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7 UNITED STATES OF AMERICA
8 NATIONAL LABOR RELATIONS BOARD

10 NEW YORK NEW YORK HOTEL, LLC d/b/a) Case No. 28-CA-14519
11 NEW YORK NEW YORK HOTEL and)
CASINO)

12)
13 and)

) BRIEF OF AMICUS CURIAE

14)
15 LOCAL JOINT EXECUTIVE BOARD OF)
LAS VEGAS, Culinary Workers Union, Local)
226, and Bartenders Union, Local 165, affiliated)
16 with UNITE HERE)

17)
18 Teamsters Local 439 request that this court consider this Brief of Amicus Curiae.

19 In the 1930's the only thing that non-union employers had to fear was the unionized
20 delivery driver who brought goods to the dock or picked them up from the dock. Occasionally
21 there might be a unionized construction worker or maintenance worker who would show up.

22 The workplace has radically changed since the Act of 1935 and its amendments in 1947.
23 This Board recognized those changes in among other cases, *H.S. Care*, 343 NLRB 659(2004) but
24 the majority refused to accommodate the Act to those changes, which have occurred.

25 Teamsters Local 439 is an active organizing Local. It deals with employers who have
26 caring employment relationships, both with their own employees as well as other employees who
27 are constantly welcomed on to the employer's premises for various purposes. The employer may
28 well have a right to keep non-employees off its premises, *Lechmere, Inc. v. NLRB*, 502 U.S. 527

1 (1992), but once allows, invites, permits or otherwise suffers to have individuals in varying
2 statuses on its premises, it cannot start drawing lines about communication between those
3 individuals and its employees. There is simply no practical way to effectively limit the rights of
4 human beings to communicate, solicit and talk. Indeed, although an employer can theoretically
5 prohibit employees from any communication during work time, no employer can effectively
6 impose rules, which prohibit people from talking so long as it doesn't otherwise directly interfere
7 with work. *Cf. Republic Aviation Corp v. NLRB*, 324 U.S. 793 (1945).

8 Efforts by employers to separate human beings will become more and more impossible as
9 the electronic work place forces further changes. *Cf. Intel Corp. v. Hamidi*, 30 Cal. 4th 1342 (2003)
10 and *Virginia Concrete Court*, 338 NLRB 1182 (2003).

11 In summary, the Board must allow an employee within the meaning of the Act, to exercise
12 his or her full rights without regard to who their particular employer may be. *Eastex, Inc. v. NLRB*,
13 437 U.S. 556 (1978). There is no way that the Board can now draw a line to differentiate now that
14 the workplace has so radically changed.

15 Dated: October 2, 2007

16 WEINBERG, ROGER & ROSENFELD
17 A Professional Corporation

18 By: 

19 DAVID A. ROSENFELD
20 Attorneys for Amicus Curiae
21 Teamsters Local 439

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PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On October 2, 2007, I served upon the following parties in this action:

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copies of the document(s) described as:

BRIEF OF AMICUS CURIAE

|| BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

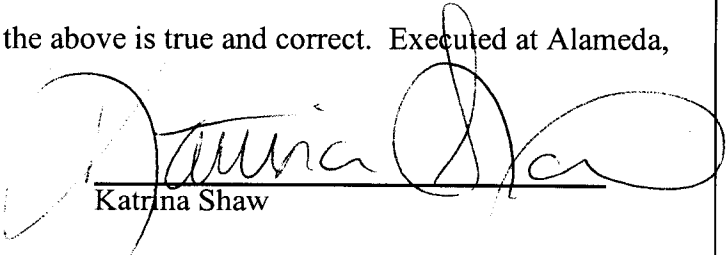
|| BY PERSONAL SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused the same to be delivered by hand to the offices of each addressee.

|| BY OVERNIGHT DELIVERY SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.

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[x] **BY FACSIMILE** I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list. Verbal permission was given by each party indicated above.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on October 2, 2007.



Katrina Shaw