

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

PORTLAND MUSEUM OF ART

Employer

and

TECHNICAL, OFFICE & PROFESSIONAL  
UNION, LOCAL 2110, UAW

Petitioner

Case No. 01-RC-266534

**PETITIONER’S OPPOSITION TO REQUEST FOR REVIEW**

**I. INTRODUCTION**

Technical, Office and Professional Union, Local 2110, UAW (“the Union” or “the Petitioner”) filed this petition on September 23, 2020, seeking a wall-to-wall unit of employees of the Portland Museum of Art (“the Employer” or “the PMA”). In its Statement of Position, the Employer raised no issues with respect to the proposed wall-to-wall unit description (Bd. Ex. 3).<sup>1</sup> However, as the Employer states in its Request for Review, the Board Agent pointed out that guards must be excluded if the Board is to certify the unit (Req. for Rev. at 6). See § 9(b)(3) of the Act. The Employer then took the position that employees in two classifications, Gallery Ambassadors and Security

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<sup>1</sup> References to the record shall be designated herein as follows:  
Request for Review.....Req for Rev. (followed by page number)  
Decision and Direction of Election.....DDE (followed by page number)  
Transcript of the Hearing.....Tr. (followed by page number)  
Board Exhibits .....Bd. Ex. (followed by exhibit number)  
Employer Exhibits .....Er. Ex. (followed by exhibit number).

Associates, are guards who should be excluded from the Unit. The Petitioner disputed that position.

Following a hearing and the submission of briefs, the Regional Director issued his Decision and Direction of Election, finding that the Security Associates are guards and should be excluded from the Unit but that the Gallery Ambassadors are not guards and should be included. The Employer filed a Request for Review of the Regional Director's finding that the Gallery Ambassadors are not guards within the meaning of §9(b)(3). The Employer argues that the Regional Director applied the wrong legal standard and that his findings of fact are clearly erroneous. Neither argument warrants serious consideration.

The Regional Director applied the same legal standard in finding the Security Associates to be guards and the Gallery Ambassadors not to be guards. He lays out in detail the controlling precedent, citing many of the cases relied upon by the Employer in its argument (DDE at 5-6). The Employer does not dispute the Regional Director's application of this standard to the Security Associates, when it resulted in a finding favorable to its position. Rather, the Employer takes a single word from the Decision and Direction of Election out of context to construct its argument that the Regional Director applied the wrong legal standard to the Gallery Ambassadors.

In the course of describing the overall nature of the Gallery Ambassadors' job, the Regional Director uses the phrase, "the bulk of their duties consist of ...." The Employer takes the word "bulk" from this sentence to distort the Regional Director's legal analysis. The Employer proceeds to analyze Board decisions to demonstrate that guard status does not turn on whether "the bulk" of an employee's time is spent on

guard duties. But that is not the test applied by the Regional Director. The Regional Director explicitly recognized the legal principle so painfully set out by the Employer, that guard status turns on the nature of an employee's job. Thus, the Regional Director holds that "the controlling factor in determining 'guard' status is the nature of the duties of the alleged guard and not the percentage of time which the alleged guard spends performing these duties." (DDE at 6). He applied this standard to make the finding that Gallery Ambassadors are not guards because the nature of their job is to provide customer service. He used the word "bulk" to describe the nature of the duties performed by the Gallery Ambassadors, not to hold that guard status depends upon spending the "bulk" of time on guard duties.<sup>2</sup> Thus, the Employer's argument is based upon a distortion of the Regional Director's holding.

The Employer's other arguments challenge the Regional Director's factual findings.<sup>3</sup> To support its position, the Employer cites testimony from its witnesses while almost completely ignoring the job descriptions and other business records prepared by the Employer. Those documents describe in detail the duties and requirements of the Gallery Ambassador position and establish that it is a customer service position, not a guard position. It was not "clearly erroneous" for the Regional Director to rely upon the Employer's written documents rather than testimony of its managers that is inconsistent with those records.

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<sup>2</sup> Regional Director uses the word "bulk" one time in his decision. The Employer uses the word 15 times in its Request for Review.

<sup>3</sup> The Employer frames another of its arguments as a legal argument, contending that the Regional Director departed from Board precedent regarding the meaning of the word "incidental." This argument is based upon a disagreement with the Regional Director's findings regarding the nature of the Gallery Ambassadors' duties and not the legal standard that he applied.

