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FAX COVER SHEET

TO: Hon. Lester A. Heltzer
FROM: Charles F. Donnelly
DATE: November 21, 2011
FAX NO: 202.273.4270
SUBJECT: Massey Energy, et al. – NLRB Case No.: 09-CA-42057

MESSAGE:

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November 21, 2011

Hon. Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, Northwest
Washington, DC 20570

**°VIA REGULAR MAIL AND
FACSIMILE @ (202) 273-4270**

**Re: Massey Energy, et al.
NLRB Case No. 09-CA-42057**

Dear Mr. Heltzer:

The above-noted case is one of the two member decision cases returned to the Board for further consideration as a result of the Supreme Court's decision in New Process Steel, v. NLRB, 130 S. Ct. 2635 (2010). A recent November 8, 2011 NLRB press release indicates that decisions in all but one of these two-member Board cases have been rendered. However, the Board's website indicates the status of a number of two-member cases are still, "In Process." To ensure against the possibility of an unintended oversight, this is to bring to your attention that a decision in the above-noted case is still outstanding.

As you will note from the record, this is a discriminatory failure to hire case stemming from events arising in December 2004, and involves eight-five (85) discriminatees. The charges were filed in June 2005, and an ALJ decision rendered on November 21, 2007. On September 30, 2009, a two-member Board decision was issued and enforcement proceedings were initiated in the Fourth Circuit Court of Appeals. However, those proceedings were dismissed upon the joint motion of the General Counsel and the Respondent in April 2010. Since then, the matter has been under consideration by the Board which, on March 11, 2011, requested further briefing on a single employer issue. The parties promptly complied with that directive of the Board.

In light of the passage of time since the events giving rise to the charge in this matter and the unfortunate possibility that the Board will soon return to a two-

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member body, we urge the Board to consider and resolve this matter as soon as possible.

Thank you for your attention to this matter.

Very truly yours,



Charles F. Donnelly

CFD/vam

cc: Hon. Gary W. Muffley, Director, Region 9, NLRB
Judith Rivlin, Esquire
Forrest H. Roles, Esquire
Richard R. Parker, Esquire

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