

**FOR IMMEDIATE RELEASE**  
**Tuesday, September 4, 2007**

**R-2632**  
**202/273-1991**  
**www.nlr.gov**

**NLRB TO HOLD ORAL ARGUMENT ON WHETHER  
EMPLOYEES OF A LESSEE RESTAURANT CAN DISTRIBUTE  
HANDBILLS ON PROPERTY OF LESSOR HOTEL**

The National Labor Relations Board will hear oral argument on Friday, November 9, 2007, in *New York New York Hotel, LLC, d/b/a New York New York Hotel and Casino*, Case 28-CA-14519. The issues presented in the case include whether Ark Las Vegas Restaurant Corporation's employees, who are employed by Ark on the premises of the New York New York Hotel and Casino, have a statutory right to distribute handbills at various places on hotel property during the employees' off-duty hours. The handbills were aimed at guests and customers and protested Ark's nonunion status and wages.

Today, the Board issued the formal notice of oral argument and invited the parties and interested amici to file briefs on the issues raised in the case. (The full text of the Board's notice is attached.) Briefs must be filed with the Board's Executive Secretary by close of business in Washington, D.C. on October 2, 2007. No extensions will be granted. Briefs are limited to 50 pages. Amici briefs should include a request to participate at oral argument, if desired. Parties only may file responsive briefs, which will be due on or before October 16, 2007. The Board encourages parties to file briefs electronically through the Agency's website ([www.nlr.gov](http://www.nlr.gov)). Briefs also may be filed in person, or by mail, or commercial courier. If the brief is not electronically filed, a CD-ROM containing the brief must be submitted with it.

Argument will be heard by Chairman Robert J. Battista and Members Wilma B. Liebman, Peter C. Schaumber, Peter N. Kirsanow, and Dennis P. Walsh. The hearing will begin at 9:30 a.m. in the Ceremonial Courtroom, Room 643, Philadelphia City Hall, Broad and Market Streets, Philadelphia, Pennsylvania.

[Briefs and other documents related to this case can be found at  
[http://www.nlr.gov/research/frequently\\_requested\\_documents.aspx](http://www.nlr.gov/research/frequently_requested_documents.aspx)]

###

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

New York New York Hotel, LLC, d/b/a  
New York New York Hotel and Casino

and

Case 28–CA–14519

Local Joint Executive Board of Las Vegas,  
Culinary Workers Union, Local 226, and  
Bartenders Union, Local 165, affiliated  
with UNITE HERE<sup>1</sup>

**NOTICE OF ORAL ARGUMENT AND INVITATION TO FILE BRIEFS**

**PLEASE TAKE NOTICE** that, pursuant to the authority vested in the National Labor Relations Board under the National Labor Relations Act, as amended, oral argument will be held before the National Labor Relations Board on Friday, November 9, 2007, in the Ceremonial Courtroom, Room 643, Philadelphia City Hall, Broad and Market Streets, Philadelphia, Pennsylvania.

The parties and interested amici are invited to file pre-argument briefs with the Board addressing the questions set forth below, which were specifically raised by the Court of Appeals, 313 F.3d 585, 590 (D.C. Cir. 2002). The parties and the amici also may raise and address any other relevant issues.

1. Without more, does the fact that the Ark employees work on NYNY's premises give them *Republic Aviation* rights (324 U.S. 793 [1945]) throughout all of the non-work areas of the hotel and casino?
2. Or are the Ark employees invitees of some sort but with rights inferior to those of NYNY's employees?
3. Or should they be considered the same as nonemployees when they distribute literature on NYNY's premises outside Ark's leasehold?
4. Does it matter that the Ark employees here had returned to NYNY after their shifts had ended and thus might be considered guests, as NYNY argues?

---

<sup>1</sup> We have amended the caption to reflect the disaffiliation of the Culinary Workers Union and Bartenders Union from the AFL-CIO and their affiliation with UNITE HERE.

5. Is it of any consequence that the Ark employees were communicating, not to other Ark employees, but to guests and customers of NYNY (and possibly customers of Ark)? Compare *United Food & Commercial Workers*, 74 F.3d at 298. (Derivative access rights, the Supreme Court has held, stem 'entirely from on-site employees' Section 7 organizational right to receive union-related information.' *ITT Industries*, 251 F.3d at 997.)

**Briefs must be filed with the Board's Executive Secretary by close of business in Washington, D.C. on October 2, 2007. No extensions will be granted. Briefs are limited to 50 pages and must include a certificate of service showing service on the parties, whose names and addresses are attached.<sup>2</sup> Briefs of amici should include a request to participate at oral argument, if desired, on the page preceding the certificate of service. Parties only may file responsive briefs, which will be due by close of business on October 16, 2007. All party briefs will be posted on the Board's website, [www.nlr.gov](http://www.nlr.gov), as they are received. Amicus briefs will be posted when the Board grants amicus requests.**

Time limitations may preclude granting all requests by amici to participate at oral argument. Prior to argument, the Board will notify all parties and amici of its decisions regarding their participation and the time allotted to each.

By direction of the Board:

Dated at Washington, D.C., September 4, 2007.

Lester A. Heltzer  
Executive Secretary

Attachment

---

<sup>2</sup> Briefs may be filed electronically through the Board's website, [www.nlr.gov](http://www.nlr.gov), in person, or by mail or commercial courier. If the brief is not electronically filed, a CD-ROM containing the brief must be submitted with it. The CD-ROM must be labeled with the case name, lead docket number, and the name of the organization or individual on whose behalf the brief is submitted. Instructions and requirements for electronic filing are set forth at the Board's website.

## **PARTIES TO BE SERVED**

### EMPLOYER

Gary C. Moss, Esq.  
DLA Piper USLLP  
3960 Howard Hughes Pkwy, Suite 400  
Las Vegas, Nevada 89169  
Facsimile 702-737-1612

### CHARGING PARTY

Michael T. Anderson, Esq.  
Davis, Cowell & Bowe, LLP  
8 Beacon Street, 4<sup>th</sup> Floor  
Boston, Massachusetts 02108  
Facsimile 617-227-5767

### GENERAL COUNSEL – NLRB

Michael J. Karlson, Regional Attorney  
Region 28, National Labor Relations Board  
2600 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-3099  
Facsimile 602-640-2178