Starbucks Corporation (“Employer”) is a company headquartered in Seattle, Washington that operates a chain of coffee shops with locations throughout the United States and the world. On December 23, 2021, Workers United (“Petitioner”) filed a representative petition with the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act (“Act”). Petitioner seeks a single-facility election that includes all full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers, performing work at the Employer’s Store #9780 located at 116 Merchant Drive, Knoxville, Tennessee (“Store #9780” or “Merchant Road store”),\(^1\) excluding Store Managers, office clericals, guards and supervisors as defined by the Act (the “Act”). There are approximately 30 employees in the petitioned-for unit.

The Employer contends that the petitioned-for unit limited to a single facility is inappropriate. Rather, the Employer maintains that an appropriate unit must include all the facilities in the Employer’s Knoxville market located within Knox County, Tennessee, and the greater Knoxville area, totaling 16 facilities (“16 Employer-sought facilities or stores”),\(^2\) including the petitioned-for facility.\(^2\) There are approximately 481 employees in the 16 Employer-sought facilities.

On January 18 and 19, 2022, a hearing officer for the Board conducted a hearing by videoconference, during which the parties were invited to present their positions and supporting evidence. Thereafter, the parties submitted post-hearing briefs. I have duly considered all testimony, evidence, and arguments.

\(^{1}\) The location of the Employer’s facility is also referred to in the record as I-75 at Merchant Road.

\(^{2}\) The parties stipulate that the 16 stores in the Knoxville Market are: Store #9788, 116 Merchant Dr., Knoxville; Store #23875, 870 Highway 321 N., Ste. 1, Lenoir City; Store #10173, 2021 Cumberland Ave., Knoxville; Store #8590, 11038 Park Side Dr., Knoxville; Store #11655, 7803 Montvue Center Way, Knoxville; Store #8883, 1305 Oakridge Turnpike, Oak Ridge; Store #29203, 1938 Pinnacle Pointe Way, Knoxville; Store #8586, 4924 Kingston Pike, Knoxville; Store #11820, 1011 W. Lamar Alexander Pkwy., Maryville; Store #19129, 115 Moss Grove Blvd, Knoxville; Store #11293, 121 Cusick Rd., Alcoa; Store #47932, 101 S. Campbell Station Rd., Knoxville; Store #48688, 4721 Old Broadway St., Knoxville; Store #8578, 329 N. Cedar Bluff Blvd., Knoxville; Store #116576, 401 East Emory Road, Powell; and Store #48338, 111 Chapman Triangle Way, Knoxville.
Based on the entire record and consistent with Board law, I find that the Employer has not sustained its burden of demonstrating that the petitioned-for unit must include all 16 Employer-sought facilities it seeks. I find that the petitioned-for single unit is an appropriate unit for collective bargaining purposes, and I am directing an election for this unit. There are approximately 30 employees in this appropriate unit. The parties stipulate that any election that takes place will be conducted by mail ballot. Therefore, I find that a prompt mail ballot election is appropriate.

I. Issues and Position of the Parties

The Employer asserts that the only appropriate unit is a multi-facility unit that includes the 16 facilities located in Knox County and the greater Knoxville area. The Employer argues that I should not apply the same single-facility presumption previously determined in prior representative petitions for Starbucks locations in Buffalo, New York, and Mesa, Arizona. The Employer further argues that the Petitioner’s request to hold an election in a single store bargaining unit violates Section 9(c)(5) of the Act.

The Employer asserts that it maintains full autonomy and control over the stores in the Knoxville Market and that core operational decisions for Store #9780 and all the stores in the Knoxville Market are made at the market level or above and not at the store level. The Employer contends that the Employer uses technology and operating systems and policies that are implemented nationwide for all baristas and shift supervisors. The Employer emphasizes the company’s detailed and centralized operational protocols, which it contends demonstrate functional integration, eliminate distinctions between stores, and facilitate regular and frequent interchange of employees. The Employer asserts that 31% of baristas and shift supervisors in the Knoxville

3 I have taken administrative notice, and the Petitioner and the Employer agree that administrative notice is appropriate, of the records, including transcripts and exhibits, in Cases 03-RC-282115, 03-RC-282127, 03-RC-282139 (collectively referred to as Buffalo 1); 03-RC-285929, 03-RC-285986, 03-RC-285989 (collectively referred to as Buffalo 2); and 28-RC-286556 (Mesa). On December 7, 2021, the Board denied review of Buffalo 1, stating that the DDE had correctly applied the standard that an employer bears a “heavy burden” in overcoming the single-facility presumption and “must demonstrate integration so substantial as to negate the separate identity” of the single store units. Starbucks Corp., 2021 WL 5848184, at *1 (Dec. 7, 2021). In that regard, the Board rejected Starbucks’ suggestion that a community of interest between petitioned-for employees and excluded employees rebuts the single-facility unit presumption. Id. The Board also found that Starbucks had failed to overcome the Union’s “specific evidence” of store managers’ involvement in such matters as hiring and firing, resolving daily grievances and routine problems, adjusting schedules, approving time off and overtime, evaluating employees, and imposing discipline. Id. (citing Haag Drug, 169 NLRB 877, 878 (1968)). The Board further agreed that “the remaining factors under the Board’s single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange.” More recently, on February 23, 2022, the Board denied review of Mesa, affirming that the Employer failed to meet “its heavy burden to overcome the presumption that the petitioned-for single store unit is appropriate; the mere fact that the petitioned-for employees may share some community of interest with excluded employees does not serve to rebut the presumption.” Starbucks Corp, 371 NLRB No. 71 (February 23, 2022)

4 The parties agree to defer litigation on the classification of Assistant Store Manager until after the election, and any individual holding the title of Assistant Store Manager will vote subject to challenge because the issue relates to the eligibility or inclusion of a portion of the unit or units involved and does not significantly impact the size or character of the unit or units.
Market worked in multiple stores, and 42% of employees working at Store #9780 were “borrowed” from other stores during the two-and one-half-year period from April 29, 2019, through December 12, 2021. The Employer maintains that labor relations are standardized nationally and not controlled by store managers. It notes that employees throughout the market have the same skills and are entitled to the same benefits and wages. Finally, it asserts that the geographic proximity and lack of bargaining history within the Knoxville Market support a multi-facility unit.

