

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

BROOKS BROTHERS

And

**Case 02-CA-063650
02-CA-156504**

**NEW YORK NEW JERSEY REGIONAL
BOARD AND ITS LOCAL AFFILIATE
LOCAL340 AND LOCAL 25**

ORDER

On October 4, 2016, the Respondent filed a Petition to Revoke subpoena B-1-TJK9SB that was issued on September 21, 2016. Thereafter, on October 13, 2016, the General Counsel filed an opposition to the Petition to Revoke.

The Consolidated Complaint that was issued on August 31, 2016 alleged as follows:

1. That the Respondent, since May 27, 2011 and until October, 2012, refused or has unreasonably delayed furnishing to the Union all payroll records, schedules and any other documents that show that an employee working in any other store covered by the collective-bargaining agreement worked at a newly opened store located at 1180 Madison Avenue, New York, New York.

2. That in March or April 2015, the Respondent, by Jill Washington, its General Manager, interrogated employees about their union membership and activities.

The Complaint further alleges that Melvin Walls and Jill Washington are supervisors and/or agents as defined in Section 2(11) and 2(13) of the Act. However, the complaint only alleges that Jill Washington engaged in conduct that is violative of the Act.

The subpoena, at paragraphs 1, 2, 3, and 4 seeks a large group of documents in relation to the supervisory structure and the supervisory duties and responsibilities of all supervisory employees of Brooks Brothers at its 346 Madison Avenue store and its 1180 Madison Avenue store. The General Counsel seeks such documents from March 2013.

If the Respondent is willing to concede the supervisory status of Jill Washington, none of this material will be necessary and the subpoena will be revoked as to these paragraphs. If however, the Respondent insists of denying that Washington is either a supervisor or agent, then it should produce documents only relating to her job functions, (including any job descriptions), from the time that she allegedly assumed the position of General Manager and any documents that she authored during the period from January 1, 2014 to April 2015 that would relate to her exercise of authority with respect to hiring, firing, transferring, assigning, disciplining or otherwise affecting the employment conditions of employees.

As to Melvin Walls, neither the Complaint nor the General Counsel's response to the Petition to Revoke, indicate what actions, if any, Mr. Walls engaged in or why he is named in the

Complaint. Accordingly, I shall defer ruling until I have some idea of why his name is being alleged.

In all other respects, the Petition to Revoke as to paragraphs 1, 2, 3 and 4 of the Subpoena are granted.

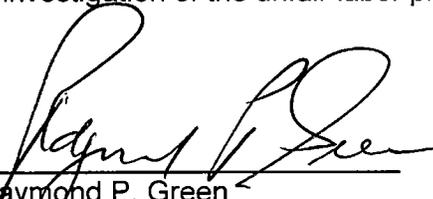
The subpoena at paragraph 6 requests communications between the Respondent and the Union relating to the Union's request for information dated May 27, 2011. It also requests any subsequent communications on this subject. Inasmuch as the complaint concedes that the Respondent furnished the information in October 2012, the only relevant communications would be those that occurred between the parties on this subject matter between May 27, 2011 and the date upon which the information was provided.

Paragraphs 8, 9 and 10 request multiple communications made during the period from January through July 2015 relating to union activity in general and more specifically to any notes made by Jill Washington relating to certain "touch base meetings" and "impromptu meeting" held from January through May 2015. It is asserted by the General Counsel that such communications would be relevant to the Complaint's allegation that Ms. Washington engaged in unlawful interrogation in March or April 2015.

Typically proof of unlawful interrogation is presented by offering live witnesses who will testify about conversations that they have had with a supervisor or agent. Moreover, as smart phones have become ubiquitous, it is not unusual for recordings of such conversations to be made and offered into evidence. None of the documents requested by the subpoena are necessary for the General Counsel to present a prima facie case. Moreover, communications between company supervisors and managers regarding the general topic of unionization are in my opinion insufficiently relevant to warrant their disclosure for the simple type of allegation that is involved in this case. Accordingly, I shall grant the Petition to Revoke as to paragraphs 8 and 9 of the subpoena.

As to paragraph 10 of the subpoena, the Respondent should produce any contemporaneous notes made by Ms. Washington at the time of the alleged meetings that are referenced in the Complaint. Nevertheless, this would not include any notes or communications given by Ms. Washington to counsel made during the investigation of the unfair labor practice charge or in preparation for the trial in this case.

October 17, 2016


Raymond P. Green
Administrative Law Judge