

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REPUBLIC SERVICES, INC.

and

Cases 25-CA-31683 Amended
25-CA-31708 Amended
25-CA-31709 Amended
25-CA-31813 Amended

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 150,
AFL-CIO, a/w INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

ACTING GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S CROSS-
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Respectfully submitted,

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EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Comes now Counsel for the Acting General Counsel and respectfully submits to the Board this Answering Brief to the Cross-Exceptions to the Administrative Law Judge's Decision filed by Republic Services, Inc., hereinafter referred to as Respondent. Counsel for the Acting General Counsel hereby requests that Respondent's cross-exceptions be denied and that the Administrative Law Judge's Decision in instant case, which issued on June 21, 2011, be affirmed except as modified by Counsel for the Acting General Counsel's exceptions, which were filed on July 19, 2011. In support of this position, Counsel for the Acting General Counsel offers the following:

I. STATEMENT OF THE CASE

On May 11, 2011 and consecutive days thereafter, an administrative hearing was held before Administrative Law Judge Arthur Amchan regarding the instant case. On June 15, 2011, the parties filed post-hearing briefs. On June 21, 2011, the Judge issued his decision. In his

decision, the Judge correctly concluded that, since the parties' collective-bargaining agreement was still in effect, the Respondent's November 11¹ letter to the Union withdrawing recognition without qualification violated the Section 8(a)(1) and (5) of the Act (Decision, p. 9, l. 1-9). The Judge also correctly concluded that Respondent engaged in unlawful direct dealing with bargaining unit employees including by unilaterally providing employee Carleen Condon with Respondent's health, vision, and dental benefits without first notifying the Union and giving the Union an opportunity to bargain (Decision, p. 9, l. 11-15). Furthermore, the Judge correctly concluded that the Respondent violated the Act by initially denying and later limiting the access of Union officials to the Countyline Landfill on December 13 except as modified by Counsel for the Acting General Counsel's exceptions (Decision, p. 7, l. 5-17). Additionally, the Judge correctly concluded that it violated the Act by requiring that Union representatives have management representatives present at the Countyline Landfill while Union representatives visited Respondent's facility, engaging in the surveillance of employees' Union activities, and interrogating employees on December 16 (Decision, p. 9, l. 17-36). The Judge also concluded that the Respondent temporarily violated the Act by failing to deduct Union dues for pay periods November 14 thru 27 (Decision, p. 9, footnote 7, l. 42-48).

On July 19, 2011, Counsel for the Acting General Counsel filed exceptions to the Judge's Decision including, inter alia, the Judge's findings and conclusions that the Respondent temporarily violated the Act by failing to deduct Union dues for pay periods November 14 thru 27. On September 7, 2011, the Respondent filed cross-exceptions and an answering brief to the Judge's decision.

¹ All dates herein refer to 2010 unless stated otherwise.

II. STATEMENT OF THE FACTS

A. Background

Respondent is a corporation with offices and places of business throughout the State of Indiana including in Argos, Indiana, and is engaged in the business of waste disposal, collection, and recycling (TR 18; GC Ex 1(m)). Bill Meyer is the Area President of the Northern Indiana Area in the Midwest Region (TR 22). Jack Perko is the Senior Vice President of Operations for the Midwest Region (TR 20, 21). Holly Georgell is the Attorney and Midwest Region Labor Relations Director (TR 17). Rodney Adkinson is the Area Human Resources Manager for Northern Indiana (TR 22). Bob Walls is the General Manager (TR 21, 22). Michael Beckley is the Operations Manager (TR 21).

About January 1, 2009, Respondent merged with a company called Allied Waste. At the time of the merger, the Respondent assumed the operations of the Countyline Landfill in Argos, Indiana, whose employees have been represented by the Union for about 15 years (TR 18-20). Upon assuming the operations of the Respondent's facility, Respondent recognized the Union and agreed to abide by the terms of the then-existing collective-bargaining agreement, which was effective from January 1, 2008, through December 31 (TR 20; JT Ex 1).

