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April 21, 2015

VIA E-FILE

Gary Shinnors, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

VIA EMAIL

Karen Fernbach, Regional Director
NLRB, Region 2
26 Federal Plaza
Room 3614
New York, NY 10278

Re: Brooks Brothers, A Division of Retail Brand Alliance, Inc.
And Local 340 and Local 25, New York New Jersey Regional
Joint Board
Case No. 02-UC-062745

Dear Mr. Shinnors and Ms. Fernbach:

This firm represents the Union in the above referenced matter. Currently, a Request for Review is pending at the Board. The Region conducted a unit clarification hearing pursuant to a directive by the Office of Appeals.

The Region clarified the unit to exclude the employees at the Employer's store at 1180 Madison Avenue, New York, New York, despite the fact that there was an after-acquired stores clause in the collective bargaining agreement. The Region further stated in the decision that the Union could represent the employees pursuant to a Board election should it represent a majority of employees at some point in the future. As we argued in the Request for Review, because an after acquired clause operates as an employer's waiver of the right to demand a Board election when a union is able to demonstrate majority support, this decision has compelled a concession by the union. Thus, this decision was an unlawful action on the part of the Board to compel a concession by the Union. H. K. Porter Co. v. NLRB, 397 U.S. 99, 106 (U.S. 1970). It, therefore, is "an

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order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act.” Leedom v. Kyne, 358 U.S. 184, 188 (U.S. 1958).

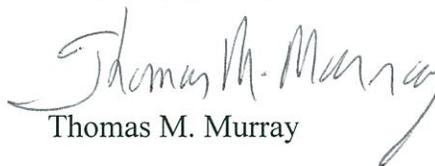
The union currently represents a majority of the employees in the Local 340 unit at the 1180 Madison Avenue store. A majority of employees have signed authorization cards authorizing the Union to represent them. The Union has demanded recognition from the Employer and offered to demonstrate majority support before an arbitrator. The Employer has declined and stated it will only recognize the unit pursuant to a Board election. Until the Board decides this case, the Union cannot enforce its contractual right to have an arbitrator determine its majority status because of the Board decision clarifying the store out of the unit. “If an NLRB determination on the definition of the proper bargaining unit conflicts with an arbitration award, the NLRB decision will prevail.” Eichleay Corp. v. Int'l Ass'n of Bridge, 944 F.2d 1047, 1056 (3d Cir. Pa. 1991).

This dispute has been pending for over four years. There has been a 100% turnover of the original employees in the unit since the store opened. Any further delay in this case risks the dissipation of the Union’s majority and will result in irreparable harm to the employees and the Union.

For the reasons stated above, the Union requests that the Board immediately grant review of the decision and dismiss the petition, or that the Regional Director reconsider her decision, if permissible under the Board’s rules, and dismiss the petition. Failure of the Board to take immediate action on this request will result in irreparable injury. Accordingly, absent action by the Board by no later than April 30, 2015, the Union will have no choice but to file suit in district court seeking the relief permitted by the Supreme Court’s decision in Leedom v. Kyne.

Please do not hesitate to contact me if you have any questions concerning this matter.

Very truly yours,



Thomas M. Murray

Cc: Theo Gould, Esq. (via email)
Fred Kaplan (via email)