

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

Massachusetts Museum of Contemporary Art

Case 01-RC-273750

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Massachusetts Museum of Contemporary Art, is a Massachusetts corporation with a place of business located at 1040 Mass MoCA Way, North Adams, Massachusetts, where it operates an art museum and galleries for the display of art collection and other exhibits. Annually, in the course and conduct of its business operations the Employer derives gross revenues in excess of \$1 million dollars and purchases and receives goods and services valued in excess of \$50,000 directly from points located outside the Commonwealth of Massachusetts.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Subregion 34, on **April 6, 2021**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Subregion office by close of business on **April 27, 2021**. All the ballots will be commingled and counted virtually by videoconference at 1:00 pm eastern time on **April 28, 2021**.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region office by no later than 5:00 pm on **April 20, 2021** in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

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5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

PROFESSIONAL UNIT: VOTING GROUP A

Included: All full-time and regular part-time professional employees employed by the Employer at its 1040 Mass MoCA Way, North Adams, Massachusetts facility, including Graphic Designers, Helpdesk & Assistant to the Director of Information Technology, Art and Museum Educators, Associate Director of Education, Senior Preparator/Fabricators, Preparator/Fabricators + Workshop Managers, Preparator/Fabricators, Senior Curators, Curators, Finance Coordinators, Special Projects Managers.

Excluded: All non-professional employees, the Interim Director, Director of Finance, Building and Grounds Manager, Custodial Supervisor, Director of Communications, Director of Development, Director of Exhibitions/Senior Curator Director of Education and Curator of Kidspace, Director of Human Resources, Human Resources Manager, Director of Information Technology, Director of Fabrication and Art Installation, Managing Director of Performing Arts, Production Manager, General Manager –Performing Arts, Director of Retail Operations, and managerial employees, confidential employees, and guards and supervisors as defined in the Act.

Others permitted to vote: The parties have agreed Building and Grounds Engineers may vote in Voting Group A but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

NON-PROFESSIONAL UNIT: VOTING GROUP B

Included: All full-time and regular part-time non-professional employees employed by the Employer at its 1040 Mass MoCA Way, North Adams, Massachusetts facility, including Finance Assistants, Executive Assistants to the Director, Program Assistants-Assets for Artists, Fundraising and Marketing Managers, Maintenance employees, Buildings and Grounds Foreman, Landscapers, Mason Tenders, Custodians, Tenant Operations and Event Coordinators, Development Operations Managers, Managers of Institutional Giving, Development Administrative Associates, Artist Services and Intern Program Directors, Gallery Teachers, Human Resources Assistants, Senior Marketers, Digital Services Coordinators, Marketing Associates, Communications Managers, House Sound Engineers, House Electricians, Project Coordinators, Audio Technicians, Associate Retail Managers, Sales Associates, Assistant Registrars and VA Coordinators, VA Senior Registrars and Exhibition Managers, Museum Attendants, Box

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Office Associates, Visitor Services Coordinators and Performing Arts Fellows.

Excluded: All professional employees, the Interim Director, Director of Finance, Building and Grounds Manager, Custodial Supervisor, Director of Communications, Director of Development, Director of Exhibitions/Senior Coordinator, Director of Education and Curator of Kidspace, Director of Human Resources, Human Resources Manager, Director of Information Technology, Director of Fabrication and Art Installation, Managing Director of Performing Arts, Production Manager, General Manager—Performing Arts, Director of Retail Operations, managerial employees, confidential employees, supervisors, and guards as defined in the Act.

Others permitted to vote: The parties have agreed Box Office Managers may vote in Voting Group B but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

OR

In the event the majority of the voting Professionals (Voting Group A) vote to be included in a unit with nonprofessional employees (Voting Group B), the following combined unit is appropriate.