B. The Bargaining Unit

At the time of the merger, the Respondent employed seven employees: Shannon Pugh, Travis Pugh, Mike Fairchild, Carleen Condon, Bob Styles, Dennis Jaeger, and Jason Weigands. All of the employees held the position of operator except Weigands, who held the position of mechanic (TR 19). About October 1, Jaeger took a voluntary layoff because of economic conditions at the Countyline Landfill (TR 338, 343-344). On November 9, Respondent discharged Travis Pugh, Fairchild, and Weigands for alleged misconduct and the Union grieved

those terminations on November 10 (TR 95, 132, 197; GC Ex 4; GC Ex 5; GC Ex 6; GC Ex 7).² About November 9, Jaeger was recalled to work (TR 341, 344). As of November 10, the Respondent employed four employees: Shannon Pugh, Condon, Styles, and Jaeger. Sometime after November 11, Wayne Miller, an employee of Respondent, was transferred from the Wabash Valley Landfill, one of Respondent's other non-Union facilities, and began working at Countyline Landfill as an operator (TR 54-56, 119-120, 146, 173-174, 348-350; CP Ex 3).

C. Withdrawal of Recognition

About August 23, Midwest Region Labor Relations Director Georgell and Union Representative James Gardner talked about the need to meet to negotiate a new collective-bargaining agreement. However, they did not talk specifically about meeting dates (TR 25). On October 5, the Union sent a letter to the Respondent requesting to meet to bargain a new collective-bargaining agreement (TR 26, 196-197; GC 24).

About November 9, after Travis Pugh, Fairchild, and Weigands were terminated, Condon told Operations Manager Beckley that she and some of the remaining employees no longer wished to be represented by the Union (TR 169-171). On November 9, after speaking with Condon, Beckley informed Area Human Resources Manager Adkinson that Condon, Styles, and Jaeger had stated that they no longer wished to be represented by the Union (TR 96-98).

About November 10, Adkinson informed Midwest Region Labor Relations Director Georgell that Condon, Styles, and Jaeger no longer wished to be represented by the Union (TR 29, 97). Later that same day, Georgell and Adkinson conducted two meetings with the employees to discuss their options if they decided to follow through their desire to no longer be

² The grievance concerning Travis Pugh's discharge was arbitrated about May 5, 2011 (TR 197-

represented by the Union and to answer any questions that they had. Georgell was not present at the Countyline Landfill. However, she spoke to the employees by telephone. During the first meeting, Adkinson and Georgell spoke to Condon and Styles and answered questions about their health insurance benefits and pension in the event that they lost their Union benefits. Adkinson and Georgell also informed Condon and Styles that Respondent would see if the employees could receive benefits including a 401(k) plan through the Respondent if they lost their Union benefits. Georgell further informed Condon and Styles that they would need to place their desire not to be represented by the Union in writing. Adkinson provided Condon and Styles with pen and paper so that they could place their desire not to be represented by the Union in writing (TR 30-32, 98-101). During the second meeting, Adkinson met with Jaeger at the Countyline Landfill. Georgell was not present at this meeting. Adkinson answered questions about Jaeger's health insurance benefits and pension in the event that the employees lost their Union benefits. Jaeger informed Adkinson that he knew that he needed to sign something to express his intent not to be represented by the Union (TR 101-103).

About November 10 or 11, Area Human Resources Manager Adkinson gave Operations Manager Beckley a manila envelope containing letters from Condon and Styles stating that they no longer wished to be represented by the Union (TR 172). On November 11, Jaeger gave Beckley his letter stating that he no longer wished to be represented by the Union (TR 172; GC Ex 9). Also, on November 11, Condon, Styles, and Jaeger submitted letters to the Union stating that they no longer wished to be represented by the Union. Later that day, Midwest Region Labor Relations Director Georgell sent a letter to the Union withdrawing recognition. The Union also sent an email to the Respondent requesting to schedule a meeting to commence the

198). At the time of the hearing, the other grievances were still pending. None of the

negotiation of a new collective-bargaining agreement. The Respondent did not respond (TR 33, 198-199, 216, 238; GC Ex 8; GC Ex 9; GC Ex 10, GC Ex 11; GC Ex 25).