## II. FACTS

The Employer is a non-profit corporation operating an art museum in Portland, Maine (DDE 2; Bd. Ex. 2). The museum is open to the public Wednesdays through Sunday, opening daily at noon and closing at 6:00 p.m. Wednesdays, Saturdays and Sundays and at 8:00 p.m. Thursdays and Fridays (DDE 2; TR. 109). The main entrance to the facility is on Congress Street in Portland, and museum customers utilize that entrance. There is a rear entrance for employees which is adjacent to the loading dock for the delivery of artwork and supplies (DDE 2; Bd. Ex. 2; Tr. 27).

The PMA reopened following a COVID-19 shutdown in June 2020 (DDE 2; Tr. 102). Shortly thereafter, in August, the Employer announced a reorganization of its "Department of Museum Experience and Safety," creating the Security Associate and the Gallery Ambassador job classifications that are in dispute (DDE 2; Tr. 19, 28; Er. Ex. 4). The previous position of Security Officer was eliminated and replaced by the Security Associate Classification (DDE 2; Tr. 19). The position of Gallery Ambassador was created to combine functions of the previous Gallery Officer position and Visitor and Member Experience Ambassador position (DDE 2; Tr. 46). Some former Gallery Officers were transferred to the Security Associate position (DDE 2; Tr. 19).

The reorganized department, described as a "hybrid model," purports to bring together "the strength of visitor experience and safety into the galleries." (Er. Ex. 4, 3<sup>rd</sup> page, 1<sup>st</sup> bullet point). A PowerPoint Presentation prepared by the Employer describing the program makes it clear that the emphasis, especially for the Gallery Ambassadors, is on welcoming visitors to the museum. "Highly trained, curious, and friendly ambassadors will help steward a visitor's experience through the galleries, at the front

desk, and in the store while also ensuring the safety of the art and visitors.” (Ibid, 2<sup>nd</sup> bullet point). “Provide a new visitor and ambassador learning dynamic that ensures a rich and supportive experience while providing training and tools needed to welcome the diverse array of visitors we hope to welcome into our spaces.” (Ibid, 4<sup>th</sup> bullet point). The next page of the presentation explains that the changes are intended “to enrich visitor experience” and provide a structure “that is authentic and welcoming for all.” (Er. Ex. 4, 4<sup>th</sup> page). The description of the changes concludes with two bullet points that are explicit that the restructuring is designed to minimize any policing functions of these employees:

- Rather than feeling policed, visitors will be engaged. Enable visitors’ perceptions of museum safety personnel as approachable sources of information, uniquely positioned to offer insights about art.
- Rather than leading with Risk, we lead with Trust.

(Er. Ex. 4, 5<sup>th</sup> page).

In its Request for Review, the Employer argues that the Gallery Ambassador Program is based upon a “community policing” model (Req. for Rev. at 5). This explanation does not appear anywhere in this PowerPoint presentation describing the reorganization. Indeed, it does not appear in any of the Employer’s documents.

The Regional Director relied upon the Gallery Ambassador job description, the PowerPoint description of the Gallery Ambassador program, and evidence in the record to conclude that this job is focused on providing a welcoming experience for museum visitors (DDE 3) and that these employees “generally do not engage in guard-like functions.” (DDE 6). The job description for the Gallery

Ambassadors strongly supports this finding. The General Summary of the position makes only a passing reference to security functions. As quoted in the decision, it reads:

The Gallery Ambassador is responsible for an exceptional visitor experience by providing exemplary customer service, education, and exhibition interpretation while safeguarding the Portland Museum of Art (PMA).

(DDE 3; Er. Ex. 3, 1<sup>st</sup> page).<sup>4</sup> This summary is followed by a list of 17 essential job functions, nearly all of which involve customer-service types of functions. The first three are:

- Works as a key member of a visitor-centered and education-oriented staff to ensure museum visitors have a positive onsite experience by providing answers to frequently asked questions, promoting resources, and assisting with museum events and programs.
- Demonstrates an inclusive, positive, and professional attitude to promote the PMA through responsive and accommodating in-person visitor service.
- Supports the PMA's strategic goal to advance a culture of inclusivity and diversity.