While urging that the decisions in Buffalo 1, Buffalo 2, Mesa, and the Board’s decision regarding the prior petitions were wrongly decided, the Employer has not presented different arguments over local autonomy and interchange, other than asserting that a critical difference is how the Knoxville market is managed by its regional director and district manager.

The Petitioner argues that the Employer has failed to rebut the strong presumption that a single-facility petitioned-for unit is an appropriate unit. The Petitioner asserts that the record evidence shows that store managers exercise meaningful control over labor relations and store operations without significant oversight from district management, including the ability to hire, discipline, train, provide orientation, promote, grant overtime, grant time-off, schedule employees, evaluate, and adjust grievances. The Petitioner argues that the testimony of the Employer’s expert witness Abby Clay Turner is irrelevant, cumulative, and fundamentally flawed. Contrary to Dr. Turner’s testimony, the Petitioner argues that the evidence adduced at the hearing demonstrate there is virtually no interchange among the employees in the Knoxville market. During the relevant time period, the Petitioner argues that Merchant Road employees only worked 0.23% of the total hours worked by employees in borrowed store, and only 1.5% of the total number of hours worked at Store #9780 were performed by employees borrowed from a different store. The Petitioner asserts that the infrequent nature of employee interchange does not destroy the petitioned-for unit’s homogeneity, but instead bolsters the position that a single-facility unit is appropriate. Also, any interchange is strictly voluntary. While the Employer provided evidence of corporate-wide policies and integration at a national level, the Petitioner argues that such evidence is insufficient to rebut the presumption of the single-facility unit in a retail industry setting.

II. Record Evidence

A. Overview of Employer’s Operation

The Employer is a multinational corporation that owns and operates an international chain of coffee shops, including nearly 9,000 stores in the United States. It organizes its retail operations in North America into regions headed by regional vice presidents, including the Midwest Region.

---

5 I note that, in Buffalo 2, the Employer presented witness testimony that described the curtailing of the store manager’s autonomy over hiring, orientation and training via the use of recruiters. Unlike Buffalo 2, no such evidence was presented in the instant case. Rather, there is no evidence that Store Manager Ashley Bracher’s discretion over hiring employees was eliminated or centralized through the use of a recruiter.

6 The Petitioner objected to the admission of Dr. Turner as an expert witness in this matter. While I have duly considered Dr. Turner’s evidence and testimony, I afford it only the appropriate weight explained in detail in this decision.
which encompasses the Knoxville market stores at issue here. The Midwest Region is further divided into various administrative areas headed by regional directors and administrative districts headed by a district manager. A store manager heads each individual store and reports to one of these district managers. Some locations also employ an assistant store manager. Shift supervisors support and cover for store managers.

All 16 Employer-sought facilities at issue in the instant case are owned by Starbucks Corporation and are not separately incorporated. The single petitioned-for unit Store #9780 is located in the Knoxville Market. The Knoxville Market is part of Area 153, known as the Bluegrass area and located within Region 16. Area 153 consists of 95 stores located in Southern Indiana, most of Kentucky, Eastern Tennessee, and a single store in Bristol, Virginia. Klint Arnold is the Regional Director (RD Arnold) overseeing Area 153. RD Arnold reports to Brett Battes, Regional Vice-President for Region 16. Nine district managers report to RD Arnold. The 16 Employer-sought stores are all located in the Knoxville Market in Eastern Tennessee. The Knoxville Market is divided in two districts, Districts 314 and 447. The petitioned-for unit Store #9780 is located within District 314 and managed by District Manager Todd Roderick (DM Roderick). District Manager Andrew Dorsey (DM Dorsey) oversees District 447, which contains 12 of the 16 Employer-sought facilities in the Greater Knoxville area. District 314 comprises 12 stores, eight of which are not included on the list of 16 Employer-sought facilities. There is no record evidence of the location of these other stores in District 314 or an explanation for their exclusion from the Employer’s proposed unit. The Employer asserts that the 16 Employer-sought stores were the only stores located within the Knoxville market from April 2019 through December 2021.

Store Manager Ashley Bracher (SM Bracher) has managed the Merchant Road for about ten years. Prior to Bracher, DM Roderick was store manager at Store #9780. The Merchant Road store has one Assistant Store Manager, Rebecca Moeller (ASM Moeller), and four shift supervisors. There are six assistant store managers among the 16 Employer-sought facilities in the Knoxville market.

Each of the 16 Employer-sought stores in the Knoxville Market are cafes with drive-thrus. The 16 Employer-sought facilities within the Knoxville market range from less than five to 26 miles from the petitioned-for unit store.

---

7. Tennessee is part of Region 16, the Midwest Region, managed by Regional Vice President Brett Battes.

8. The Employer routinely redistricts to balance administrative burdens.

9. The parties generally refer to Starbucks employees such as baristas and shift supervisors as “partners” consistent with Starbucks’ internal nomenclature. The Employer’s “Partner’s Guide” also refers to store managers and assistant store managers, as well as café attendants, baristas, and shift managers, as partners. I will use term “employee” throughout this decision to maintain consistency with the statutory definitions of the Act and the language of Board precedent.

10. DM Roderick testified that he oversees 12 stores in his district.

11. Although not at issue in this case, the Employer also has licensed Starbucks stores in every market. Licensed stores are owned and operated by other companies, such as Starbucks cafes located within Target or Kroger. Nationwide, the Employer also operates Starbucks mall-based kiosks and cafes with and without drive-thrus.
The Employer has no bargaining history with any of the stores in the Knoxville market.

**B. Control Over Daily Operations, Labor Relations, and Local Autonomy**

Consistency is a touchstone for the Employer and is sustained by a host of nationwide policies and procedures. All stores are subject to detailed operational plans that aim to ensure a consistent customer experience across locations, down to such granular details as the placement of food in display cases and the use of Siren’s Eye, a visual merchandising tool that shows how products should look at each store for every promotion used nationwide. Decisions about store design, equipment placement, marketing and promotions, store budgets, hours of operation, and contracts with vendors and contractors are made at the district level or above. There are six promotional periods a year. The regional design team for the Employer’s Tennessee stores is located in Chicago. Repairs are done through a national process, the Employer has national contracts that circumvent the need for store managers to handle repairs other than to report a maintenance ticket.

