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May 21, 2013

Gary Shinners
Executive Secretary
National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001

Re: *1621 Route 22 West Operating Company, LLC d/b/a Somerset Valley Rehabilitation*, Case Nos. 22-CA-069152 and 22-CA-074665

Dear Mr. Shinners:

Pursuant to *Reliant Energy*, 339 NLRB 66 (2003), Respondent Somerset directs the Board's attention to decisional authority issued after briefing closed.

The Administrative Law Judge ("ALJ") found that Somerset violated the Act by failing to bargain with the Union over the elimination of the LPN classification and denying the Union access to its facility (ALJD 25:1-32), relying upon the Board's August 26, 2011, Decision and Certification of Representative ("D&C") in *Somerset Valley Rehabilitation & Nursing Center*, 357 NLRB No. 71 (2011).[1] Somerset excepted to the ALJ's reliance upon the D&C and her findings that Somerset committed these unfair labor practices. (Exception Nos. 35-39).

In *NLRB v. New Vista Nursing & Rehab.*, Nos. 11-3440, 12-1027, and 12-1936 (3d Cir. May 16, 2013), the Third Circuit held that Craig Becker's appointment was unconstitutional. Accordingly, the Court held that the delegee group consisting of Becker and Members Liebman and Hayes lacked authority to issue the August 26, 2011, Order under review in that case. For the reasons set forth in *New Vista*, the Board also lacked authority to issue the D&C relied upon by the ALJ in this case – it was issued on the same day, by this same "delegee" group. Absent a valid D&C, Somerset, therefore, did not have a duty to bargain with the Union or permit the Union access to its property. While that duty may or may not attach in the future (even retroactively), it has not attached at this time. Consequently, all charges and claims predicated

[1] That decision is the subject of a Petition for Review pending before the Third Circuit. *1621 Route 22 West Operating Company, LLC, d/b/a Somerset Valley Rehabilitation and Nursing Center v. NLRB*, Case Nos. 12-1031 (3d Cir. filed Jan. 9, 2012).

upon the D&C certifying the Union as the exclusive collective bargaining representative for a group of employees at Somerset must be dismissed.

Furthermore, *New Vista*'s holding that "the 'Recess of the Senate' means only intersession breaks," slip op. at 38-39, supports the argument in Somerset's Motion to Stay (filed March 5, 2013) that the appointments of Block and Griffin are invalid.

Respectfully submitted,

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