(Er. Ex. 3, 1<sup>st</sup> page). The Qualifications for the job similarly accentuate customer service abilities. Again, the first three bullet points illustrate this emphasis:

- Friendly, courteous, empathetic, and engaging presence with all museum visitors and staff, including those of all abilities, age and backgrounds.
- Ability to communicate and work effectively with staff, volunteers, and visitors; to exercise tact and diplomacy at all times and to represent the museum in a positive and professional manner.
- Demonstrated awareness and sensitivity to the needs and concerns of individual from diverse cultures, background and orientations.

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<sup>4</sup> The job descriptions for Gallery Ambassadors (Er. Ex. 3), Security Associates (Er. Ex. 2) and the former Gallery Officer position (Er. Ex. 5) are included in an appendix to this memorandum.

(Ibid at 2).

Overall, the job description includes a total of 35 bullet points listing job functions, qualifications and working conditions. In its Request for Review, the Employer quotes five of these which contain some reference to safety or protective functions (Req. for Rev. at 4-5). It was certainly not erroneous for the Regional Director to look at the entire job description to conclude that these arguably security-related responsibilities are “incidental” to the Gallery Ambassador’s customer-relations role.

A comparison of the Gallery Ambassador job description with that of the former Gallery Officer position, which was eliminated as part of the reorganization, confirms that the change in jobs was designed to create a customer service job rather than a security position. The “General Summary” of the Gallery Officer position provided that they were:

responsible for ensuring the security and safety of the Portland Museum of Art’s (PMA’s) personnel and visitors, the museum’s collection, and the physical plant. Performs a variety of security and security-related duties, provides information and assistance to museum visitors, and directs visitors and staff during emergency situations.

(Er. Ex. 5, 1<sup>st</sup> page).<sup>5</sup> This described a security job, a sharp contrast to the new Gallery Ambassador, a “visitor experience” position. (Er. Ex.3, 1<sup>st</sup> page).

The essential functions of the old Gallery Officer included, “Performs a variety of security and security-related duties....” He or she “Protects museum property, visitors and staff and maintains order by patrolling all assigned areas within the museum and on

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<sup>5</sup> Employer Exhibit 5 is captioned “Gallery Officer – On Call.” The Deputy Director and Chief Financial Officer explained that the specific job description offered as an exhibit was used in a posting for an on-call Gallery Officer, but that the first page and one-half of the job description, up to the section labeled “Term,” would be the same regardless of whether the position were full-time, part-time or on-call (Tr. 35-36). Thus, the sections captioned General Summary, Essential Job Functions, Supervisory Responsibilities, Education & Experience, Qualifications, and Working Conditions & Physical Demands applied to all Gallery Officers.

museum grounds to observe, caution, instruct, document, investigate, report and correct activities." A Gallery Officer, "Maintains consistent and alert attention while observing and monitoring all assigned areas and implements the museum's security and safety policies to ensure compliance while maintaining a courteous and professional attitude." An employee working in that position "Promptly responds to security emergencies, medical emergencies, and other urgent situations, communicating with security and emergency personnel as needed." All of these security related Essential Job Functions were removed when the job description for the new Gallery Ambassador position was created. (Er. Ex. 3).

The Employer quotes at length from testimony by Elena Henry, Deputy Director and Chief Financial Officer of the PMA regarding the duties of the Gallery Ambassadors. Henry testified that the Gallery Ambassador position was intended to carry forward the security duties formerly performed by the Gallery Officers, but in a friendlier manner. (Req. for Rev. at 5). As noted by the Employer, Henry "drafted the Gallery Ambassador position description" (Req. for Rev. at 5). Her testimony about the intent of the job description is not reflected in the words she wrote in the position description. The job description did not carry forward the security functions of the Gallery Officers; it removed them.

This shift in function from security to customer service is similarly reflected in the differing educational and experience requirements and other qualifications for the jobs. Both the old and new positions called for a high school diploma or the equivalent. The Gallery Officer job description also stated, "one year of security experience preferred, including customer service experience." (Er. Ex. 6, 2<sup>nd</sup> page). The preference for

security experience has been dropped from the requirements for the Gallery Ambassador. Now, the PMA prefers “one to three years of customer service and/or retail experience. Experience in one or more of the following areas is a strong advantage: education/teaching, hospitality, retail or visitor/guest services.” (Er. Ex. 3, 2<sup>nd</sup> page). The Qualifications for a Gallery Officer included the “Ability to stay calm and focused and to respond effectively during emergencies” and the “Physical ability for patrolling building and grounds and operating in emergency situations.” (Er. Ex. 6, 2<sup>nd</sup> page). The Qualifications for a Gallery Ambassador are much broader and largely fall within the areas of courtesy, understanding and cooperation that one would expect in someone whose job centers on providing a positive experience for visitors. The Working Conditions of the Gallery Officer included using security equipment and devices (Er. Ex. 6, 2<sup>nd</sup> page). The job description for the Gallery Ambassador contains no mention of using security equipment. Instead, the new job description mentions helping visitors with strollers and wheelchairs (Er. Ex. 3, 3<sup>rd</sup> page).