The Employer maintains various technologies to assist with supply orders, scheduling, and consistency in stores’ application of human resources policies. For example, the Employer has tools for ordering products and supplies. The Employer imitated an automatic ordering system in early 2021 that generates orders for all packaged foods, packaged coffee, merchandise, and gift cards. This ordering system cannot be adjusted by the store manager. Another program ensures auto-shipment of certain food and beverage items without action by the store manager. A third system manages inventory by suggesting quantities of products not covered by automatic shipments known as inventory management system (IMS).

On a daily or weekly basis, store managers, assistant store managers, and shift supervisors order and receive food products, merchandise, and supplies using the Employer’s nationwide inventory management system (IMS). IMS is also used to transfer supplies and products between stores. Two distribution centers serve the Knoxville market. A distribution center in Nashville delivers dry goods two times a week and a distribution center in Atlanta delivers “CDC” (cold, refrigerated and frozen products) three and a half times per week. There is no evidence that store managers play any role in distribution routes or decisions. If a store runs out of an item before the next delivery, the only option is to have the out-of-stock item picked up from another store, usually the closest in proximity, resulting in a transfer in the IMS. The Employer asserts that any employee (and not just managers) can pick up out-of-stock items, in which case hourly employees are paid for their mileage. Although the record reflects that district and store managers have served as couriers in this situation, there is no record evidence of any employee at the Merchant Road store serving as a courier for out-of-stock products.

A store’s projected needs are calculated by the operations services team on a quarterly basis using the Employer’s “Par Builder” tool. The Par Builder tool contains, receives, and uses data regarding the amount of product that a store needs based on orders, sales history, forecast, and sales trends. This data is then used to set a store’s par, which is the anticipated amount of food product

---

12 The Employer asserts that each store has iPads that allow any employee, even a barista, to place inventory orders or make repair requests. However, there is no record evidence that baristas or even shift supervisors perform these functions at the Merchant Road store.
and supplies that a store needs per order. Unlike the food ordering system, some systems like Par Builder are not fully automated, and store managers still need to input information into the system related to the specific store. Store managers can and do revise these suggested quantities. For example, when placing an order, a store manager will review the suggested order quantity (SOQ) provided by the inventory management system and either accept the order or modify the order if they feel the SOQ is incorrect. SOQ’s are calculated based on the store’s sales history and the store’s par, but do not represent strict requirements that must be followed by store managers. Store managers may use the SOQ’s to guide their discretion in ordering product, but store managers may also ignore the SOQ’s and use their discretion, experience, and observations to order product and supplies. RD Arnold confirmed that anyone placing an order in Par Builder could change the order amount and not order what was recommended on Par Builder.

Store managers are responsible for day-to-day operations at individual stores and report to their corresponding district manager. As part of their duties, store managers engage in non-customer-facing activities conducted during “non-coverage” administrative time. Store #9780 employs one assistant store manager and four shift supervisors, who provide coverage in the event the store manager is not available to manage the store, such as during non-coverage administrative time. Individuals tasked with running the store’s sales floor are considered “key holders” and may include the store manager, assistant store manager, and shift supervisor. Store managers are typically assigned to a single store but may be assigned to multiple stores in the event there is an extended need at another store. There is no witness testimony of SM Bracher overseeing multiple stores.13

District Meetings

RD Arnold has weekly meetings called “huddles” with his district managers. DM Roderick holds weekly virtual team meetings every Monday for about an hour with all the store managers and assistant store managers in his district.

Before March 2020, DM Roderick visited the 12 stores in District 314 two or three times a month. The visits could be for period planning (lasting around three hours), an observe-and-coach visit (lasting around one to two hours), or a quick connect visit. After March 2020, the period planning visits were more often virtual, and the number of in-store visits were shortened.14 DM Roderick communicates with his store managers by phone, text, email, or group chat.

Employee witnesses testified to seeing DM Roderick inside the store only a handful of times during their employment at Merchant Road. While the small number of witnesses’ sightings of district managers may be a coincidence of scheduling, the inference is unavoidable that district managers are not consistent or regular figures in the Employer’s store. Inversely, the record is clear that store managers play a meaningful and consistent role in handling matters that require an in-person presence to observe and judge the circumstances.

Scheduling

13 I note that the Employer’s interchange data reflects SM Bracher worked shifts at another store in 2021 and 2022, but there is no witness testimony explaining the coverage.

14 DM Roderick has visited the Merchant Road store in 2021 about twice a month.
Technology also supports employee scheduling. The Employer uses a program called “the Partner Planning tool,” which uses demand forecasts and information about employee availability to generate store schedules. Employees must indicate their availability to work on a standard Partner Availability Form. Store managers input the information into the scheduling system. The form can be updated anytime. The Partner Planning tool then generates a proposed schedule based on these availabilities and forecasted demand. The Employer asserts that the program always generates schedules three weeks in advance, which are posted at each store. The record reflects that store managers take dedicated administrative time on Mondays, in part to work on scheduling, and new schedules are posted by the end of day on Mondays. The Employer maintains store managers merely execute the dictates of this tool. The Employer contends that the only time a store manager should deviate from the program is if there were information the program did not know, i.e. COVID issues or a University of Tennessee football game near one of its stores. In these instances, store managers may need to make changes for additional coverage.

However, the record reflects different facts on the ground as to scheduling. While the Partner Planning tool creates a starting point for schedules, store managers routinely make changes based on the circumstances of their stores. Their job descriptions, the company’s employee guide, and witness testimony support the conclusion that store managers have authority to make such changes. If employees need to make changes to their schedule, they communicate directly with the store manager. Witnesses testified that SM Bracher directly speaks with employees about their schedules and tries to accommodate employee preferences, including scheduling around conflicts like class schedules and parenting responsibilities. It is undisputed that a store manager does not need the approval of district managers to revise the work schedule and ensure that their respective store is staffed. In addition, the Employer’s witnesses did not have first-hand knowledge whether SM Bracher used or deviated from the tool.

