidered did not have to list the RC case. This claim, of course, is simply baseless. Apparently in the haste again to submit this letter, Acting General Counsel was unaware that County Waste's brief to the Second Circuit stated the same proposition: that the Board's representational decisions are not reviewable by the Court of Appeals. Here again the focus of the Board should be to consider the arguments raised in the Employer's September 7th letter rather than the unjustified assertions of bad faith by the Acting General Counsel.

As for the third basis for reconsideration, re-opening and re-hearing that the two Board members who initially decided the case should have recused themselves, the Acting General Counsel asserted that the Employer's arguments are meritless. Whether the arguments turn out to be meritless or not, it is certainly not a basis for General Counsel to assert that they were made in bad faith. For the reasons stated in the September 7th letter, County Waste asserts that its arguments are not meritless.

In sum, for the foregoing reasons as well as the reasons stated in its September 7th letter, County Waste asserts that the Board must reconsider, re-open and re-hear its decision on August 10th and grant the relief requested by the Employer in its letter. A copy of this letter has been served by e-mail on the parties listed below.

Very truly yours,



Stuart Weinberger

cc: Tamir Rosenblum, Esq.
Haluk Savci, Esq.
Steven Kern, Esq.
Allen Rose, Esq.

SW:CountyWaste,L913rev

CERTIFICATION OF SERVICE

A true and complete copy of the foregoing has been served upon the following parties by Electronic Transmission on September 13, 2010:

Steven Kern, Esq.
Barnes, Iaccarino & Shepherd
258 Saw Mill River Road
Elmsford, New York 10523
skern@bivaslaw.com

Allen Rose, Esq.
National Labor Relations Board
Region 2
26 federal Plaza, Room 3614
New York, New York 10278
Allen.Rose@nlrb.gov

Haluk Savci, Esq.
Local 108, LUINA
520 8th Avenue
New York, New York 10018
hsavci@masontenders.org

Dated: September 13, 2010

Stuart Weinberger

Stuart Weinberger