The wide range of assignments given to Gallery Ambassadors confirms this customer service orientation. Gallery Ambassadors may be assigned to work in the galleries, the front desk, the call center, the museum store, and in other locations (DDE 3; Tr. 38). Gallery Ambassadors also serve as “greeters” at the entrance to the museum, where their function is to make patrons feel comfortable and welcome and to inform them that masks are required (DDE 3; Tr. 64). At the front desk, Gallery Ambassadors sell tickets and verify that patrons have paid for entry to the museum (DDE 3; Tr. 66). When assigned to the call center, Gallery Ambassadors answer telephone calls from museum patrons (DDE 3; Tr. 71). When assigned to the store,

Gallery Ambassadors perform typical retail duties such as selling art reproductions and other items (DDE 3; Tr. 65-66). Henry testified that the “security functions” performed by Gallery Ambassadors working in the gallery store involved keeping an eye on the merchandise to watch for shoplifters (Tr. 66). This is a function that any clerk in any retail store would be expected to perform. Similarly, in 2020, like the Gallery Ambassadors assigned as greeters, retail employees are regularly expected to advise customers to wear masks. If this constitutes a “security function”, then any sales employee in a retail establishment, from a jewelry store to the Dollar Store, would be a guard.

The Employer claims that Gallery Ambassadors receive training in safety and security (Req. for Rev. at 3). The Employer also claims that the Gallery Ambassadors received “intensive training” based upon its Security Manual (Req. for Rev. at 12; Er. Ex. 7). This Manual was created before the reorganization, as it repeatedly refers to Security Officers (E.g., Er. Ex. 7, pp. 6, 7, 10, 28) and includes some pages related to Gallery Officers (pp. 33-34) but contains no references to Security Associates or Gallery Ambassadors (Tr. 68). It has not been updated to reflect the new job classifications created in the reorganization. Contrary to the Employer’s argument, Henry testified that she did not know whether the Gallery Ambassadors were expected to be familiar with this Manual (Tr. 42). Elizabeth Jones, Deputy Director and Director of External Affairs, attempted to lay a foundation for the manual by claiming that it was used as “the basis” for a training session (Tr. 91). However, she acknowledged that it was not distributed to any employees and that it has not been updated to reflect the changes in jobs (Tr. 106).

The job description for Gallery Ambassadors, on the other hand, is very explicit as to the type of training required for Gallery Ambassadors. The “Essential Job Functions” of the position describes the type of training mandated by the Employer. The list includes “regular trainings and workshops on topics including accessibility, anti-racism, customer service, exhibition content, visitor engagement strategies, and interpretation and inquiry based-conversation.” (Er. Ex. 3, 4<sup>th</sup> bullet point). Henry explained that this latter category of training referred to the interpretation of art (Tr. 70). Security training is not listed as an Essential Function of the Gallery Ambassador job. Rather, the training requirements involve learning how to help and inform patrons. Thus, the job description contradicts the Employer’s claim that the Gallery Ambassador position requires training in security.

A comparison between the Security Associate job description and the Museum Ambassador job description provides further support for the Regional Director’s finding that the Gallery Ambassador job is not a security position. The General Summary for the Security Associate begins by stating that “the Security Associate ensures the security and safety of” of personnel, visitors and property. The Security Associate “performs a variety of security and security-related duties....” (Er. Ex. 2, 1<sup>st</sup> page). In contrast to the “Essential Functions” of the Gallery Ambassadors, the Essential Functions of the Security Associates emphasize security and protection. The first three essential functions of this job involve “a variety of security and security-related duties,” “Protects museum property, visitors and staff,” and “implements the museum’s security and safety policies....” (Ibid, 1<sup>st</sup> page). This stands in sharp contrast to the customer service functions of the Gallery Ambassadors quoted above at page 6. Under

