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January 5, 2005

VIA HAND DELIVERY

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 - 14th Street, N.W.
Washington, D.C. 20570

Re: New York New York LLC, d/b/a New York New York Hotel and Casino
Case Nos.: 28-CA-14519 and 28-CA-15148

Dear Executive Secretary Heltzer:

The undersigned is counsel for Respondent New York New York LLC, d/b/a New York New York Hotel and Casino ("New York New York") and I am writing in response to the letter of December 27, 2004 from Michael T. Anderson, counsel for the Charging Party.

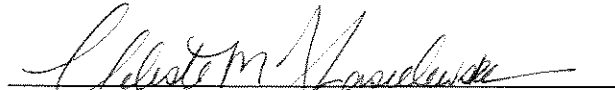
Contrary to counsel's assertion, the Board did not hold in *Ark Las Vegas Restaurant Corporation*, 343 NLRB No. 126 (December 16, 2004) that the off-duty employees of Ark Las Vegas Corp. ("Ark") have a statutory right to engage in Section 7 activities on New York New York's private property. Rather, a two-member panel of the Board found two work rules of Ark regarding employee access to its leased premises to be impermissibly overly broad. (Slip op. at 4). According to the Board majority in striking down the rules, "[w]e would at best consider the rules to be ambiguous, as reasonably open to our interpretation as to [Chairman Battista's] interpretation. Any ambiguity in the rules must be construed against [Ark] as the promulgator of the rules." *Id.* (footnotes omitted).

Ark clearly concerns only the question of the legality of two work rules. As Chairman Battista stated in dissent: "This case involves only an attack on the facial validity of a rule. There is no evidence of unlawful application; indeed, there is no evidence that any employee has been deterred from engaging in Section 7 activity." *Id.* at 5. *Ark* is plainly inapplicable to the above-referenced matter as *Ark* in no way addresses the access rights of off-duty Ark employees



vis-à-vis New York's private property rights. Consequently, New York New York requests the Board to deny the Charging Party's request.

Sincerely,



Celeste M. Wasielewski

CMW/dlr

cc: Michael T. Anderson, Esq.
Cornele Overstreet
Nathan W. Albright, Esq.