



Littler Mendelson, P.C.
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, TX 75201.2931

Arthur Tracy Carter
214.880.8105 direct
214.880.8100 main
214.594.8601 fax
atcarter@littler.com

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VIA ECF

Mark J. Langer, Esq.
Clerk, United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Ave., N.W., Room 5423
Washington, DC 20001-2866

Re: *Leggett & Platt, Inc. v. NLRB*, Case Nos. 20-1060, 20-1061, 20-1134
(Oral Argument Scheduled December 2, 2020)

Dear Mr. Langer:

This letter constitutes Petitioner Leggett & Platt, Inc.'s ("Leggett") response to the National Labor Relations Board's ("NLRB" or the "Board") FRAP 28(j) submission regarding the D.C. Circuit's decision in *Wyman Gordon Pennsylvania, LLC v. NLRB*, No. 19-1263 (Nov. 13, 2020) (per curium).

While the NLRB suggests that *Wyman Gordon* supports its position that an affirmative bargaining order is appropriate in this case, the Court's recent decision is distinguishable for several reasons. First, the decertification petition on which the employer relied was insufficient because several of its pages lacked any decertification or explanatory language, whereas every page of the Leggett petition clearly identified it as a union decertification petition. *See Leggett & Platt, Inc.*, 367 NLRB No. 51, slip op. at 7 (Dec. 17, 2018).

Second, while the employer in *Wyman Gordon* had committed multiple other unfair labor practices before or near the time of the petition; Leggett had not. A bargaining order is only appropriate in cases involving serious violations, including

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situations where the employer's conduct was "deliberate or calculated" or where it was "the genesis of [the] employees' desire to rid themselves of" the union. See *Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147 (D.C. Cir. 2017). This standard may have been met in *Wyman Gordon* where the employer rushed into withdrawal based on a faulty petition in an atmosphere created by its own unfair labor practices, but it was not in this case, where Leggett announced its intent 48 days before formally withdrawing recognition, and did so based on a decertification petition that was valid, supported by a majority of employees, and not tainted by employer interference. *Id.*

Third, and most importantly, unlike this case, *Wyman Gordon* did not involve an anticipatory withdrawal of recognition and a union's effort to collect and hide counter-evidence. Thus, there was no concern that a bargaining order would "punish" an "unintentional" violation by an employer "who acted in good faith on a facially valid decertification petition" or reward a union's gamesmanship. As a result, the *Wyman* Court did not cite *Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147 (D.C. Cir. 2017), nor was *Johnson Controls*, 368 NLRB No. 20 (July 3, 2019), applicable.

In sum, because of the significant factual differences between the employer's withdrawal of recognition in *Wyman Gordon* and Leggett's withdrawal of recognition in this case, the Court's decision in *Wyman Gordon* does not support the imposition of an affirmative bargaining order here.

Sincerely,

/s/ Arthur Tracy Carter

Arthur Tracy Carter
Shareholder