Education & Experience, the Employer states, “security experience preferred.” (Ibid, 2<sup>nd</sup> page). The Working Conditions include “patrolling” and “operating in emergency positions.” (Ibid). This is sharply different from the Gallery Ambassadors. It was thus reasonable for the Regional Director to conclude that the Security Associates perform a security function while the Gallery Ambassadors perform a customer relations function.<sup>6</sup>

The Employer asserts that the Gallery Ambassadors and Security Associates work under common supervision (Req. for Rev. at 5-6). This, again, is belied by the Employer’s records. According to the organizational chart, the Security Associates report to Shawn Emerick, the Security Manager (Er. Ex. 1, 6<sup>th</sup> page), while the Gallery Ambassadors report to one of two Museum Experience and Safety Managers (Ibid, 5<sup>th</sup> and 8<sup>th</sup> pages). While the presentation describing the reorganization includes a chart that indicates some sort of cross supervision of the two job classifications (Er. Ex. 4<sup>th</sup> and 6<sup>th</sup> page), this is not reflected in the job descriptions. The job description for the Security Associates states that they work, “Under the general supervision of the Security Manager....” (Er. Ex. 2). The job description for the Gallery Ambassadors states that they work, “Under the general supervision of the Museum Experience and Safety Manager....” (Er. Ex. 3). This is consistent with the organizational chart (Er. Ex. 1). Thus, the evidence establishes that these two classifications work under separate supervision.

Security Associates wear blue shirts, a tie, black slacks and black shoes (DDE 3; Tr. 22). Gallery Ambassadors wear aprons to signal to patrons their role as sources of

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<sup>6</sup> The Union took the position at the hearing that the Employer had failed to meet its burden to establish that the job of the Security Associates included enforcing rules, one of the statutory criteria. The Regional Director rejected that argument, and the Petitioner is not seeking review of that decision.

information and assistance and to carry maps, brochures and other information to share with visitors (DDE 3; Tr. 75-76, 93-94). Gallery Ambassadors working in locations such as the Call Center where they do not have contact with the public are not required to wear the aprons (DDE 3; Tr. 93).

The Employer claims that, when the Gallery Ambassador position was created, employees previously classified as "Visitor and Experience Ambassadors" were given a raise "[i]n recognition of the additional security functions and training that would be required." (Req. for Rev. at 3). The Employer cites Henry's testimony at Tr. 46 to 47 to support this assertion. As reflected on those pages of the transcript, Henry did testify that these employees were given a raise. She did not testify that this raise was in recognition of any security responsibilities.

Thus, the record supports the Regional Director's conclusion that the Gallery Ambassadors' jobs generally do not involve guard duties. The overall thrust of the job description, the essential duties and the other details demonstrate that this is a customer service position. They are "ambassadors" for the museum whose job is to make visitors feel welcome. The contrast between the job description of the Gallery Ambassadors on the one hand and the Security Associates and the former Gallery Officers on the other, reaffirms this distinction. The duties of the position, as described by the Employer's witnesses, involve answering visitor questions, promoting the museum, assisting with events, reporting visitor feedback, and contributing to gallery programs. They wear aprons rather than the security uniforms worn by Security Associates. The Regional Director's findings are supported by the record.

### III. ARGUMENT

The Regional Director's decision contains a summary of the case law governing guard status under § 9(b)(3) of the Act (DDE at 5-6). The Employer does not dispute any of the principles set out by the Regional Director (Req. for Rev. at 7-8). Indeed, the Employer cites many of the same cases as the Regional Director. The Employer contends that the Regional Director "selectively emphasizes" the non-guard functions performed by the Gallery Ambassadors (Req. for Rev. at 8). As set forth above, this emphasis is reflected in the job description for the Gallery Ambassadors. Thus, it is the Employer's job description, not the Regional Director, who has emphasized the "non-guard functions" of the position.

The Employer points out that "the Board has made clear that it is not the amount, but the nature of the employees' duties that is dispositive of their guard status," citing *Boeing Aircraft Co.*, 328 NLRB 128 (1999) and *Rhode Island Hospital*, 313 NLRB 343 (1993) (Req. for Rev. at 8). The Regional Director clearly recognized this principle. Citing one of the cases relied upon by the Employer, the Regional Director held:

As the Board explained in *Rhode Island Hospital*, 313 NLRB 343, 346 (1993), the controlling factor in determining "guard" status is the nature of the duties of the alleged guard and not the percentage of time which the alleged guard spends performing these duties. Nevertheless, the Board in *Rhode Island Hospital* did consider whether the guard responsibilities were a "minor or incidental part" of the disputed employees' overall responsibilities. *Id.* at 347.

