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July 1, 2005

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

Re: New York-New York Hotel and Casino  
Case Nos. 28-CA-14519 and 28-CA-15148

Dear Mr. Heltzer:

I write to bring to the Board's attention the June 28, 2005 decision by the D.C. Circuit Court of Appeals in *ITT Industries, Inc. v. NLRB*, Nos. 04-1172, 04-1198, 2005 WL 1513091 (D.C. Cir. June 28, 2005).

The Court enforced the Board's order in *ITT Industries, Inc.*, 341 NLRB No. 118 (2004), but reiterated that in access cases involving "off-site" employees, the Board must first determine if the individuals seeking access have a nonderivative Section 7 right to enter the property. *ITT Indus.*, 2005 WL 1513091 at \*5-6. If so, the Board must then accommodate those rights and the owner's property rights: *Id.*

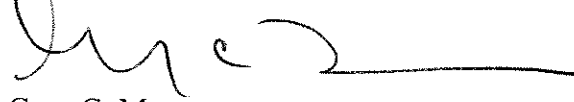
In approving the Board's determination that the off-site employees did have a Section 7 right of access, the Court cited the Board's reliance on two factors: 1) that there was an employment relationship between the individuals seeking access and the property owner; and 2) that those seeking access were attempting to communicate with similarly situated on site employees, which the Court viewed as a condition precedent to a finding of a nonderivative Section 7 right. *Id.* at \*6-7. Neither of these factors are present in the instant cases. (This issue is discussed at pp. 3-13 of Respondent's Statement of Position on Remand.)

Regarding the "accommodation" issue, the Court again cites with approval the Board's reliance upon the employment relationship between those seeking access and the employer. *Id.* at 15. (This issue is discussed at pp. 13-19 of Respondent's Statement of Position on Remand.)

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Respondent believes that in light of the D.C. Circuit's decision, the Board should reverse its earlier decisions in these cases.

Sincerely,

A handwritten signature in black ink, appearing to read "G. C. Moss", with a long horizontal line extending to the right.

Gary C. Moss

GCM/rjc

cc: Counsel of Record

1 CERTIFICATE OF SERVICE

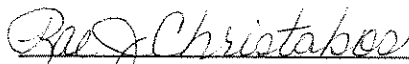
2 Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that the service of the foregoing was  
3 made this date by depositing a true copy of same in the United States mail, postage prepaid  
4 thereon, at Las Vegas, Nevada, addressed as follows:  
5

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19 Dated this 1<sup>st</sup> day of July, 2005.

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22 An Employee of DLA Piper Rudnick Gray Cary  
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