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May 25, 2010

Via UPS NEXT DAY AIR

Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
1099 - 14th Street, N.W.
Washington, DC 20570

Re: *The McBurney Corporation and International Brotherhood of Boilermakers
Case No. 26-CA-17564, et al.*

Dear Mr. Heltzer:

Enclosed please find the original and eight (8) copies of *Motion For Briefing And/Or Consolidation Or In The Alternative Stay In The Above-Referenced Case* to be filed in the above-captioned matter.

Please return one file-stamped copy of the enclosed document to me in the franked envelope I have provided.

I thank you in advance for your time and attention to this matter.

Yours truly,


Michael J. Stapp

MJS:kkw
Enclosures

cc: Dion Y. Kohler
Ronald K. Hooks
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

THE McBURNEY CORPORATION

and

Case No. 26-CA-17564, et al.

INTERNATIONAL BROTHERHOOD
OF BOILERMAKERS, IRON SHIP
BUILDERS, BLACKSMITHS,
FORGERS & HELPERS, AFL-CIO

**MOTION FOR BRIEFING AND/OR CONSOLIDATION
OR IN THE ALTERNATIVE STAY IN THE
ABOVE-REFERENCED CASE**

COMES now the Charging Party, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, by and through its attorneys, pursuant to Board Rule and Regulations 102.47 and 102.50 and moves for the Board to transfer this case to the Board for briefing in order to effectuate the purposes of the Act or to avoid unnecessary delay. Charging Party also seeks to consolidate this case for purposes of briefing with the following cases: *Brown & Root, Inc.*, Case Nos. 15-CA-12752-S and 12875-S (351 NLRB No. 20); *Leiser Construction, LLC*, Case No. 17-CA-23177; *Independent Electrical Contractors of Houston, Inc., et al.*, Cases 16-CA-18821-2, et al.; and *Kenmore Electric Co., et al.*, Cases 16-CA-17895R, et al. In the alternative, Charging Party seeks to have the Board stay compliance proceedings before the Regions, pending determination of the current cases pending before the Board concerning the Board's decision in *Oil Capitol Sheet Metal, Inc.*, 349 NLRB, No. 118 (2007).

On May 18, 2010 the Second Circuit Court of Appeals ruled on Charging Party's Petition For Review seeking *inter alia* to overturn *Oil Capitol*. The Court dismissed the Union's Petition

For Review “without prejudice to the Union renewing its arguments concerning *Oil Capitol* after the compliance proceedings have been conducted.”

The IBEW and Iron Worker cases referenced above currently present the issue to the Board of whether *Oil Capitol Sheet Metal* should be overturned. Any compliance determination efforts undertaken by the Regions will result in unnecessary costs and delay in these proceedings in the event that *Oil Capitol Sheet Metal* is overturned. For example, in a similar case involving *Fluor Daniel III*, 333 NLRB No. 57 (2001), both Regions 26 and 28 engaged in hundreds, if not thousands, of hours of compliance investigation over a period of years in order to issue a Compliance Specification that was hundreds of pages long in a case which is nearly identical to the present case. The Compliance trial in *Fluor Daniel* lasted over 40 days, and the case was not nearing completion, when it settled.

The present case encompasses a backpay period that is approximately fifteen (15) years long. Forcing the Regions to undergo compliance under the *Oil Capitol* standard will result in the excessive expenditure of precious Regional resources both in terms of time and money. Accordingly, Charging Party requests the Board take this matter for briefing, or in the alternative, that the Board stay proceedings pending a decision on cases raising the *Oil Capitol Sheet Metal* issue.

Charging Party joins in the position set forth by the International Brotherhood of Electrical Workers set forth in *Independent Electrical Contractors of Houston, Inc., et al.*, Cases 16-CA-1882102, et al.; and *Kenmore Electric Co., et al.*, Cases 16-CA-17895R, et al.

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By *Michael J. Stapp*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Motion For Briefing And/Or Consolidation Or In The Alternative Stay In The Above-Referenced Case** was sent to the following via U.S. Mail, postage prepaid, this 25th day of May, 2010.

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