(DDE at 6). This is precisely standard that the Employer advocates for. Thus, there is no basis for the Employer to argue that the Regional Director departed from Board precedent.

The Employer sets up a straw man argument to try to claim that the Regional Director applied the wrong standard. Taking a couple of words out of context, the Employer claims that the Regional Director based his decision on whether the Gallery Ambassadors' guard duties "constitute a 'significant portion' or the 'bulk' of their duties..." (Req. for Rev. at 8). The Employer then goes on to discuss cases in which the Board rejected a claim that a majority of an employee's duties must involve protection of property or persons in order for the employee to be deemed a guard. The Employer's argument fails because the Regional Director did not hold that guard status turns on a majority of an employee's duties.

The Employer repeatedly cites *Boeing Aircraft Co.*, supra, without discussing the Board's holding in that case that firefighters employed at a factory were not guards. The firefighters spent the majority of their time in fire prevention duties. However, during strikes by production and maintenance employees, they were assigned to make tours of the property to provide a "uniformed presence" to serve as a deterrent to "unauthorized conduct." 328 NLRB at 129. The Board noted that the duties performed by employees during a strike are of particular importance to the determination of guard status. Agreeing with the regional director that this deterrent function did not render the firefighters guards, the Board held:

In a great many cases, as here, an employer will charge certain employees with duties that are arguably security-related for only a portion of their working hours. Of central concern in such cases is not a numerical accounting of the percentage of time employees spend on such duties but rather the specific nature of the duties themselves. Accordingly, the Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities.

328 NLRB at 130. Applying this test, the Board agreed with the regional director that the firefighters were not guards because, even during strikes, “the firefighters retained as their primary and essential function the prevention and suppression of fires.” (Ibid). Likewise, the Regional Director found in this case that the “primary and essential function” of the Gallery Ambassadors is, as the job description states, to create “an exceptional visitor experience by providing exemplary customer service...” (Er. Ex. 3). He thus followed the precedent cited by the Employer.

The Regional Director properly analogized the Gallery Ambassadors to the doorpersons at issue in *55 Liberty Owner's Corp.*, 318 NLRB 308 (1995). That decision addressed five cases involving residential cooperatives or condominiums in New York City. Like the Gallery Ambassadors, the primary function of the doorpersons was to provide customer service and to create a welcoming environment. In all five cases, the Board found that the employees at issue “monitor and regulate access into the building, deny entrance to unauthorized persons, and observe and report irregularities.” 318 NLRB at 308. The acting regional director found that these individuals were guards “because their primary responsibility is to safeguard the Employer’s property and residents by monitoring and regulating access to the building and by denying entry to unauthorized persons.” *Id.* at 310. The Board reversed, holding:

Although the doorpersons and elevator operators perform certain guard-like functions, we find, contrary to the Acting Regional Director, that the doorpersons and elevator operators are not guards as defined by Section 9(b)(3) of the Act. Rather, we find that any guard-like functions performed are incidental to their primary function of providing courtesy oriented and receptionist type services to the tenants of the various buildings.

308 NLRB at 310, citing *Tac/Temps*, 314 NLRB 1142 (1994). The Board found that “asking unauthorized persons to leave” and enforcing no loitering and no smoking rules were “incidental” to their primary hospitality functions. (Ibid).

This precedent is controlling with respect to the Gallery Ambassadors. The Employer accuses the Regional Director of a “selective recitation of the record evidence” to minimize the guard functions of the Gallery Ambassadors (Req. for Rev. at 17). It is the Employer, however, that “selectively” relies upon self-serving testimony of witnesses rather than the job description written by those very witnesses. The job description and the entire record establish that the Gallery Ambassadors’ “primary function” is to provide “courtesy oriented” services. Like the doorpersons, their jobs are hospitality oriented. To the extent that they also perform duties related to “safeguarding” the PMA, it is incidental to their main function of serving as ambassadors for the museum to enhance the visitor experience.<sup>7</sup>

The Employer also notes that two Gallery Ambassadors, Amy Hicks and Dan Gifford, have been given assignments to posts normally staffed by Security Associates (Req. for Rev. at 21-22). From this evidence, the Employer argues that this establishes “interchange” between the two positions. The Employer also notes that it has a shortage of Security Associates (Req. for Rev. at 22). Hicks and Gifford previously held a position as a Security Officer (Tr. 77-78). The record does not establish whether they performed all the duties of a Security Associate when assigned to these posts. In any

