UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

CASINO ONE CORPORATION d/b/a
LUMIERE PLACE CASINO and HOTELS

and **Case 14-CA-078274**

UNITE HERE LOCAL 74.

RESPONDENT'S REQUEST FOR RECONSIDERATION OF ITS PETITION TO REVOKE AND/OR QUASH SUBPOENA DUCES TECUM

COMES NOW Casino One Corporation d/b/a Lumiere Place Casino and Hotels ("Respondent"), by and through its undersigned attorneys, and files its Request for Reconsideration of Its Petition to Revoke and/or Quash Subpoena Duces Tecum B-613019. In support thereof, Respondent states as follows:

1. On August 9, 2012, the National Labor Relations Board issued an Order denying Respondent's Petition to Revoke Subpoena Duces Tecum B-613019.

2. This Order stated, in part:

> "In addition, the Employer's assertion that the subpoena should be revoked because compliance with it would require the Employer to produce surveillance tapes in violation of state gaming regulations (Chapter M, Section 403 of the Missouri Gaming Commissions Minimum Internal Control Standards) is without merit, as the Employer has not yet sought approval of the Missouri Gaming Commission for the release of the documents pursuant to the subpoena."

3. The foregoing statement by the Board, on which the order denying Respondent's Petition to Revoke was based, is wholly inaccurate. The Respondent discussed with both the Missouri Gaming Commission and the Union, the legality of providing the requested surveillance footage despite the prohibition set forth in Chapter M, Section 403 of the Missouri Gaming Commissions Minimum Internal Control Standards. On December 29, 2011, the Missouri Gaming Commission denied Respondent's request to allow the Union to review

surveillance footage. (See Attachment No. 1). Further, on January 26, 2012, the Employer and the Union discussed obtaining permission from the Missouri Gaming Commission to allow the Union to view the surveillance videos. As communicated to the Union via the attached correspondence, this request was denied (See Attachment No. 2). Additionally, Respondent, through the undersigned Counsel, contacted the Missouri Gaming Commission on May 25, 2012 and June 15, 2012, requesting guidance on this issue. To date, the Missouri Gaming Commission has not granted Respondent a specific waiver to Region 14's investigative subpoena and the statement that Respondent "has not yet sought approval of the Missouri Gaming Commission for the release of the documents pursuant to the subpoena" is inaccurate. Moreover, the Board has offered no indication that it has sought input from the Missouri Gaming Commission with respect to this subpoena, forcing Respondent to choose between the competing interests and demands of both a state and a federal regulatory agency. As discussed in Respondent's Petition to Revoke and/or Quash the Subpoena, the Missouri Gaming Commission imposes a clear state prohibition on the production of the surveillance tapes and, therefore, the Board may not compel production of those tapes. *See NLRB v. Midland Daily News,* 151 F.3d 472, 475 (6th Cir. 1998); *Annalee Griffin,* 346 NLRB 293, 294 n.5 (2006). Such a rigid determination by the Board which places the Employer in a potentially legally precarious position is certainly not in furtherance of the Act. Respondent requests the Board secure approval from the Missouri Gaming Commission before simply imposing sanctions for blind enforcement of an investigative subpoena.

4. The Employer requests that the Board stay the enforcement of the subpoena and reconsider its Petition to Revoke Subpoena Duces Tecum B-613019 in light of the foregoing factual inaccuracies contained in the Board's August 9, 2012 Order.

WHEREFORE, based on the foregoing, Respondent respectfully requests that its Petition to Revoke and/or Quash Subpoena Duces Tecum B-613019 be reconsidered and that all further proceedings are stayed while the issue is pending. Respondent renews its request that Subpoena Duces Tecum No. B-613019 be revoked, consistent with the National Labor Relations Board's Rules and Regulations and the National Labor Relations Board Casehandling Manual in Unfair Labor Practice Proceedings. In addition, Respondent requests, pursuant to Section 102.66(b) of the National Labor Relations Board's Rules and Regulations, that this Request for Reconsideration of its Petition to Revoke and/or Quash Subpoena Duces Tecum become part of the official record upon its receipt by the National Labor Relations Board, and that any decision from this Request for Reconsideration of its Petition to Revoke and/or Quash Subpoena Duces Tecum be reserved until hearing in order for Respondent to be permitted a full and fair opportunity to be heard and to present argument in support of this Petition.