On November 12, Midwest Region Labor Relations Director Georgell and Area Human Resources Manager Adkinson met with the Condon, Styles, Jaeger, and Shannon Pugh at the Countyline Landfill and informed them that Respondent had withdrawn recognition from the Union (TR 45, 108-109). Adkinson also informed the employees that the benefits offered through Respondent would take effect immediately, including a 401(k) plan and a different health insurance plan. During the meeting, Adkinson distributed information to the employees concerning the Respondent's medical, dental and vision plans (TR 117-119, 133-140, 297-299; CP Ex 2). Georgell and Adkinson further informed employees that Union dues may no longer be taken out of employees' paychecks and they could receive five personal days which had previously been made available to non-Union employees, but not to Union members (TR 46-51, 110-119). Prior to the withdrawal of recognition, the employees were previously receiving health insurance benefits and pension under the Union's pension and health insurance programs (TR 299-300). Also, on November 12, Senior Vice President of Operations Perko sent a memo to represented employees at other facilities notifying them of the withdrawal of recognition at the Countyline Landfill and that such a withdrawal had no impact on the contracts for these other employees (including any no-strike provisions) (TR 35-36; GC Ex 12).

D. Unilateral Changes and/or Failure to Abide by the Contract

Shortly after the meeting with employees on November 12 to inform them of the withdrawal of recognition, Union Representatives James Gardner and Mike DeWulf attempted to visit the Respondent's facility to conduct Union business and speak to employees. Such a visit is

terminations was ever alleged to be an unfair labor practice.

allowed pursuant to the language of Article 6.02 of the collective-bargaining agreement (JT Ex 1). However, Midwest Region Labor Relations Director Georgell informed Gardner that the Respondent had withdrawn recognition and he was not allowed to have access to the employees. Gardner recorded this conversation (TR 200-210; GC Ex 30; GC Ex 31). On December 9 or 10, Gardner sent an email to Area Human Resources Manager Adkinson and General Manager Walls requesting access to the Countyline Landfill to conduct Union business. On December 10, Georgell sent an email to Gardner stating that he could visit the Countyline Landfill on December 13 (TR 216-218; GC Ex 26).

On December 13, Union Representatives Garner and Tom Lanham went to the Countyline Landfill. General Manager Walls told Gardner and Lanham that they were not allowed onto Respondent's facility because of weather conditions even though all of the employees were working. Walls also informed them that he wanted more management representatives present. Walls further informed them that they could return on December 16 (TR 218-221).

On December 16, Union Representatives Gardner and Lanham returned to the Countyline Landfill. Upon their arrival, about eight representatives of Respondent including General Manager Walls escorted Gardner and Lanham through the Countyline Landfill. Also, before Gardner was allowed to speak to the employees Condon, Styles, and Jaeger, Walls first asked each employee if they wanted to speak to Gardner. Additionally, Walls remained about 15 feet away while Gardner spoke to employee Travis Pugh about work and Union business. Four representatives of the Respondent also stood roughly about 30 to 40 feet away from Gardner and employee Pugh while they spoke. Gardner recorded this conversation with Respondent's representatives and employee Pugh (TR 222-234, 306-307; GC Ex 32; GC Ex 33). After the

withdrawal of recognition, Respondent ceased deducting dues from employees' paychecks for about two weeks, before resuming the deductions until the contract expired on December 31 (TR 332; GC Ex 14; GC Ex 15; GC Ex 36(a)-36(f); Resp. Ex 3(a)-3(d)).

Around November 14, the Respondent transferred employee Miller from the Wabash Valley Landfill to the Countyline Landfill to fill an operator position rather than contacting the Union to obtain a referred person from the Union hall to fill the position. Thus, Respondent failed to utilize the Union's hiring hall procedures as required by Article X of the collective-bargaining agreement (JT Ex 1). In fact, Area Human Resources Adkinson posted a job description on www.CareerBuilder.com for an operator on November 13. Miller subsequently filled the position (TR 55, 120-123, 163, 173-176; GC Ex 19). As noted above, Respondent also informed employees, at a November 12 meeting, that they would be eligible for Respondent's 401(k) and health insurance programs immediately. Furthermore, paperwork to that effect was distributed to employees at the meeting (TR 133-140, 297-299; CP Ex 2). Additionally, Respondent mailed information concerning Respondent's 401(k) and health insurance benefits to employees about November and December (TR 302-306, 311-313; GC Ex 17; GC Ex 18; GC Ex 34; GC Ex 35). Starting about November 11, employee Condon began participating in the Respondent's medical, dental, and vision plan (TR 328-330; GC Ex 36(a)).

