UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAESARS ENTERTAINMENT d/b/a
RIO ALL-SUITES HOTEL AND CASINO

and **Case 28-CA-060841**

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT COUNCIL 15,
LOCAL 159, AFL-CIO

ACTING GENERAL COUNSEL'S REPLY BRIEF

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Pursuant to Section 102.46(h) of the Board's Rules and Regulations, Counsel for the Acting General Counsel (the General Counsel) files this Reply Brief to Respondent's Answering Brief to General Counsel's Exceptions to the Decision (ALJD) of Administrative Law Judge William L. Schmidt (ALJ) in the captioned case.

I. Introduction

In its Answering Brief, Respondent makes numerous sweeping arguments in support of its position that the exceptions filed by the General Counsel lack merit. In making its arguments, however, Respondent overlooks the basis of the General Counsel's exceptions, the reasoning behind the well-established Board principles upon which such exceptions rely, and the factual distinctions in the instant case.

II. Argument

A. Respondent's Appearance Standards for Visiting Property When Not in Uniform

In its Answering Brief, Respondent suggests that in litigating the merits of this allegation, the General Counsel is engaged in "the very form of hyper-vigilance and technicality the Board has consistently refused to exercise when evaluating the legality of

employer handbook provisions." (RAB 3)[1] In support of its position, Respondent contends that because the rule in question appears in a 7-page section of the Employee Handbook titled "Appearance Standards," it has been taken out of context, especially when one considers that the General Counsel objects to the use of "*one word*." (RAB 2)

However, a careful examination of the Appearance Standards contained in the Employee Handbook reveals that even when viewed in the context of the of the four pages of Appearance Standards which precede it, the rule could be construed by reasonable employees to inhibit their Section 7 rights. The fact that the rule is one of several in Respondent's appearance guidelines does not serve to shelter Respondent from arguments that the rule in question could not deemed to be unlawful. While Respondent is correct that the rule in question is just one of many provisions which make up its Appearance Standard, the rule in question is unique in that it applies to employees who visit the property *when not in uniform*, including those employees who visit the property prior to the commencement of their shift. Thus, the rule is subject to more scrutiny because it governs the types of clothing and apparel which can be worn by employees during their non-working hours.

In foot note 1 of its Answering Brief, Respondent curiously attempts to import the definition of "offensive" used in the context of tattoos and apply it to the meaning of the term when used in the context of articles of clothing off-duty employees are not permitted to wear when visiting Respondent's property. Such arguments are unsupported and are indicative of the confusion which might arise from the ambiguity of the rule, an ambiguity which must be construed against Respondent as the promulgator of the rule. See *Lafayette Park Hotel*, 326

[1] RAB ___ refers to Respondent's Answering Brief to General Counsel's Exceptions followed by the page number. General Counsel's exhibits are shown as GCX followed by the exhibit number and exhibit page, if applicable. Transcript references are (Tr.__:__) showing the transcript page and line, if applicable. ALJD__ refers to JD(SF)-11-12 issued by the ALJ on March 20, 2012, followed by the page number.

NLRB 824, 828 (1998), enf. 203 F. 3d 52 (D.C. Cir. 1999) (citing *Norris/O'Bannon*, 307 NLRB 136, 1245 (1992)).

B. Respondent's Rule Concerning Use of Its Facilities by Off-Duty Employees

Respondent contends that in its exception to the ALJ's conclusion as to the lawfulness of Respondent's rule concerning the use of its facilities by off-duty employees, the General Counsel overlooks references to the consumption of alcohol, "public lounges restaurants, casino, and other public areas" which would contextualize the applicability of the rules. (RAB 4) More specifically, Respondent compares the rules in the instant case to that reviewed by the Board in *Lafayette Park Hotel* and notes that "[t]here is no evidence to suggest that there is any gambling or consumption of alcohol in the employer's exterior non-work areas and parking lots." (RAB 4) Respondent's arguments miss the arguments made in the General Counsel Brief in Support of Exceptions and gloss over the distinctions in the rule in *Lafayette Park Hotel*.

