UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

McBURNEY CORPORATION

and

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

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

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

COMES NOW Respondent, McBurney Corporation ("McBurney"), by and through its attorneys, and files this its Opposition to Charging Party's motion to transfer this case to the Board for briefing Charging Party's Motion, filed on or about May 26, 2010. Alternatively, Charging Party moves the Board to stay compliance proceedings on the general bases that Oil Capitol Sheet Metal, Inc., 349 NLRB 1348 (2007), may be reversed and, consequently, "compliance . . . efforts undertaken by the Regions will result in unnecessary costs and delay . . . ." Charging Party's Motion, p. 2.

Respondent opposes the Motion. The current and proper standard under which compliance is to be conducted was established by Oil Capitol in 2007. That standard is applicable to all cases, such as the present one, where there has been a Board determination of liability and a Circuit Court summary order (issued on May 20, 2010 and attached hereto) applying the new evidentiary standard to the instant matter. While the Circuit Court commented that Charging Party may challenge the Oil Capitol standard

after compliance has run its course, the Court, in denying Charging Party's petition to invalidate or, alternatively, enjoin the Oil Capitol rule, has enforced the underlying Board order in this case thereby instructing the Board to proceed with compliance and to do so applying Oil Capitol. A subsequent reversal of Oil Capitol, if such occurred, would not affect compliance in this matter because Oil Capitol has become the law of this case by virtue of the Second Circuit's decision, until such time as compliance is completed and Charging Party, if aggrieved, may return to the Court.

Charging Party's concern about the passage of time, more than fifteen (15) years, is equally felt by Respondent, certainly by the Regions, and the individual claimants. Further delay in obtaining the proper information and issuing a compliance specification is contrary to the Circuit Court's instruction and definitely more destructive of the individuals' rights to whatever back pay may be rightfully theirs than pursuing compliance that has already begun.

Submitted this 9th day of June, 2010.

/s/ Jeffrey A. Schwartz
Dion Y. Kohler
Jeffrey A. Schwartz
JACKSON LEWIS LLP
1155 Peachtree Street, NE
Suite 1000
Atlanta, Georgia 30309-3600
Telephone: (404) 525-8200
Facsimile: (404) 525-1173
Attorneys for McBurney Corporation

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Opposition to Motion for Briefing and/or Consolidation or in the Alternative Stay** has been served by U.S. Mail, postage prepared on this 9th day of June, 2010, on the following:

Ronald Hoods, Regional Director
National Labor Relations Board
Region 26
The Brinkley Plaza Bldg., Suite 350
80 Monroe Avenue
Memphis, TN 38103-2481

Dorothy L. Moore-Duncan, Regional Director
National Labor Relations Board
Region 4
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106-4404

Michael J. Stapp, Esquire
Blake & Uhlig, P.A.
753 State Ave., Suite 475
Kansas City, Kansas 66101

Ronald Meisburg
General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

_/s/ Jeffrey A. Schwartz_____
Jeffrey A. Schwartz
Counsel for McBurney Corporation