

GOLDBERG AND WEINBERGER
ATTORNEYS AT LAW

630 THIRD AVENUE
NEW YORK, NEW YORK 10017

LEWIS GOLDBERG (NY, NJ & CT)
STUART WEINBERGER (NY & NJ)

TEL: (212) 867-9595
FAX: (212) 949-1857

OTHER OFFICES:
REDDING, CT
THROGS NECK, NY

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Filed Via Federal Express

Mr. Lester A. 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

Dear Mr. Heltzer:

Our firm represents County Waste of Ulster, LLC ("Employer" or "County Waste"). In light of the United States Supreme Court decision in New Process Steel, L.P. v. NLRB, 360 U.S. ____ (June 17, 2010), the Second Circuit has remanded the above-referenced case to the National Labor Relations Board ("Board") for the Board's review. This case involves an allegation that County Waste unlawfully assisted Local 124, R.A.I.S.E., IUJAT ("Local 124") by allowing Local 124 to distribute bonuses to employees. County asserts that the Board must review this matter *de novo* with a different panel than the one that participated in the original decision. Even if the Board does not review the matter *de novo*, the Board must review carefully its finding that there was a violation. As indicated below, the initial finding of unlawful assistance is indefensible and unsupported.

Pursuant to a stipulated election agreement (2-RC-22858), on January 6, 2006, an election was held to determine whether the employees wished to be represented by Laborers International Union of North America ("Local 108"), Local 124 or no union. Local 124 overwhelming won the election.

Local 108 filed unfair labor practice charges (2-CA-37437) as well as objections to the election against County Waste. The Regional Director issued a complaint against County Waste alleging several violations of the Act, including that County Waste had violated the Act by allowing Local 124, which was the incumbent union, to distribute a bonus at the end of

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November 2005, for purposes of influencing the outcome of the election that was held on January 6, 2006. The Regional Director also issued an order directing a hearing on Local 108's objections and consolidating the objections with the unfair labor practice allegations. A hearing was held before Administrative Law Judge Raymond Green (the "ALJ").

On May 9, 2007, the ALJ issued a decision in this matter. The ALJ dismissed all the unfair labor practices against County Waste, except with respect to the issue of the bonus. The ALJ found that County Waste violated Section 8(a)(2) by allowing Local 124 to distribute the bonus in order to influence the employees to support Local 124 in the election. The ALJ further concluded, without it being alleged by General Counsel, that County Waste had violated Section 8(a)(1) of the Act by giving the bonus in order to influence employees to vote for Local 124. The ALJ also recommended that a new election be conducted.

County Waste and Local 124 filed exceptions to the ALJ's decision. In its exceptions regarding the distribution of the bonus, County Waste asserted that the Board must reverse the ALJ's decision for several reasons, including that it was physically impossible for the only employee who testified that he received the bonus check from Local 124 to have received the bonus from Local 124 because he had direct deposit, and that even if Local 124 distributed the bonus checks, Local 124 was lawfully entitled to distribute the bonus checks because it was the incumbent union at the time that the bonus was paid. County Waste further asserted that the ALJ's finding of the Section 8(a)(1) violation by County Waste granting the bonus should be overturned for numerous reasons, including that it had never been alleged by General Counsel.

On February 11, 2009, the Board issued a decision reported at 353 NLRB No. 89 (2007). The Board affirmed the ALJ's decision only to the extent consistent with the Board's decision. The Board upheld the finding of County Waste's unlawful assistance to Local 124 by allowing Local 124 to distribute the bonuses. The Board did not uphold the finding of the violation for granting the bonus. It remanded that issue to the ALJ to determine if the matter was closely connected to the allegations in the complaint and if this issue had been litigated. Further, the Board directed a new election and severed the R case¹ from the unfair labor practice case.

After the case was remanded to the ALJ, Local 108 asked that the allegation against County Waste involving the granting of the bonus be withdrawn. General Counsel agreed that the allegation should be withdrawn. The allegation was dismissed by the ALJ. The dismissal was affirmed by the Board.

