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April 18, 2016

VIA ECF

Honorable Vincent L. Briccetti
United States District Court
Southern District of New York
300 Quarropas Street, Room 630
White Plains, NY 10601

Re: Ley v. Wingate of Dutchess, Inc., Civil No. 15-cv-3982

Dear Judge Briccetti:

On behalf of Defendant, Wingate of Dutchess, Inc. ("Wingate"), we reply to the letter filed by Petitioner Ley earlier today seeking an expeditious decision and order in this case.

First, we take this opportunity to recertify to the Court that since the November 12, 2014 representation election, nothing has occurred which would even suggest the interim relief sought by Petitioner Ley is necessary or warranted. There have been no further complaints issued by the Labor Board against Wingate (indeed, no charges or claims of wrongdoing are even pending),[1] that would warrant the extraordinary interim remedy Petitioner seeks. Petitioner Ley does not claim otherwise in today's letter.

For Section 10(j) relief to be warranted, there must not only be "reasonable cause" to believe the Board's decision finding unfair labor practices ("ULP") will be enforced by a Court of Appeals, but the relief sought must also be "just and proper" *at this time and under the instant circumstances.* The "just and proper" inquiry is critical to ensuring an injunction does not issue simply because the Court concludes the Regional Director has reasonable grounds for believing a ULP may have occurred, see *Danielson v. Int'l Bhd. of Electrical Workers*, 509 F.2d 1371, 1375 (2d Cir. 1975), and that the relief granted does not simply function as a substitute for the exercise

[1] The charge filed by the Union was dismissed (as one portion was withdrawn and the other resolved).

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of the Board's power. *See McLeod v. General Electric Co.*, 366 F.2d 847, 849-850 (2d Cir. 1966), *vacated as moot*, 385 U.S. 533 (1967) (per curium).

Second, all exceptions and cross-exceptions, and accompanying briefings, have been fully submitted to the Board and the parties await the Board's decision, which is expected within months.

For the above reasons, it is respectfully submitted *there need be no rush to judgment here* and the petition for injunctive relief, when decided, be denied.

Respectfully yours,

Eve I. Klein

EIK:jb

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