Employee witnesses testified that store managers edit schedules for discrepancies and secure additional coverage outside of stated availabilities to account for gaps in coverage, last minute time-off requests, and other availability issues, including COVID related issues. Contrary to the Employer’s representation that schedules are uniformly set three weeks in advance, an employee with firsthand knowledge of her store’s practices testified that there were usually only two schedules posted on the freezer at the Merchant Road facility. The witness testified that starting in late December 2021, the Merchant Road store began posting schedules three weeks out. The Petitioner argues that the timing of this change coincides with the filing of the representation petition. The witness further testified that SM Bracher removes and reposts schedules reflecting changes. This supports witness testimony that employees speak directly to SM Bracher regarding any schedule changes, including last minute changes. SM Bracher either prints new schedules reflecting the latest changes or makes handwritten changes to the posted schedules. The record therefore reflects that store managers are responsible for and maintain discretion in developing employees’ schedules.

**Overtime and Time-Off Requests**

The record shows that store managers are responsible for approving time-off requests, approving overtime, and ensuring the accuracy of timekeeping and payroll records. The Employer asserts that overtime is approved by district managers. DM Roderick testified that he has told store
managers not to schedule overtime and, if overtime is required, the store manager should discuss the need with him before scheduling the work.

Roderick’s testimony is contradicted by the Partner Guide and witness testimony. The Employer’s Partner Guide explicitly states that overtime must be approved by the store manager and failure to receive approval may result in corrective action. Witness testimony affirms SM Bracher approving overtime in “real time” without first speaking with DM Roderick, when the need for overtime was immediate and related to closing a store. The record shows that SM Bracher has approved overtime without getting prior approval from DM Roderick in “desperate times” because “we need the help.” DM Roderick even admitted that he might not be consulted in advance for minimal amounts of overtime.

Employees must generally make time-off requests three weeks in advance through an electronic system (Teamworks App), which are then approved by managers. If employees need to make requests with less notice, that employees take these requests directly to SM Bracher, who has the authority to approve them and does so in real time. Store managers also make handwritten changes to time-keeping records and review payroll records to ensure accuracy, especially when store’s iPad is not functioning and employees cannot manually clock-in and clock-out using the iPad.

Assigning and Directing Work

The record shows that store managers assign and direct employees’ work. The Employer maintains and administers a nationwide program known as the “Play Builder” tool, which is used to project in-store workflow, product needs, and employee tasks and assignments. The program allows assignments to a position by employee name. Per the Employer, store managers input information about employees’ availability, and the program generates appropriate work assignments, taking all discretion and judgment out of the process. The Employer asserts that its Play Builder tool removes discretion and judgement from the local store manager in assigning work assignments and employee tasks.

However, the record reflects that, in practice, store managers or other Key Holders like assistant store managers or shift supervisors either do not use this tool or routinely deviate from its suggestions to build their own choreography. A Key Holder’s experience and judgement to assess staffing needs on the floor in real time cannot be replaced by computer program. Witnesses who have been involved in developing assignments stated that they had rarely or never used the tool. Indeed, a Merchant Road shift supervisor testified to having used the tool only during the first few shifts she worked as a shift supervisor and not since then. The witness stated that Play Builder does not have the flexibility the store needs, and she places people where they are most helpful and beneficial to the team.15 There is no evidence to suggest that a store manager, assistant store manager, or shift supervisor has been disciplined for failing to use the Play Builder tool or for choosing to ignore the tool’s suggestions. Critically, RD Arnold confirmed that “in reality, the answers don’t change much over time” in Play Builder, so “there may be a shift supervisor who doesn’t open up the iPad every single time to look at it.” DM Roderick testified that he knew shift

15 The record shows that SM Bracher informed a shift supervisor that Play Builder is a tool that can help, but her judgment is also adequate to assign work.
supervisors at the Merchant Road store “do not actively have Play Builder pulled up,” and “a shift supervisor does have to have some knowledge where to deploy people.” There is no evidence that DM Roderick has ever disciplined a shift supervisor for not using Play Builder.

**Hiring**

Hiring is one such example of store managers’ personal involvement in a matter that requires presence and discretion. The Employer asserts that it is always posting for shift supervisors and baristas; RD Arnold testified that one to two employees are hired per month in every store in the market. While the Employer asserts that staffing needs are determined at the district level, based on planning meetings between the store manager and the district manager, the record establishes that SM Bracher is solely responsible for personnel and staffing decisions at the Merchant Road store. It is undisputed that store managers have the discretion to interview and hire baristas and promote baristas to shift supervisor positions. In doing so, SM Bracher has the sole discretion to select the candidates, handle the interviews, evaluate the candidates’ merit, and directly hire candidates.

The substance of the hiring process occurs at the store level. Candidates apply to a posting for a specific store. That store’s manager conducts interviews. (Interviews take place at the store level, and employees are hired for a particular “home store,” where they will work their regularly scheduled shifts.) A candidate begins the application process, first, by submitting an online application through the Employer’s career website. The application is tracked through a hiring platform called Taleo, the backside or management side of the system. District managers, store managers, and assistant store managers have access to Taleo. Taleo allows stores in the market to share an applicant from one store’s system to another store if there is a hiring need. Applicants must pick a store location, but one applicant can apply for multiple locations. Once an applicant has passed the Employer’s pre-screening process, a store manager will then interview an applicant for a position. If an applicant is not hired within seven days of applying, the application is released into a pool in Taleo where every store manager within the market can access the application. The store manager also has the discretion to release an applicant into the pool before the seven days. There is no record evidence that SM Bracher has hired an applicant for another store, or that another store manager hired an applicant for Store #9780. At most, store managers can only refer an applicant by releasing them to the applicant pool or by referring them directly to another store.

There is no evidence that another store manager is required to be present for any interview conducted by SM Bracher. There is also no record evidence that a district manager needs to be present with SM Bracher during the interview process of any applicant for the Merchant Road

---

16 RD Arnold testified that the store manager decides whom to interview and whether to hire an applicant, and these decisions do not require approval from the district manager. RD Arnold further testified that store managers decide if a barista gets a promotion to shift supervisor based on interviews store managers conduct in-store and are not required to get the approval from a district manager before making this decision.

