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Portland Museum of Art and Technical, Office & Professional Union Local 2110. Case 01–RC–266534

April 16, 2021

DECISION ON REVIEW AND ORDER REMANDING

BY MEMBERS KAPLAN, EMANUEL, AND RING

On November 9, 2020,¹ the Acting Regional Director for Region 1 issued a Decision and Direction of Election (Decision), in which he found that the Employer’s Gallery Ambassadors are not guards under Section 9(b)(3) of the National Labor Relations Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board’s Rules and Regulations, the Employer filed a timely request for review of the Acting Regional Director’s Decision. The Petitioner filed an opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Employer’s request for review is granted as it raises substantial issues warranting review. Upon review, and for the reasons discussed below, we reverse the Acting Regional Director and find that the Employer’s Gallery Ambassadors are statutory guards.

Background

The Employer operates an art museum in Portland, Maine. In August 2020, the Employer reorganized its Department of Museum Experience and Safety. Part of the reorganization included creating the Gallery Ambassador position to, according to the Employer, provide security in a way that appeared less “authoritative” and more welcoming to visitors. In an email to its employees concerning the reorganization, the Employer stated that “monitoring visitors is easier to do when you are engaged directly with them.” The Gallery Ambassador job description states that these employees are “responsible for an exceptional visitor experience by providing exemplary customer service, education, and exhibition interpretation while safeguarding the Portland Museum of Art.” They are required to perform visitor-related tasks, such as answering questions and promoting museum resources, while “keeping artwork and visitor safety as [the] main priority.” Gallery Ambassadors receive training based on the Employer’s security manual, which includes the museum’s policies on staff access to art storage rooms, after-hours entry for authorized staff, vandalism to collections, break-

ins, dangerous situations, etc. They also receive training in de-escalation tactics, responding to active-shooter incidents, CPR and first aid, and museum experience. Gallery Ambassadors wear badges, lanyards, and, when working in areas that place them in front of visitors, a black apron. The apron identifies the employee as a Gallery Ambassador and is used for carrying items like museum maps and business cards. Gallery Ambassadors are posted throughout the museum, including the Employer’s galleries, call center, museum store, and front desk. When stationed in the galleries, Gallery Ambassadors, along with Security Officers, perform various functions to satisfy security specifications in the Employer’s contracts with art lenders. For example, they ensure that patrons maintain distance from exhibits, do not touch or damage the exhibits, and refrain from carrying food or beverages. They also position themselves at specifically designated places near exhibits, work night shifts to provide 24-hour security for certain exhibits, and enforce restrictions on access to closed galleries during the installation of new artwork. In the call center, Gallery Ambassadors answer calls from potential visitors and other callers. In the museum store, a Gallery Ambassador processes purchase payments and attempts to prevent theft of merchandise. At the front desk, a Gallery Ambassador welcomes visitors, sells them museum tickets, and ensures that they abide by the Employer’s rules, including pandemic-related mitigation measures.

The record also shows that Gallery Ambassadors have independently staffed locations typically covered by Security Associates, such as its loading dock and security hub.² Employees stationed at the loading dock monitor the entrance used by employees and for delivery of supplies and artwork, and they check employees’ bags as they exit. Employees stationed in the security hub view monitors that display live video feeds from surveillance cameras installed throughout the museum. Gallery Ambassadors do not operate alarms or respond to alarm calls, but they must stay alert to problems Security Associates report through a two-way radio. On at least one occasion, a Gallery Ambassador responded to an issue with a problematic patron and alerted a manager to it.

On September 23, the Petitioner, Technical, Office & Professional Union Local 2110, filed a petition seeking to represent a wall-to-wall unit of all employees, excluding statutory supervisors and managers, employed by the Employer. The Employer contended that its Security Associates and Gallery Ambassadors should be excluded from the unit as guards within the meaning of Section 9(b)(3)

September 13 from 6:00 a.m. to 10:00 a.m., and that a different Gallery Ambassador was the only employee scheduled to work at the loading dock on October 18 from 6:15 p.m. to 8:00 p.m.

¹ All dates hereinafter are in 2020.

² For example, copies of staff schedules show that a Gallery Ambassador was the only employee scheduled to work in the security hub on

of the Act. Following a preelection hearing, on November 9, the Acting Regional Director issued his Decision, in which he found that the Security Associates, but not the Gallery Ambassadors, are statutory guards. With respect to the Gallery Ambassadors, the Acting Regional Director stated that these employees “generally do not engage in guard-like functions”; that the “bulk of their duties consists of answering questions, distributing maps, greeting patrons, and selling tickets and merchandise”; and that their aprons are not traditional guard attire. In addition, the Acting Regional Director found that Gallery Ambassadors do not control access to the Employer’s premises in the manner of statutory guards, noting that almost all retail employees could ask patrons to leave the premises for not following pandemic-related mitigation measures. He also noted that a manager resolved the one documented instance where a Gallery Ambassador engaged with a problematic patron. The Acting Regional Director found that Gallery Ambassadors should be included in the unit and directed an election to be conducted by mail ballot from November 30 to December 21.