About February 4, 2011, Respondent announced to its employees that it was changing its vacation policy. In the past, employees accrued vacation time throughout the calendar year and then used that accrued vacation time the following calendar year. Respondent announced that vacation time would be accrued in an ongoing fashion and was to be used the year it was accrued. Also, about February 4, 2011, employees received a vacation buyout under the new vacation policy. In the past, only employees who had been laid off would be eligible for a

vacation buyout, a lump sum payment for unused vacation. Under the new policy, current employees received a vacation buyout for unused vacation (TR 125-128, 257-258, 307-309; GC Ex 20). About March 4, 2011, Respondent announced that employees would receive a merit pay increase, which amounted to an increase in the hourly rate of all of the employees in the bargaining unit. Also, about March 4, 2011, all of the employees in the bargaining unit received a merit pay increase of about \$0.34 per hour (TR 61, 129-130, 310-311; GC Ex 20; GC Ex 21).

III. ARGUMENT

A. The Judge Correctly Concluded That Respondent Violated Section 8(a)(1) and (5) Of The Act By Unlawfully Withdrawing Recognition From The Union.

In its exceptions, the Respondent argues that the Judge incorrectly ruled that the Respondent's November 11 letter stating that it was withdrawing recognition from the Union violated Section 8(a)(1) and (5) of the Act. The Respondent also argues that the Judge incorrectly concluded that, upon receiving notification that employees Condon, Styles, and Jaeger no longer wished to be represented by the Union, the Respondent was only allowed to inform the Union that it would not negotiate a successor agreement and announce that it would not recognize the Union after the expiration of the parties' collective-bargaining agreement. The Respondent asserts that case law which permits anticipatory withdrawal does not require that any particular language be used by an employer. The Respondent also asserts that its letter withdrawing recognition from the Union was lawful and its continued compliance with the collective-bargaining agreement is further evidence of Respondent's lawful anticipatory withdrawal of recognition.

Despite Respondent's assertions, the Judge correctly concluded that, since the parties' collective-bargaining agreement was still in effect, the Respondent's November 11 letter to the

Union withdrawing recognition without qualification violated the Section 8(a)(1) and (5) of the Act (Decision, p. 9, l. 1-9). In support of his conclusion, the Judge cited Auciello Iron Works, Inc. v. NLRB, 517 U.S. 781, 187 (1996), in which Board held that an employer may not lawfully withdraw recognition while a collective-bargaining agreement is in effect since an incumbent union enjoys a conclusive presumption of majority status during the life of the contract up to three years. The Judge also correctly concluded that all that the Respondent was entitled to do on November 11, 2010 was inform the Union that it would not negotiate a successor agreement and announce that it would not recognize the Union after the expiration of the parties' collective-bargaining agreement. In support of his conclusion, the Judge also cited Abbey Medical, 264 NLRB 969 (1982), *enfd.* Mem. 709 F.2d 1514 (9th Cir. 1983), in which the Board held that an employer faced with evidence that an incumbent union has lost majority support during the term of a collective-bargaining agreement may lawfully refuse to negotiate a successor agreement and announce that it will not recognize the Union after the contract expires (Decision, p. 8, l. 5-14). Furthermore, the Judge correctly concluded that, after the Respondent unlawfully withdrew recognition from the Union, the Respondent violated the terms of the parties' collective-bargaining agreement and engaged in subsequent unilateral changes in employees' terms and conditions of employment by denying and later limiting the Union's access to the Respondent's facility, ceasing deducting dues for a two-week period of time, requiring Respondent's agent to accompany Union representatives while they accessed the Respondent's facility, announcing and implementing the Respondent's 401(k) plan and health insurance benefits without notifying the Union and giving the Union the opportunity to bargain as discussed above (Decision, page 5, l. 14-17; page 7, l. 14-17; page 9, footnote 7, l. 11-48).