Respectfully submitted,

McMAHON BERGER P.C.

/s/ James N. Foster, Jr.

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Casino One Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2012, a true and correct copy of the above document was filed via electronically on the Board's website and served via electronic mail with the following individual:

Office of Executive Secretary
National Labor Relations Board
1099 14th St. NW
Washington, DC 20570
Lester.Heltzer@nlrb.gov

/s/ James N. Foster, Jr.

I further certify that on the 21st day of August, 2012, a true and correct copy of the above document was served on the following individuals via U.S. first class mail, postage prepaid and via electronic mail:

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/s/ James N. Foster, Jr.

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December 29, 2011

Mr. Dustin Ziebold, Compliance Officer
Lumière Place Casino
999 North Second Street
St. Louis, MO 63102

Re: Access to Surveillance Recordings/Reports by Union Officials

Dear Mr. Ziebold:

Minimum Internal Control Standard, Chapter M, Section 4.04, enacted pursuant to 11 CSR 45-9.030, provides that only occupational licensees above first line supervisors may review surveillance recordings. This has been a long-standing rule to which no waiver has been granted authorizing access by unlicensed or non-law enforcement personnel other than upon receipt of a subpoena issued by a court or administrative body of competent jurisdiction.

Surveillance Incident Reports and Logs, while required by regulation, do not have similar restrictions placed upon their dissemination. Release of these documents would be a matter of casino policy or discretion.

If you have further questions concerning this matter, please do not hesitate to call.

Sincerely,

William K. Seibert, Jr.
Deputy Director - Enforcement

cc: Sergeant Harrell

Dave Morton
Local 74

January 26, 2012

RE: DISCIPLINE/DISCHARGE RESOLUTION FOR MANNY DABBS

Dave,

With regards to the Discipline/Discharge Resolution matter of Manny Dabbs, it is our understanding that, with the exception of the surveillance video tape relied upon by the Company in this matter; the Union has received all requested documents concerning his Discipline/Discharge matter. If that is not correct, please notify Andrea Whitfield as soon as possible so that we may comply with any outstanding or additional information requests.

At our January 18, 2012 Discipline/Discharge Resolution hearing regarding Manny Dabbs, we presented that he was terminated for stealing tips. We discussed that Manny denied stealing tips and that because he and another employee both go by the name "Manny" that there may have been some confusion about the tips. We discussed statements provide by the food servers who left the tips in which they indicated they wrote "Emmanuel" on the tips they left for Emmanuel, not Manny, so we do not believe there was any confusion because of their names. We indicated that the Company had reviewed a surveillance video tape that indicated Manny had taken 5 straps of tips from the Tip Box, when all 5 straps did not belong to him. We discussed that the Union wishes to see the actual surveillance video which the Company relied on. We further discussed that the Company recently requested permission from the Missouri Gaming Commission to allow the Union access to view surveillance video for purposes such as this, but the Company's request was denied.

It is our understanding the Union has contacted the Missouri Gaming Commission and is seeking to have this policy changed.

Given the importance of the evidence contained on the surveillance video tape, to both parties ability to fully evaluate the situation, we agreed that this Discipline/Discharge Resolution matter is on hold pending the outcome of your resolution with the Missouri Gaming Commission. At that time, should the Union wish to pursue this matter further, you will notify us and we will reconvene and resume the hearing.

In the meantime, while we await a resolution of the MGC matter, if you feel that we have not fully considered any facts or evidence or if you have additional facts or evidence that you would like us to consider, please let us know.

Sincerely,

Vern Jennings