COMBINED UNIT

Included: All full-time and regular part-time professional and nonprofessional employees employed by the Employer at its 1040 Mass MoCA Way, North Adams, MA facility, including Graphic Designers, Helpdesk & Assistant to the Director of Information Technology, Art and Museum Educators, Associate Directors of Education, Senior Preparator/Fabricators, Preparator/Fabricators + Workshop Managers, Preparator/Fabricators, Senior Curators, Curators, Finance Coordinators, Special Projects Managers, Finance Assistants, Executive Assistant to the Director, Program Assistants-Assets for Artists, Fundraising and Marketing Manager, Maintenance employees, Buildings and Grounds Foreman, Landscapers, Mason Tenders, Custodians, Tenant Operations and Event Coordinators, Development Operations Managers, Managers of Institutional Giving, Development Administrative Associates, Artist Services and Intern Program Directors, Gallery Teachers, Human Resources Assistants, Senior Marketers, Digital Services Coordinators, Marketing Associates, Communications Managers, House Sound Engineers, House Electricians, Project Coordinators, Audio Technicians, Associate Retail Managers, Sales Associates, Assistant Registrar and VA Coordinators, VA Senior Registrar and Exhibition Managers, Museum Attendants, Box Office Associates, Visitor Services Coordinators and Performing Arts Fellows.

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Excluded: The Interim Director, Director of Finance, Building and Grounds Manager, Custodial Supervisor, Director of Communications, Director of Development, Director of Exhibitions/Senior Curator Director of Education and Curator of Kidspace, Director of Human Resources, Human Resources Manager, Director of Information Technology, Director of Fabrication and Art Installation, Managing Director of Performing Arts, Production Manager, General Manager–Performing Arts, Director of Retail Operations, managerial employees, confidential employees, guards and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed on **March 21, 2021**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

VOTING PROCEDURE

Since the Combined Unit includes professional and nonprofessional employees who cannot be joined in a single unit without the desires of the professional employees being determined in a separate vote, the election will be conducted in the **Voting Groups** identified above with **Professional employees voting in Group A** and **Nonprofessional employees voting in Voting Group B**.

The employees in the professional **Voting Group A** will be asked the following two questions on their ballot:

- 1.) Do you wish to be included in the same unit with nonprofessional employees of the Employer for the purpose of collective bargaining?

- 2.) Do you wish to be represented for purposes of collective bargaining by TECHNICAL, OFFICE AND PROFESSIONAL UNION, LOCAL 2110, UAW, AFL-CIO?

To which the choices for an answer will be “YES” or “NO”.

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The employees in the nonprofessional **Voting Group B** will be asked the following question on their ballot:

Do you wish to be represented for purposes of collective bargaining by TECHNICAL, OFFICE AND PROFESSIONAL UNION, LOCAL 2110, UAW, AFL-CIO?

To which the choices for an answer will be "YES" or "NO".

As indicated, professional employees will vote separately as to whether or not they wish to be included in the same bargaining unit with nonprofessional employees. If a majority of the professional employees in Voting Group A vote "Yes" to the first question, indicating their wish to be included in a unit with nonprofessional employees, they will be so included, in the overall Combined Unit, as described above. Their votes on the second question will then be counted together with the votes of the nonprofessional employees in Voting Group B to decide whether the Petitioner has been selected to represent the Combined Unit.

If a majority of the professional employees in Voting Group A do not vote for inclusion in the same bargaining unit with nonprofessional employees, they will not be included with the nonprofessional employees. Their votes on the second question will be counted to decide whether they wish to be represented by the Petitioner in a separate professional unit and the votes in Voting Group B will be counted separately.

In the event that the professionals vote for separate representation, the separate appropriate units will be described as set forth in voting Group A and voting Group B above.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

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There will be two questions on the ballot for Voting Group A. The first question will be "Do you wish to be included in the same unit with nonprofessional employees of the Employer for the purpose of collective bargaining?" The choices on the ballot will be "Yes" or "No". The second question will be "Do you wish to be represented for purposes of collective bargaining by TECHNICAL, OFFICE AND PROFESSIONAL UNION, LOCAL 2110, UAW, AFL-CIO?" The choices on the ballot will be "Yes" or "No".

The question on the ballot for Voting Group B will be "Do you wish to be represented for purposes of collective bargaining by TECHNICAL, OFFICE AND PROFESSIONAL UNION, LOCAL 2110, UAW, AFL-CIO?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative:

Tracy Moore, Interim Director, 1040 Mass MoCa Way, North Adams, MA 01247, tmoores@massmoca.org, (413)664-4448 (phone)

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

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