17 The record reflects that SM Bracher has conducted interviews from hiring fairs occurring at the Merchant Road store. There is no record evidence of DM Roderick being present during these fairs.
store. At most, DM Roderick requests store managers to consult him before any rehires of an employee to ensure that the employee is not using the Employer for short-term employment.\(^{18}\)

The record reflects that store managers can hire employees who are seeking to change their home store, including employees on a transfer list. A witness testified that while a customer at the Merchant Road store, she spoke with a Store #9780 employee about her inability to transfer to Merchant Road because the pandemic had frozen all transfers. During that same visit and before the employee received her coffee order, SM Bracher called the employee on her phone inquiring when she could begin employment the following week. There is no evidence of DM Roderick’s involvement before her transfer was approved.

The Employer has an hourly recruiter named Jenny Lee to assist with hiring in RD Arnold’s entire area (Area 153); Lee has only been in this role for four months. Lee’s job duties include generating applicant flow to the system, building strategic relationships within the market with communication organizations like the local college, and educating hiring managers about the population. There is no record evidence that Recruiter Lee had any direct involvement in the hiring of applicants at Store #9780 or within the Knoxville market other than finding prospective applicants.\(^{19}\) There is no record evidence that SM Bracher’s hiring responsibilities were affected after Recruiter Lee began working in the Knoxville market.

**Orientation and Training**

With respect to orientation and training, the Employer has developed standardized new hire orientation procedures and training plans, including detailed protocols for the “First Sip” orientation. However, store managers conduct new hire orientations and are responsible for new employee training, which they may delegate to barista trainers.\(^{20}\) The Employer provided no concrete evidence of higher-ups’ involvement in implementing or evaluating orientation and training at the store level.

A barista trainer can be either another barista or a shift supervisor. A barista trainer is responsible for the bulk of training. Every store has multiple barista trainers. Any barista can apply for the position, or a store manager who notices “aptitude” in an employee can select and train them. Barista trainers are rewarded with a training bonus of around $65.

**Promotions and Evaluations**

\(^{18}\) There is no evidence in the record that SM Bracher consulted with DM Roderick regarding the rehire of a former employee.

\(^{19}\) I note that the instant case differs factually from the facts in Buffalo 2, where the Employer changed the hiring process by removing hiring responsibilities from store managers and centralizing hiring through the use of a recruiter for certain Buffalo area stores.

\(^{20}\) RD Arnold confirmed that the “First Sip” is conducted by the “person who hired you.” Here, SM Bracher hires all the baristas.
In addition to evaluating employee performance, store managers play a key role in promotions. Store managers may promote employees from barista to barista trainer without approval from district managers; as noted above, barista trainers are eligible for additional pay. Store managers also directly promote employees from barista to shift supervisors. The record reflects that SM Bracher has directly promoted employees to shift supervisor and conversely, has denied an employee requests to be a barista trainer and part-time shift supervisor.21

Witnesses testified to meeting directly with the store manager about their job performance and working with store managers toward desired promotions. To the extent upper-level management may be involved behind the scenes, there is no evidence of regular independent investigation into job performance or promotion recommendations. The Employer’s employee guide corroborates this conclusion, providing that employees must contact store managers about promotions and to receive coaching about performance and evaluations. It also specifically provides that store managers decide whether an employees’ work performance puts them in “good standing” such that they may be promoted. The store managers’ job description also specifies these roles, indicating that they must monitor and manage staff development.

RD Arnold testified that there are no performance reviews for hourly “partners.” However, the record reflects that SM Bracher engaged in performance development conversations (PDC) with Merchant Road employees. This is consistent with the Employer’s Partner Guide that states employees will have at least two PDC conversations with a manager per year, and the Employer’s job description for store managers include conducting regular performance assessment of employees. Store managers are the only management on the frontline who regularly observe employees’ performance who can make such assessments, not district managers.

District managers are responsible for hiring and promoting assistant store managers. Store managers have no role to determine where a newly promoted assistant store manager will be placed. ASM’s need to be trained by a certified trainer, or SMT 30, and not all store managers are certified trainers. SM Bracher is a certified trainer and has trained a newly promoted ASM who was then placed at another store location. At Store #9780, there is only one assistant store manager. While the Employer may be responsible for the promotion of one assistant store manager, SM Bracher is responsible for the promotion of the remaining 29 employees.

Disciplines

Store managers likewise observe and issue discipline. In particular, the responsibility of identifying conduct warranting discipline falls to them. This fact is corroborated by testimony from employees who witnessed coaching’s and disciplines done by SM Bracher in real time. The Employer maintains that a technology program called “Virtual Coach” curtails store manager’s independent judgment in order to ensure that discipline is consistently administered. It is a program that walks store managers through questions to confirm whether the observed conduct merits discipline and, if so, the appropriate degree. The Employer did not provide testimony from anyone who actively used the tool. Store managers are not required to use or follow the suggested actions from the Virtual Coach. Moreover, the tool itself specifies that the tool “is intended to complement, not replace, your active assessment and judgment.” ER. Ex. 10.

21 The record reflects that the denials were due to the employee’s lack of regular hours and her availability being closed off.
So too, store managers’ job descriptions delegate discipline decisions to them. There is no record evidence indicating that upper-level managers independently investigate or override store managers’ recommendations regarding disciplines. RD Arnold testified that he had no knowledge whether SM Bracher used the Virtual Coach and confirmed that store managers have the discretion and authority to determine the appropriate level of discipline. DM Roderick has disciplined store managers for not maintaining operational standards. ER. Ex. 18. However, there is no evidence of SM Bracher ever being disciplined, and the disciplines the Employer provided did not involve a store manager’s failure to use the Virtual Coach, Par Builder, or Play Builder.