In his decision, the Judge found that, on January 1, 2009, Respondent merged with Allied Waste and began operating the Countyline Landfill. At the time of the merger, the Respondent recognized the Union and agreed to abide by the collective-bargaining agreement between Allied and the Union, which was effective from January 1, 2008 until December 30 (Decision, p. 2, l. 42 – P. 3, l. 2). The Judge also found that, upon receiving written notification from employees Condon, Jaeger, and Styles that they no longer wished to be represented by the Union, the Respondent sent the Union a letter dated November 11 stating that it was withdrawing recognition from the Union. The Judge further found that the letter did not state that Respondent had any obligation to comply with the parties' collective-bargaining agreement until it expired on December 31, 2010 (Decision, p. 3, l. 22 – p. 4, l. 8). Additionally, the Judge found that the letter purported to withdraw recognition from the Union without qualification (Decision, p. 9, l. 6).

Also, record evidence clearly demonstrates that, after the Respondent withdrew recognition from the Union, the Respondent engaged in subsequent unilateral changes in employees' terms and conditions of employment. Specifically, record evidence demonstrates that, shortly after the meeting with employees on November 12 to inform them of the withdrawal of recognition, Union Representatives James Gardner and Mike DeWulf attempted to visit the Respondent's facility to conduct Union business and speak to employees. Such a visit is allowed pursuant to the language of Article 6.02 of the collective-bargaining agreement (JT Ex 1). However, Midwest Region Labor Relations Director Georgell informed Gardner that the Respondent had withdrawn recognition and he was not allowed to have access to the employees. Gardner recorded this conversation (TR 200-210; GC Ex 30; GC Ex 31). On December 9 or 10, Gardner sent an email to Area Human Resources Manager Adkinson and General Manager

Walls requesting access to the Respondent's facility to conduct Union business. On December 10, Georgell sent an email to Gardner stating that he could visit the Respondent's facility on December 13 (TR 216-218; GC Ex 26).

On December 13, Union Representatives Garner and Tom Lanham went to the Respondent's facility. General Manager Walls told Gardner and Lanham that they were not allowed onto Respondent's facility because of weather conditions even though all of the employees were working. Walls also informed them that he wanted more management representatives present. Walls further informed them that they could return on December 16 (TR 218-221).

On December 16, Union Representatives Gardner and Lanham returned to the Respondent's facility. Upon their arrival, about eight representatives of Respondent including General Manager Walls escorted Gardner and Lanham through the Countyline Landfill. Also, before Gardner was allowed to speak to the employees Condon, Styles, and Jaeger, Walls first asked each employee if they wanted to speak to Gardner. Additionally, Walls remained about 15 feet away while Gardner spoke to employee Travis Pugh about work and Union business. Four representatives of the Respondent also stood roughly about 30 to 40 feet away from Gardner and employee Pugh while they spoke. Gardner recorded this conversation with Respondent's representatives and employee Pugh (TR 222-234, 306-307; GC Ex 32; GC Ex 33). After the withdrawal of recognition, Respondent ceased deducting dues from employees' paychecks for about two weeks, before resuming the deductions until the contract expired on December 31 (TR 332; GC Ex 14; GC Ex 15; GC Ex 36(a)-36(f); Resp. Ex 3(a)-3(d)). Therefore, the preponderance of record evidence supports the Judge's findings and conclusions that Respondent violated the Act by unlawfully withdrawing recognition from the Union (Decision, p. 9, l. 1-9).

B. The Judge Correctly Concluded That The Respondent Engaged In Direct Dealing With Bargaining Unit Employees By Offering Them Benefits That They Would Receive As Non-Union Employees and Unilaterally Providing Benefits To Its Represented Employees.

In its exceptions, the Respondent argues that the Judge incorrectly concluded that it engaged in direct dealing and unlawfully provided benefits to its employees. The Respondent asserts that, after the employees signed the disaffection petition, the Respondent held a meeting with employees on November 12 to merely advise them of the types of benefits that might be available to them after the collective-bargaining agreement expired. The Respondent also asserts that some of benefits packets that were mailed to bargaining unit employees had an effective date prior to the expiration of the parties' collective-bargaining agreement based upon some confusion between Area Human Resources Manager Adkinson and the benefits administrators. The Respondent also asserts that, after employees Condon, Styles, and Jaeger indicated their desire to no longer be represented by the Union, Condon expressed concerns that the Union would retaliate against her with respect to her health benefits and asked the Respondent to allow her to enroll into the Respondent's health plan. In response, the Respondent allowed her to enroll in into the Respondent's medical, vision, and dental plan in November.