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<sup>7</sup> Apparently recognizing that the record is not sufficient to establish that the Gallery Ambassadors perform guard functions, the Employer offers information from outside the record regarding the duties of museum employees at Harvard University and at the Metropolitan Museum of Art in New York (Req. for Rev. at 19, 20). The issue in this case turns on the duties of Gallery Ambassadors at the Portland Museum of Art in Portland, Maine, not the duties of other employees at other museums in other cities.

event, the fact that two Gallery Ambassadors who formerly worked as Security Officers have been assigned on occasion to perform some Security Associate functions hardly establishes that the Gallery Ambassador position held by 20 employees meets the statutory definition of a guard.

The Regional Director's decision is consistent with other Board cases finding that employees who perform duties similar to the Gallery Ambassadors were not "guards" because those duties were "incidental" to their main functions. In *Wolverine Dispatch*, 321 NLRB 796 (1996), the Board found that receptionists who operated a system to control access to the facility were not guards because their "'guard-like' duties ... are incidental to their basic clerical functions." 321 NLRB at 798. In *Madison Square Garden*, 325 NLRB 971 (1998), event staff employees assigned as "guards" to work with police and supervisors to control access to an arena were not guards within the meaning of the Act because they referred any crowd control problems to other personnel. In *J.C. Penney Co.*, 312 NLRB 32 (1993), charge back clerks, who tracked product to prevent theft, were not guards, even though their duties involved safeguarding the employer's product. Their duties included confronting unauthorized persons and uncovering theft, but, like the Gallery Ambassadors confronting unruly patrons, they referred any issues to a manager. To the extent that they performed guard-like functions, those were incidental to their main responsibility for tracking product.

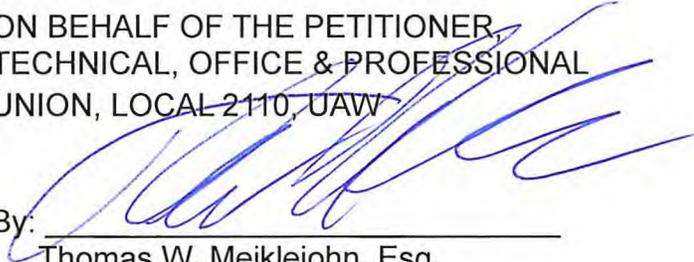
By the same token, any security duties performed by the Gallery Ambassadors are incidental to their hospitality functions. The central focus on providing a welcoming visitor experience is reflected in the very title of the position. The prior, security-oriented

job was called an “officer.” These employees are now “ambassadors”, to signify their role in establishing positive relationships with patrons. The Gallery Ambassadors are not guards, and the Regional Director properly included them in the Unit.

**IV. CONCLUSION**

The Regional Director’s factual findings are supported by the record, especially by documents written by the Employer. Those documents establish that the Gallery Ambassadors perform a customer service function, welcoming visitors to the museum, answering their questions, and creating a positive environment. The Regional Director followed established precedent in concluding that any guard-like duties that they perform are an incidental part of their overall responsibilities. Accordingly, the Employer’s Request for Review should be denied forthwith.

ON BEHALF OF THE PETITIONER,  
TECHNICAL, OFFICE & PROFESSIONAL  
UNION, LOCAL 2110, UAW

By: 

Thomas W. Meiklejohn, Esq.  
Livingston, Adler, Pulda, Meiklejohn  
& Kelly, PC  
557 Prospect Avenue  
Hartford, CT 06105-5922  
(860) 570-4639  
[twmeiklejohn@lapm.org](mailto:twmeiklejohn@lapm.org)

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Opposition to Request for Review and Appendix was sent via email, on this 2<sup>nd</sup> day of December, 2020, to the following:

Glenn Israel  
Bernstein Shur  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104-5029  
[gisrael@bernsteinshur.com](mailto:gisrael@bernsteinshur.com)

Paul Murphy, Acting Regional Director  
National Labor Relations Board, Region 1  
Thomas P. O'Neill Jr. Federal Building  
10 Causeway Street, Suite 601  
Boston, MA 02222-1072  
[paul.murphy@nlrb.gov](mailto:paul.murphy@nlrb.gov)



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Thomas W. Meiklejohn