Similarly, termination decisions originate with store managers, who observe the conduct warranting termination. The Employer asserts that store managers are required to discuss such decisions and seek assistance from either the district manager or the Employer’s human resources department. DM Roderick testified that even though he would not get consulted for document coachings or written warnings, he would be consulted by store managers for final written warnings or separations. This is consistent with witness testimony showing that SM Bracher has the discretion to discipline and meet with employees in-store for infractions like dress code violations or using profanity in the store. DM Roderick testified that he had been consulted by SM Bracher “numerous times over the years” regarding employment issues, yet DM Roderick could not identify a single termination at Store #9780 in which he was involved, or if a termination even occurred since Ashley Bracher became the store manager. DM Roderick also could not identify a single suspension occurring at Store #9780.

Adjusting Grievances

The Employer has systems in place through which employees may affirmatively seek input on labor relations matters from outside the store. The Employer employs the Partner Contact Center (PCC also known as Partner Resource Support Center) that store managers, district managers and regional directors can use to address workplace concerns; it is essentially an on-call Human Resource Department. As part of this system, employees may seek assistance by using the Employer’s human resources hotline to raise complaints, concerns, and questions. In practice, however, store managers handle most on-the-ground concerns. Witness testimony reflects that employees bring employment issues directly to SM Bracher, including any personal conflicts with other employees. SM Bracher has served as a mediator to resolve these issues by meeting with the employees involved directly. These anecdotes are consistent with documentary evidence, including

---

22 Although the Employer’s witness testified that a store manager could be subject to discipline for failing to use the Virtual Coach, there is no record evidence of this having happened. Rather, the discipline against a store manager the Employer produced occurred not at the petitioned-for store but another store under DM Dorsey. ER. Ex. 16. The infractions involved failing to abide by the Operational Standards around Food Safety, Clean Safe and Ready, including preventing the spread of COVID-19, and the store manager was placed on a performance improvement plan.

23 The disciplines involved failing to follow Siren’s Eye by not having proper signage for using facial coverings, failure to properly maintain equipment, for having a lack of dignity and respect in improper text messages, improper relationship between manager and partner, and failing to have a welcoming environment.
the employee guide and store manager’s job description, which set forth store managers as the point-people for resolving concerns, complaints, and conflicts. Witnesses testified that they have never called or used the hotline number to resolve issues at the store or the PCC. In fact, witnesses testified that they have never seen the Employer’s “Helpline and Email Reference Guide”24 posted at the Merchant Road store. Rather, employees report any issues, either with fellow co-workers or equipment issues, directly to SM Bracher. For equipment-related issues, SM Bracher inputs a maintenance ticket, if needed.

Overall, the Employer maintains that upper-level management is involved behind the scenes on all matters related to labor relations and employee working conditions. The Employer argues that operational and labor relations decisions are centrally controlled at the market level for the Knoxville stores or above. However, the Employer did not provide specific examples of upper-level management’s direct involvement with employees. Witnesses testified that they have not had any conversations with RD Arnold or DM Roderick concerning employment issues. The Employer’s argument is premised on its corporate-level expectations at each store. However, the record evidence and witness testimony demonstrate that operations at store level differ significantly from corporate expectations and, while upper-level management may be involved behind the scenes, store managers consistently address day-to-day operations and employee concerns at the store level. Moreover, store managers routinely are the highest-level in-store management and authority.

C. Employee Skills, Functions, and Working Conditions

Little dispute exists that skills, wages, and benefits are generally the same among the Employer’s employees throughout its stores. Store employees use a common skillset to prepare and sell identical products at the Employer’s stores nationwide. Employees in the Knoxville market operate the same type of equipment and follow the same procedures and routines when preparing and serving food and drinks as employees nationwide to provide consistent product to customers.

Employee wages are determined by the Employer’s compensation team headquartered in Seattle, Washington. As such, the wage scale is the same for all the baristas across the Knoxville market with a set increase every year. As noted above, store managers may promote baristas to the position of shift supervisor, thereby issuing pay raises to employees, without requiring outside approval. Store managers may also promote employees to barista trainers, thereby granting them an additional monetary reward after each training session. Store managers cannot change an employee’s salary without approval from a district manager, regional director and partner resource. Additionally, while the Employer determines the frequency at which employee are paid, and the wages that each position receives, store managers are ultimately responsible for ensuring that payroll is accurate. As noted above, store managers will edit and correct timecards when employees are unable to punch in or out on the iPad.

Employees’ benefits are also the same nationally. They receive the same vacation, time off, and family leave benefits; health, dental, vision, life, and disability insurances; stock grants; investment and 401(k) plans; COVID-19 benefits; and free coffee and food while working.

24 Employer Exhibit 4.
Employees are also subject to the same national personnel policies and operating procedures. These procedures govern a range of functions and working conditions, including opening the store; clocking in and out; stocking and displaying merchandise; placing and closing transactions; preparing food and drinks; uniforms and equipment; employee orientation and training; and employee development. However, functions and working conditions may vary between stores depending on the store setup and services provided. For example, the cafés nationwide with and without drive-thrus necessitate different lay-outs, sets of responsibilities, and operational considerations.

All the stores in the 16 Employer-sought facilities are cafes with drive-thrus. Store managers, however, can also make operational determinations that affect how the store will operate, i.e. as only a drive-thru facility versus being fully operational. District managers set the store operating hours within their district. For the Knoxville market, DM Roderick and DM Dorsey set the hours for the respective stores within their markets. District managers decide if a store will close early because of COVID-19 related or other issues, including short staffing. Store managers generally lack authority to change them, except for weather-related exigencies. SM Bracher made the decision to change the Merchant Road store’s operation to drive-thru only for a specific time period during the COVID-19 pandemic. DM Roderick admitted that it was not a “must” that he be consulted before such a decision “because sometimes in the moment the decision has to be made right then.” DM Roderick confirmed that SM Bracher controls the daily operations and minute-to-minute operations and can make these types of operational determinations. Store #9780 was the only store open in District 314 in the Knoxville market from about March 18, 2020, until September 2020, the early months of the pandemic, which shows that working conditions varied between the four stores at issue here in District 314.

D. Employee Interchange

Individuals seeking hire with the Employer apply to a store. The application and hiring process is maintained electronically, but store managers may receive applicants in-store and assist the applicants in applying electronically. Once hired, employees are assigned to a “home store,” generally, the location at which they were interviewed and where they will be oriented, trained, and regularly scheduled for work. However, employees can and do work shifts at stores beside their assigned home store through what the Employer refers to as “borrowed” employees.