Despite Respondent's assertions, the Judge correctly concluded that Respondent engaged in unlawful direct dealing with bargaining unit employees and unilaterally provided Condon with Respondent's health, vision, and dental benefits (Decision, p. 9, l. 11-15). The Judge found that, after sending the Union its withdrawal letter dated November 11, Midwest Region Labor Relations Director Georgell, Area Human Resources Manager Adkinson, General Manager Walls, and Operations Manager Beckley held a meeting with the employees on November 12. During the meeting, the management representatives informed the employees that a majority of

the employees indicated that they no longer wished to be represented by the Union and that the Respondent had communicated that information to the Union. Also, during the meeting, Georgell discussed the health insurance benefits and 401(k) plan available to Respondent's non-union employees and advised the employees that these benefits would be immediately available to them (Decision, p. 4, l. 26-48, footnote 3).

The Judge also found that, on November 12, Adkinson sent Respondent's benefit administrators an email stating that Respondent had withdrawn recognition at the Countyline Landfill and he planned to the employees with the selection of their benefits plans upon his return there in a few days (Decision, p. 5, l. 1-7). The Judge further found that Respondent sent employees plan enrollment documents indicating that they were eligible to participate in the plans as of November 12 (Decision, p. 5, 35-36, footnote 3). Additionally, record evidence demonstrates that, starting about November 11, employee Condon began participating in the Respondent's medical, dental, and vision plan (TR 328-330; GC Ex 36(a)). Also, in its exceptions, the Respondent admits that it allowed Condon to participate medical, vision, and dental plan in November. Thus, the preponderance of record evidence demonstrates that Respondent engaged in unlawful direct dealing by offering bargaining unit employees benefits which had only been provided to non-Union employees and allowing Condon to participate in Respondent's medical, vision, and dental plan during the life of the collective-bargaining agreement.

C. The Judge Correctly Concluded That The Respondent Violated The Act By Failing to Deduct Union Dues.

In its exceptions, the Respondent argues that the Judge incorrectly concluded that the Respondent temporarily violated the Act in failing to deduct Union dues for pay period November 14 thru 24. The Respondent also argues that the Judge incorrectly concluded that the

Respondent rectified the failure to deduct dues, but that taking such action did not cure the violation. The Respondent asserts that the Respondent continued to administer the contractual provisions of the parties' collective-bargaining agreement. The Respondent also asserts that, since it immediately rectified its failure to deduct dues by deducting the missed Union dues from employees' paychecks, its actions should not be considered a violation of the Act. The Respondent further asserts that, even assuming that its actions constitute a violation of the Act, it cured the violation under Passavant Memorial Area Hospital, 237 NLRB 138 (1978).

In his decision, the Judge concluded that the Respondent temporarily violated the Act by failing to deduct Union dues for pay periods November 14 thru 27 (Decision, p. 9, footnote 7, l. 42-48). The Judge found that Union dues was not deducted from employees' December 3 paychecks covering pay period November 21 thru 27 and employees received a credit on that paycheck for the union dues deducted for the pay period November 14 thru 20. The Judge also found that, in the following two paychecks, enough Union dues was deducted from employees' paychecks to cover the weeks in which dues were in arrears. The Judge further found that the Respondent's failure to deduct Union dues was a result of a belated realization that the Respondent was legally required to deduct union dues at least until December 31. Additionally, even though the Judge found that the Respondent quickly rectified this violation, the Judge also found that Respondent's actions did not cure its violation in unlawfully withdrawing recognition from the Union on November 11. Also, record evidence demonstrates that the Respondent failed to take any steps to cure its withdrawal of recognition from the Union. In fact, the Respondent unilaterally changed employees' terms and conditions of employment after its unlawful withdrawal of recognition, as discussed above.

In support of his findings and conclusion, the Judge cited Passavant Memorial Area Hospital. Id. and outlined the Board's test that charged parties must meet in order to cure a statutory violation of the Act. However, the Judge failed to explain why he concluded that the Respondent "temporarily violated" the Act (Decision, p. 6, l. 8-14; p. 9, footnote 7, l. 42-48). It should be noted that Counsel for the Acting General Counsel has filed exceptions, inter alia, regarding the Judge's findings and conclusions that Respondent "temporarily violated" the Act by failing to deduct Union dues from employees' paychecks for a two-week period of time.