On November 23, the Employer filed its request for review of the Acting Regional Director’s Decision, repeating its contention that Gallery Ambassadors are guards under Section 9(b)(3) of the Act.³ The Petitioner filed an opposition.

Discussion

Section 9(b)(3) of the Act prohibits the Board from certifying for collective-bargaining purposes a unit of employees that includes both guards and nonguards. This section defines a guard as “any individual employed . . . to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises[.]” 29 U.S.C. § 159(b)(3). “[T]he 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.” *Boeing Co.*, 328 NLRB 128, 130 (1999) (citing *Rhode Island Hospital*, 313 NLRB 343, 347 (1993)). The duty to enforce “against employees and other persons rules to protect

property of the employer,” as stated in Section 9(b)(3), is plainly a guard responsibility. In addition, the Board has found that guard responsibilities include training in security procedures, participation in security rounds or patrols, and monitoring and controlling access to the employer’s premises. *Boeing Co.*, above at 130. In determining guard status, “[i]t is the nature of the duties of guards and not the percentage of time which they spend in such duties which is controlling.” *Rhode Island Hospital*, above at 346 (citing *Walterboro Mfg. Corp.*, 106 NLRB 1383, 1384 (1953)).

Applying this precedent, we find, in agreement with the Employer, that the Acting Regional Director erred in finding that Gallery Ambassadors are not guards under Section 9(b)(3) of the Act. In our view, it is clear that the Employer has assigned its Gallery Ambassadors guard responsibilities. They are responsible for maintaining security of the artworks and safety of visitors and other employees on the Employer’s premises. The Employer stations these employees in its galleries to monitor visitors and other employees and to enforce rules aimed at protecting exhibits. Gallery Ambassadors either address rule violations directly or report them to a Security Associate or manager for resolution, they communicate with Security Associates via two-way radio in order to respond to incidents reported by the Security Associates,⁴ and they perform various guard duties that are required by the security specifications in the Employer’s contracts with art lenders.⁵ In addition, Gallery Ambassadors work when the museum is closed, when the Employer presumably is not in need of their visitor-related services. Further, as discussed above, the Employer assigns Gallery Ambassadors to stations, such as the loading dock, where assigned employees monitor other employees and enforce the Employer’s rules (e.g., bag checks) against them.⁶

Based on the foregoing facts, we find that Gallery Ambassadors possess and exercise responsibility to enforce the Employer’s rules against employees and other persons to protect exhibits and other property and that their guard responsibilities are neither minor nor incidental to their overall responsibilities.⁷ We accordingly find that the

³ Neither party has requested review of the Acting Regional Director’s findings with respect to the Security Associates or with his direction of a mail-ballot election.

⁴ See, e.g., *Madison Square Garden*, 333 NLRB 643, 645 (2001) (guard status established where employees’ responsibilities included, among other things, carrying a two-way radio to send and receive reports about incidents at the facility).

⁵ See *Allen Services Co.*, 314 NLRB 1060, 1062 (1994) (guard status established—notwithstanding the lack of guard training, guard uniforms, or authority to do more than observe and report trespass infractions—where employer assigned employees security-related responsibilities to satisfy contractual obligations).

⁶ See, e.g., *Raymond Metal Products Co.*, 223 NLRB 127, 127–128 (1976) (guard status established where employees’ responsibilities included inspecting employees’ packages to ensure they only removed property identified on the employer’s property passes).

⁷ We find that the Acting Regional Director’s reliance on *55 Liberty Owners Corp.*, 318 NLRB 308 (1995), is misplaced. In that case, the Board found that doorpersons and elevator operators were not guards, where their guard-like functions of asking unauthorized persons to leave (or enforcing the no-loitering or no-smoking rules) were “incidental to their primary function of providing courtesy oriented and receptionist type service” to building tenants. *Id.* at 310. Here, by contrast, the

Employer’s Gallery Ambassadors are guards under Section 9(b)(3) of the Act.

For the foregoing reasons, we find, contrary to the Acting Regional Director, that the Employer’s Gallery Ambassadors are guards within the meaning of Section 9(b)(3) of the Act. Accordingly, the Acting Regional Director’s finding that these employees are included in the wall-to-wall unit is reversed.

ORDER

The case is remanded to the Acting Regional Director for further appropriate action consistent with this decision.

Dated, Washington, D.C. April 16, 2021

Marvin E. Kaplan, Member

William J. Emanuel, Member

John F. Ring, Member

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Gallery Ambassadors’ guard duties are neither incidental nor minimal for the reasons explained above.