The record evidence demonstrates that this interchange is strictly voluntary for those employees who may wish to pick up additional shifts. There is no record evidence of any involuntary interchange in the Knoxville market or any disciplinary actions against an employee for refusing to work a shift at another Knoxville market store. An interchange may also precede a permanent transfer from one home store to another or may be related to other circumstances such as new store openings, temporary store closures, or staffing shortages. Witnesses testified they worked at Store #9780 with borrowed employees whose stores were undergoing renovations. Witness testimony also reflects that borrowed employees were sent to Store #9780 when other stores in the district were closed due to COVID-19 in 2020.

The Employer maintains that individuals applying for a position, though they may apply

25 The record does not address how long Store #9780 remained drive-thru only in 2020.
at a particular store, are applying for employment in the Knoxville market. As such, the Employer places significant emphasis on its expectation that employees will be assigned to work at non-home store locations whenever necessary. The form employees fill out to indicate their availability to work apprises them of that possibility: “[y]ou could also be asked to work at another location to meet the needs of the business or to attain your requested hours.” The Employer maintains that employees are willing to pick up additional hours and the work culture is such that employees would not refuse to work at another location if asked. The Employer argues that district managers are directly involved in finding coverage for stores, and, if an employee refuses to work a borrowed shift, the refusal is escalated to the district manager for “possible” disciplinary action. However, there is no record evidence of any employee refusing to work or being disciplined for refusing to work outside of their home store.\(^\text{26}\)

There is also no record evidence that employees have been disciplined for refusing to work their assigned shifts. Store managers can reach out to employees to seek their cooperation to cover a shift but may ultimately need to cover the shift in the event no employee volunteers. Employees are also responsible for finding coverage for shifts that they cannot work. The record reflects that employees at Store #9780 communicate directly with SM Bracher regarding any changes to shift coverage or if they need assistance in finding coverage.

The Employer asserts that it is common practice for employees to find replacement coverage by trading shifts. The Employer argues that employees communicate “in-store through our in-store communication tools” to swap shifts, or more commonly, employees directly talk to each other via text. However, the Employer’s witnesses did not have any direct knowledge how the employees at Merchant Road communicated with each other or whether SM Bracher texted another store manager in the Knoxville market for coverage issues, other than asserting that this was the “practice.” To find coverage, employees at Store #9780 talk to each other while working in the store. There is no record evidence that employees assigned to Store #9780 ever communicated with each other through a group chat or with any other employee outside of Store #9780 to cover a shift.

Further, there is no record evidence that the petitioned-for unit of employees have access to the contact information of employees working at other stores in the Knoxville market. The only phone list posted at the Merchant Road store lists only that store’s employees. Witnesses testified that if they need to switch a shift or find coverage, they mainly speak to the employees in-person during work hours or they speak with SM Bracher regarding coverage issues. Witnesses testified that they have not spoken with any employee outside of Merchant Road for shift coverage. There is also no record evidence that the employees within the Knoxville market have contact with each other through joint staff meetings conducted by the Employer.

The record evidence shows that only district managers and regional directors are issued company work phones. Store managers are the only employees issued a company-owned laptop and company-issued email addresses.\(^\text{27}\) Only store managers and assistant store managers have

\(^{26}\) There is no witness testimony from a current store manager working in the Knoxville market. The Employer only provided the testimony of DM Roderick, who has not been a store manager at Store #9780 since 2011. There is no record evidence that DM Roderick ever disciplined an employee for refusing to work a shift outside of their home store.

\(^{27}\) The record is unclear whether assistant store managers also have company emails.
access to WorkChat, a workplace app function.²⁸ Unlike the stores involved in Buffalo 1, Buffalo 2, and Mesa, there is no evidence that employees in the Knoxville market, including Store #9780, used or have ever used a third party chatgroup via the app GroupMe or any text or chat groups to communicate with each other or with any employees in the Knoxville market to cover shifts.²⁹

At hearing, the Employer provided raw data regarding employees working in the Knoxville market during the period from April 29, 2019, to December 12, 2021 (referred to in this decision as the relevant time period). The Employer asserts that the raw data includes information about the amount of interchange within the Knoxville market.³⁰ The Employer also provided a data analysis and statistical report by economist Dr. Abby Clay Turner to further detail the nature of employee interchange in the Knoxville market, including Store #9780. Dr. Turner reviewed the source data contained in ER. Ex. 1 in order to assess the amount of interchange that employees were engaging in across stores within the Knoxville market. Dr. Turner used the aggregate data showing the shifts worked by different employees in the market between April 29, 2019, and December 12, 2021. Dr. Turner removed store managers from the data after being provided with their ID numbers, then ran the data through a statistical program to come up with the percentages and numbers. ER. Ex. 23.

In addition to analyzing the Knoxville market as a whole, Dr. Turner provided statistical reports on data prior to March 2020 in an effort to show that employee interchange was still present before COVID-19. In order to address the deficiencies noted in the decisions in Buffalo 1, Buffalo 2, and Mesa, the Employer also presented statistical analysis by removing the impact of permanent transfers from stores within and outside the Knoxville market.

The Employer highlights the following statistics from its dataset relating to the Knoxville market during the period April 29, 2019, to December 12, 2021:³¹

²⁸ A Merchant Road shift supervisor testified that she has never used the WorkChat app.

²⁹ GroupMe is a third-party platform. It was not created by the Employer and is not owned, facilitated, or administered by the Employer. Employees in the prior litigated cases used GroupMe to create different group chats that may have included employees from different stores.

³⁰ In its brief, the Employer references the 16 Employer-sought facilities as the only stores in the Knoxville market. The Employer did not argue either at the hearing or in its brief that there are other stores located in the Knoxville market besides the 16 Employer-sought facilities, including those located in District 314 and 447, the districts in which all 16 Employer-sought facilities are located in Eastern Tennessee. However, I find that the raw data in ER. Ex. 1 is flawed as it extends beyond the 16 Employer-sought stores in the Knoxville market to include stores that have no connection with any of the 16 Employer-sought facilities relied upon by Dr. Turner for her statistical analysis. The discrepancies are detailed further in the decision. Although the record reflects that Dr. Turner had a list of the 16 Employer-sought stores, there is no testimony confirming whether Dr. Turner specifically excluded the source data on the non-relevant stores in her overall statistical analysis, unlike the store managers. In fact, according to Dr. Turner, she testified that no one informed her that the raw data in ER. Ex. 1 was incorrect or defective.