Despite its attempts to limit the applicability of rules to the interior of its facility, the text of the rules does not reasonably support such a limitation. As noted in the General Counsel's exceptions, the rules in the instant case are distinguishable from the rule reviewed and found lawful in *Lafayette Park Hotel*. Rule 2.19, which as Respondent points out references alcohol, requires a manager's authorization to use Respondent's "public facilities while off duty." The applicability of the rule however, is not limited to only those situations where alcohol is served. This is made evident by the following text of the rule:

> In addition, *if alcohol* is consumed, it should be done responsibly while having a meal. Employees participating in company-sponsored events where alcohol is served (e.g. awards banquets) must act responsibly and professionally. (JTX 1, pg 2.19) (emphasis added)

Similarly, Rule 2.34 requires prior authorization to visiting "public lounges, restaurants, casino, and *other public facilities* while off duty." Unlike rule 2.19, this rule makes no reference to the consumption of alcohol and fails to define or indicate what "other public facilities" might entail. Such ambiguity could easily be construed to include *all* of Respondent's facilities, including its parking lots or exterior non-working areas in violation of the Board's holding in *Tri-County Medical Center*, 222 NLRB 1089 (1976). Moreover, the ambiguity of these rules must be construed against the Respondent. See *Lafayette Park Hotel*, 326 NLRB at 828 (citing *Norris/O'Bannon*, 307 NLRB at 1245).

C. Respondent's Rule Concerning Confidentiality

1. Rule 2.19

Respondent contends that the confidentiality rule it maintains in Rule 2.19 is analogous to the rule in *Lafayette Park Hotel*, which the Board found to be lawful.[2] Such an argument ignores the textual differences between both rules.

Contrary to Respondent's contentions, the language contained in Rule 2.19 is distinguishable from that found in the rule reviewed in *Lafayette Park Hotel*. Unlike the confidentiality rule in *Lafayette Park Hotel*, 326 NLRB at 826, which prohibited employees from "[d]ivulging *Hotel-private* information to employees or individuals or entities that are not authorized to receive that information" (emphasis added), the rule in the instant case contains much broader language. Rule 2.19 prohibits employees from revealing "*confidential* company information to unauthorized persons," language which could be reasonably construed to extend well beyond matters of privacy referenced in the rule in

[2] In footnote 3 of Respondent's Answering Brief, Respondent notes that the General Counsel committed a typographical error on page 13 of his Brief in Support of Exceptions when he "stated that the employer's confidentiality rule in Lafayette Park Hotel was found to be 'unacceptable.'" Page 13 of the General Counsel's Brief in Support of Exceptions, however, does not make such an assertion or contain the typographical error suggested by Respondent.

Lafayette Park Hotel. In concluding that the rule in question in *Lafayette Park Hotel* was lawful, the Board reasoned that "[a]lthough the term 'hotel-private' is not defined in the rule, employees in our view reasonably would understand that the rule is designed to protect that interest rather than to prohibit the discussion of their wages." Id. Here the use of the term "confidential" is broader and reasonably encompasses more than the items covered by the term "hotel private."

2. Rule 2.21

In arguing against the General Counsel's exception to the ALJ's conclusion that Rule 2.21 was lawful, Respondent overlooked the arguments contained in the General Counsel's Brief in Support of Exceptions. More specifically, Respondent appears to have completely ignored the factual distinctions discussed in the General Counsel's Brief in Support of Exceptions between the text of Rule 2.21 and those reviewed by the Board in *Lafayette Park Hotel* and *Mediaone of Greater Florida*, 340 NLRB 277 (2003).

D. Respondent's Rule Banning Photography

In answering the General Counsel's exception to the ALJ's conclusion that Respondent's rule prohibiting employees from using cameras and any type of audio-visual recording equipment or devices is unlawful, Respondent acknowledged its use of surveillance cameras. Respondent, however, attempts to justify its own use of surveillance cameras by arguing that it is required by Nevada gaming requirements to ensure the fairness of its games and to protect Respondent's property. Respondent asserts that its "recording of casino operations is extremely limited, which would not be the case with employee photography and the internet." (RAB 11) Moreover, pointing to a subsequent section of its Employee handbook captioned "Guest Privacy," Respondent argues that its blanket prohibition of photography is based on the protection of guest privacy. (RAB 11-12)

Respondent's arguments are unsupported and fall short of rendering the rules in question to be lawful. While Respondent undoubtedly has a legitimate interest in protecting the privacy rights of guests, such interests do not serve to immediately trump the Section 7 rights of employees. The inclusion of the section within the Handbook which addresses Guest Privacy fails to give the rules in question sufficient context such that a reasonable employee would conclude the rules to be intended for the protection guest privacy. Instead, the rules are broadly worded to apply in all situations and scenarios, even in those which do not involve violating the privacy of guests.

III. Conclusion

Respondent's Answering Brief to General Counsel's Exceptions, as discussed above, lacks merit and is not supported by the record or by legal precedent. It is respectfully requested that the Board should grant General Counsel's exceptions and otherwise affirm the decision of the ALJ.

Dated Las Vegas, Nevada, this 10th day of May 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S REPLY BRIEF in CAESARS ENTERTAINMENT d/b/a RIO ALL-SUITES HOTEL AND CASINO,
Case 28-CA-060841was served by E-Gov, E-Filing, E-Mail, and regular mail on this 10th day of May 2012, on the following:

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