

**UNITED STATE OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LOCAL 340, NEW YORK NEW JERSEY REGIONAL
JOINT BOARD**

and

Case No. 02-CB-069460

**BROOKS BROTHERS, A DIVISION OF RETAIL
BRAND ALLIANCE, INC.**

**OPPOSITION OF RESPONDENT TO THE PETITION FOR SUMMARY JUDGMENT
AND REQUEST FOR RECONSIDERATION OF THE BOARD'S DENIAL OF
RESPONDENT'S REQUEST FOR REVIEW**

Respondent Local 340, New York New Jersey Regional Joint Board, (herein, the "Union" or "Joint Board"), by its undersigned counsel, files this Opposition to the General Counsel's Petition for Summary Judgment and Request for Reconsideration of the Board's Denial of the Joint Board's Request for Review of the Regional Director's in Case No. 02-UC-062745. This Opposition supplements and revises Respondent's Opposition filed with the Executive Secretary on September 27, 2016.

The basis of the Joint Board's Opposition is as follows:

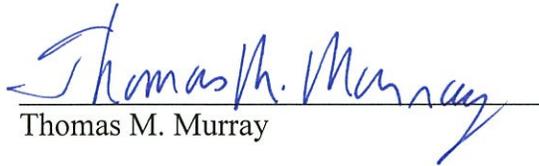
1. Special circumstances exist requiring the Board to reconsider its decision in the underlying unit clarification decision inasmuch as the Region failed to enter twenty-one exhibits into the record after the Regional Director issued an order denying the Joint Board's motion for further hearing days and ordering that the exhibits be entered in the record after the last hearing day.
2. Special circumstances exist requiring the Board to reconsider its decision in the underlying unit clarification because the Board failed to consider the decision of the Court of Appeals for the District of Columbia in Ozark Auto. Distribs. v. NLRB, 779 F.3d 576, 585 (D.C. Cir. 2015), which issued after the Joint Board submitted its Request for Review. The Regional Director improperly denied Respondent's request for enforcement of subpoenas in the unit clarification proceeding and denied the Joint Board the opportunity to recall witnesses to question them about documents produced after they

had testified, thus denying Respondent the opportunity to litigate all representation issues at the hearing. The court in Ozark Auto. Distribs. vacated a Board order in a representation case because the Board's quashing of an employer's subpoena's was prejudicial error.

3. Respondent has been seeking recognition based on majority status since a time prior to the Board's issuance of its decision denying Respondent's Request for Review. Since at all material times Respondent has had a lawful basis to demand recognition from the Charging Party, it is not in violation of the Act. Wright Line, 251 N.L.R.B. 1083 (1980).
4. The Board departed from established precedent in its unit clarification decision without a reasoned justification.

WHEREFORE, the Joint Board respectfully requests that the Board deny the General Counsel's Petition for Summary Judgment, grant the Joint Board's Request for Reconsideration and reverse the Regional Director's decision in the Unit Clarification.

Dated: November 3, 2016
New York, NY


Thomas M. Murray