

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION**

**DO NOT WRITE IN THIS SPACE**

Case No.  
02-RC-233642

Date Filed  
01/04/19

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position: The New Museum of Contemporary Art	1c. Business Phone: (212) 219-1222	1e. Fax No.: (212) 431-5328
1b. Address (Street and number, city, state, and ZIP code): 235 Bowery St, New York, NY 10002	1d. Cell No.:	1f. e-Mail Address:

2. Do you agree that the NLRB has jurisdiction over the Employer in this case?  Yes  No  
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate?  Yes  No (If not, answer 3a and 3b.)

a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)  
Petition does not list classifications sought. Employer cannot guess whether Petitioner seeks non-eligible classifications and reserves right under Rule 102.63(d) to challenge ballots of supervisory, managerial, confidential, and temporary employees.

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.  
Added: Excluded:

4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.  
Petition does not list classifications sought. Employer cannot guess whether Petitioner seeks non-eligible classifications and reserves right under Rule 102.63(d) to challenge ballots of supervisory, managerial, confidential, and temporary employees.

5. Is there a bar to conducting an election in this case?  Yes  No If yes, state the basis for your position.

6. Describe all other issues you intend to raise at the pre-election hearing.  
Appropriate eligibility criteria for seasonal/intermittent employees, e.g. art handlers

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015>  
(a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)  
(b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D).

8a. State your position with respect to the details of any election that may be conducted in this matter. Type:  Manual  Mail  Mixed Manual/Mail

8b. Date(s): January 31, 2019	8c. Time(s): TBD	8d. Location(s): TBD
8e. Eligibility Period (e.g. special eligibility formula): as per Board policy	8f. Last Payroll Period Ending Date: 12/31/18	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input checked="" type="checkbox"/> Other (specify length) semi-monthly

**9. Representative who will accept service of all papers for purposes of the representation proceeding**

9a. Full name and title of authorized representative Frank Birchfield, counsel	9b. Signature of authorized representative	9c. Date 01/14/19
9d. Address (Street and number, city, state, and ZIP code) Ogletree Deakins, 599 Lexington Ave, 17th Floor, New York NY 10022		9e. e-Mail Address frank.birchfield@odnss.com
9f. Business Phone No.: (212) 492-2518	9g. Fax No.: (212) 492-2501	9h. Cell No.: (415) 404-0003

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.