County Waste filed a petition for review of the Respondent/Cross-Petitioner National Labor Relation's Board's ("Board") decision and order in County Waste of Ulster, LLC, 353 NLRB No. 89 (2008) finding that County Waste had unlawfully assisted Local 124 by allegedly allowing Local 124 to distribute the bonus. The case was briefed and argued by the parties

¹ This letter does not deal with the R case or the issues in the R case, which also eventually will have to be dealt by the Board under New Process Steel, L.P. v. NLRB, 360 U.S. ____ (June 17, 2010).

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before the Second Circuit. One of the issues before the Second Circuit was the Board's jurisdiction to issue a decision with only two Board members.

Based upon the Supreme Court's decision in New Process Steel, L.P., on July 1, 2010, the Court granted County Waste's petition for review and denied the Board's cross-application for enforcement. The Court also vacated the Board's decision and Order.

On July 1, 2010, the Board issued a press release. In the press release, the Board stated that all of the cases which are remanded back to the Board will be considered by panels which will include the same two Board members who had initially decided the cases and who were without authority to decide the case.

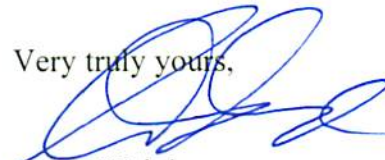
County Waste asserts that the Board should not and cannot follow the procedure that it indicated that it would follow in the press release. Rather, the Board must review the case at bar on remand by a *de novo* review by members who did not participate in the first decision. It is unlikely that the same two Board members can put out of their minds their previously expressed views. Moreover, for the appearance of justice, there must be a new panel of Board members, particularly since the Board's press release gives the appearance that the Board may just rubber stamp the prior decisions. Additionally, the Board's actions in having the same two members decide the case again with a third member violates the Supreme Court's decision in New Process Steel, L.P. v. NLRB that these two members did not have authority to act. Simply stated, since the remand by the Supreme Court is not based upon a change in the law but the lack of authority to act, the Board has created a method to ensure that there are no changes in the decisions because these two members, who acted without authority, have already determined the matter based upon what they perceived to be the law and the application of the law to the facts. The Board's claim that two other members can participate is merely an attempt to justify referring the matter to the two members who decided without the authority to make a decision.

No matter the type of review or which Board members review this case, County Waste further asserts that this case has to be carefully reviewed. A substantial amount of time, effort and money has been spent litigating this matter without any basis or justification. Before the Second Circuit, the Board did not even try to justify its claim that the bonuses were distributed by Local 124 based upon the testimony of the only employee who claimed that he received the bonus directly from Local 124. The reason is that this employee who claimed that Local 124 distributed the bonus had direct deposit. In fact, the Board's argument was largely unrecognizable from the initial claim by General Counsel. Thus, by and large, the whole case and finding is based upon testimony regarding events that could not have taken place. The Employer requests permission to submit a further brief on this matter, including what was argued to the Second Circuit.

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In sum, Count Waste asserts that this case must be reviewed *de novo* review by a panel of Board members who did not participate in the initial decision. Further, this case also must be carefully reviewed again on the facts.

Very truly yours,



Stuart Weinberger

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

SW: L8.2.10

CERTIFICATION OF SERVICE

A true and complete copy of the foregoing has been served upon the following parties via Federal Express, Next Day Delivery on August 8, 2010 as well as via Electronic Transmission on August 10, 2010 to the following parties:

Steven Kern, Esq.
Barnes, Iccarino & Shepherd
258 Saw Mill River Road
Elmsford, NY 10523
skern@bislaw.com

Alan Rose, Esq.
NLRB-Region 2
26 Federal Plaza, Room 3614
New York, NY 10278
Allen.Rose@nlrb.gov

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

Tamir Rosenblum, Esq.
Local 108, LIUNA
520 8th Avenue
New York, NY 10018
TRosenblum@masontenders.org



Lewis Goldberg

Dated: August 10, 2010