D. The Judge Correctly Concluded That The Respondent Violated the Act By Denying The Union Access To Respondent's Facility on December 13, 2010, Requiring That Union Representatives Have Management Representatives Present At The Respondent's Facility on December 16, 2010, Engaging In Surveillance of Employees' Union Activities, and Interrogating Employees.

In its exceptions, the Respondent argues that the Judge incorrectly concluded that it violated the Act by denying the Union access on December 13. The Respondent asserts that access was only delayed, not denied, on December 13 because of a severe storm. The Respondent also asserts that Midwest Region Labor Relations Georgell sent a letter to the Union stating that, for safety reasons and weather, the Respondent was denying access, but that the Respondent would like to give the Union access at another date that week.

Despite the Respondent's assertions, the Judge correctly concluded that the Respondent violated the Act by initially denying and later limiting the access of Union officials to Respondent facility on December 13 (Decision, p. 7, l. 14-17). The Judge found that Union Representative Gardner requested access to the Respondent's facility and bargaining unit employees on December 13. The Respondent initially authorized the visit. However, on December 12, Midwest Region Labor Relations Georgell informed Gardner that his visit would have to be delayed due to weather conditions. Gardner and Lanham showed up at the Countyline

Landfill anyway and were told to come back. General Manager Walls told Gardner that the Respondent wanted more management present at the Respondent's facility when it allowed Gardner access to the facility (Decision, p. 7, l. 5-12). Therefore, the preponderance of record evidence supports the Judge's findings and conclusions that Respondent violated the Act by denying and later limiting the access of Union officials to the Countyline Landfill on December 13.

The Respondent argues that the Judge incorrectly ruled that it violated the Act by protecting the interests of employees who did not want to meet the Union. Specifically, the Respondent argues that the Judge incorrectly ruled it violated the Act by requiring that Union representatives have management representatives present at the Respondent's facility during their visit to the facility, engaging in the surveillance of employees' Union activities, and interrogating employees on December 16. The Respondent also argues that the Judge incorrectly found that the Respondent's actions during the Union's site visit on December 16 prevented employees from contact with Union business representatives out of the view of the Respondent and constituted interference with employees' free choice regarding their Section 7 rights. The Respondent asserts that the Union did not offer any evidence that the Respondent limited access to employees. The Respondent also asserts that bargaining unit employees informed the Respondent that they did not want Union representatives visiting them. The Respondent also asserts that it took extra steps to ensure that the employees were not harassed during working time and on company property.

Despite the Respondent's assertions, the Judge correctly concluded that it violated the Act by requiring that Union representatives have management representatives present at the Respondent's facility during their visit to the facility, engaging in the surveillance of employees'

Union activities, and interrogating employees on December 16 (Decision, p. 9, l. 17-25). The Judge found that the Respondent required Union Representatives Gardner and Lanham to have management representatives present at the Respondent's facility during the Union visit. The Judge also found that the Respondent insisted that Union Representatives Gardner and Lanham have management representatives escort them around the Respondent's facility while they attempted to talk to employees about Union activities. The Judge further found that the Respondent observed conversations between Union Representative Gardner and Shannon Pugh and allowed Gardner to speak with bargaining unit employees only in the presence of management representatives. Additionally, General Manager Walls asked employees if they wanted to speak to Gardner (Decision, p. 9, l. 17-31). Therefore, the preponderance of record evidence supports the Judge's findings and conclusions that Respondent violated the Act by requiring that Union representatives have management representatives present at the Respondent's facility during their visit to the facility, engaging in the surveillance of employees' Union activities, and interrogating employees on December 16.

IV. CONCLUSION

For the reasons stated above, the Counsel for the Acting General Counsel respectfully requests that Respondent's exceptions be denied in their entirety and that the Administrative Law Judge's Decision be affirmed and his recommended order adopted except as modified by Counsel for the Acting General Counsel's exceptions.

Respectfully submitted this 21st day of September, 2011.

Respectfully submitted,

/s/ Raifael Williams

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of ACTING GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION has been E-filed on NLRB internet site

(www.nlr.gov) and served by Electronic Transmission on September 21, 2011 upon the following persons, addressed to them at the following addresses:

**Office of the Executive Secretary
National Labor Relations Board
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