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September 9, 2010

VIA E-FILING

Lester A. Heltzer, Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street NW  
Washington DC 20570

Re: County Waste of Ulster, LLC  
Case Nos. 2-CA-37437 and 2-RC-22858

Dear Mr. Heltzer:

Counsel for the Acting General Counsel writes in response to Respondent's letter to you dated September 7, 2010, and submits that Respondent's arguments made therein serve no purpose other than to delay this matter without good cause.

With regard to the to first of Respondent's arguments in its September 7 letter, the Board, in its three-member decision in 355 NLRB No. 64, upheld the ALJ's recommended order in Case Nos. 2-CA-37437 and 2-RC-22858, for the reasons stated in the two-member decision in 353 NLRB No. 89. However, Respondent criticises the Board's recent three-member decision in 355 NLRB No. 64 because it did not explicitly address the two-member Board's upholding of the ALJ's *supplemental* recommendation reported in 354 NLRB No. 54 (2009). That supplemental ALJ decision merely recommended dismissal of a Sec. 8(a)(1) allegation that the earlier two-member decision in 353 NLRB No. 89 had remanded. This an issue decided entirely in Respondent's favor and therefore the Acting General Counsel can fathom no reason for Respondent's objection to it other than delay. In any event, the two-member Board in 354 NLRB No. 54 upheld the supplemental dismissal and denied Respondent's motion to re-open the record. To the extent that it may be necessary to do so, the Board's two-member decision on the supplemental recommendation in 354 NLRB No. 54 should be adopted by a three-member panel for the same reasons set forth in 354 NLRB No. 54.

Respondent's states in its letter's second argument that "[i]t is unclear whether the [three-member] Board meant to decide the RC case" because the remand from the Second Circuit

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concerned only the CA case. (Resp. Ltr d. Sept. 7, 2010 at 2.) As stated above, the ALJ's recommendations covered Case Nos. 2-CA-37437 and 2-RC-22858. In 355 NLRB No. 64, the three-member Board panel ultimately agreed with the ALJ that Respondent's Sec. 8(a)(2) violation in Case No. 2-CA-37437 should warrant the direction of a second election in Case No. 2-RC-22858. What is unfortunately not clear to Respondent is that the Board's representational decisions are not reviewed by federal courts of appeals, which explains why the RC case was not before the Second Circuit. Contrary to Respondent's assertions (*id.* at 2), the three-member panel did "address . . . the reason for direction of the second election" when it adopted the two-member decision.

Finally, Respondent makes the third argument in its letter that the Board issued its three-member decision in 355 NLRB No. 64, on August 10, 2010, without having reviewed Respondent's letter filed with the Board on the day before issuance. However, Respondent's arguments as set forth in its August 9 letter to the Board are meritless, including the one (repeated in the September 7 letter) that the three-member panel should not include the two members who rendered the initial decision. As stated in the decision (at n.3), the Board's procedures in each case provide that all Board members may participate in rendering decisions.

Respectfully submitted,



Allen M. Rose  
Counsel for the Acting General Counsel

cc: Haluk Savci, Esq. (by email)  
Steven Kern, Esq. (by email)