³¹ The statistical data analysis excludes store managers from the analysis.
• Approximately 69% of employees worked in a single store, and 31% of employees worked in two or more stores.\textsuperscript{32}

• Approximately 13% of the employees worked in three or more stores and about 6% worked in four or more stores.

• For more than half of the stores in the market, employees that only work in their home store make up fewer than 50% of the overall population of employees working in the store.

• On average, borrowed employees were required for approximately 12% of the total workdays.\textsuperscript{33}

The Employer highlights the following statistics from its dataset relating to the petitioned-for Store #9780 during the period April 29, 2019, to December 12, 2021:

• Approximately 58% of employees\textsuperscript{34} worked in a single store and 43% of employees worked in two or more stores.\textsuperscript{35}

• Approximately 24.5% worked in two stores, 18% of employees worked in three or more, and about 8% worked in four or more stores.

• Approximately 71% of employees working in Store #9780 are assigned to that store

\textsuperscript{32} The Employer asserts that these figures include employees where the single store “may or may not be their home store.” In other words, this percentage does not reflect that 69% of employees only worked at their home store, since the percentage could include employees who worked at a single store that was not their home store. Because the Employer relies on aggregate data, an employee who worked a single shift at a store other than their home store during the relevant time period could be included in the percentage of employees who worked at a store other than their home store. The Employer, however, provided a chart with the number of employees with a single home store working at another store during the relevant time period. The figures for employees only working at their home store are higher. During the same period, approximately 75% of employees with a single home store worked in one store, 16% worked in more than one store, and 9% worked in more than two stores.

\textsuperscript{33} I note that in Buffalo 1, this figure was higher, at approximately 25% during a similar time period from April 29, 2019, to November 14, 2021. This fact did not impact the appropriateness of a single-facility unit.

\textsuperscript{34} The Employer asserts that when permanent transfers were removed from the data for Store #9780, the percentages remained relatively even, with 58% of employees at Store #9780 working at a single store and 43% working at more than one store.

\textsuperscript{35} As noted previously, the Employer asserts that these figures include employees where the single store “may or may not be their home store.” This percentage could arguably include employees who may have worked at Store #9780 even though Store #9780 was not their home store. The Employer also provided a chart with the number of employees with Store #9780 as their home store but working at another store for the same time period. These figures show a higher percentage of employees working at a single store. During the same time period, approximately 67% percent of employees with Store #9780 as their single home store worked in one store, while 33% worked in two or more stores.
as the home store, while 29% of employees are assigned to other home stores. Among the 71%, approximately 11% of employees with Store #9780 as their home store worked at one other store besides their home store.

- On average, borrowed employees were required for approximately 9% of the total workdays.\textsuperscript{36}

The Employer further argues that borrowing is consistent across all days of the week and throughout the calendar year.\textsuperscript{37} The Employer submitted data from April 29, 2019, to February 29, 2020 (pre-COVID-19), that showed 71% of employees in the Knoxville market worked at one store while 29% worked in more than one store. These figures are similar to the numbers for the time period through December 12, 2021. The Employer also submitted data from April 29, 2019, to December 12, 2021, that excluded data for permanent transfers by excluding the shifts before and after the transfers. The results showed similar numbers, with 69% of the employees in the entire Knoxville market working in a single store while 31% worked in more than one store.

The Petitioner argues that the Employer’s graphs and charts fail to show how many times a Merchant Road employee actually worked at another store or how many times borrowed employees actually worked at Merchant Road. In response, the Petitioner highlights the following data as providing greater context and specificity regarding employee interchange based on Employer Ex. 1:

- Store #9780 employees approximately worked 0.23% of the total number of hours worked by all the employees at the nine borrowed stores.\textsuperscript{38}

- When analyzing the total number of hours worked by borrowed employees at Store #9780 with the total number of hours worked at Store #9780 per fiscal year, the percentage of hours worked by borrowed employees in 2020 is 1.56%; in 2021, the percentage amounted to 0.57%; and in 2022, the percentage amounted to 0.32%.\textsuperscript{39}

\textsuperscript{36} I note that in Buffalo 1, this figure was higher than the instant case, at approximately 24% during a similar time period from April 29, 2019, to November 14, 2021.

\textsuperscript{37} ER. Ex. 23, Figures 6 and 7. Figure 7 shows a spike around the Christmas holidays from an average of 1.3% of shifts borrowed from another store each day to about 22%. ER. Ex. 1 does not identify the date when employees worked a borrowed shift, so the record is unclear how Dr. Turner calculated borrowing percentages for the different days of the week and different months during the year.

\textsuperscript{38} ER. Ex. 1, Vol. 2, Q7 of the Borrowed Partner Analysis. This analysis shows the total number of hours worked by employees at the borrowed store with the number of hours worked by Store #9780 at the borrowed store. This analysis also includes information reported in 2022. The percentage analysis, however, does not reflect the number of borrowed hours worked by Store #9780 employees at another Knoxville market store compared to the total number of hours worked by Store #9780 employees. Instead, this percentage is detailed in the chart and pie chart below.

\textsuperscript{39} ER. Ex. 1, Vol. 2, Q9. There is no data for 2019. The Petitioner argues that 2020 is not representative of the true numbers because for approximately six months, as Store #9780 was the only store in operation within its district due to COVID-19.
• When analyzing the total number of shifts worked by borrowed employees at Store #9780 with the total number of borrowed shifts per fiscal year, the percentage of shifts worked by borrowed employees in 2020 is 1.72%; in 2021 the number is 0.74%; and in 2022, the percentage is 0.32%.

The Employer argues that Dr. Turner only looked at the “aggregated and filtered data,” the “partner listings,” and the “store list” and did not review the borrowed partner analysis admitted as ER. Ex. 1, Vol. 2, Q9, for her statistical analysis. The Petitioner argues that the Employer’s analysis in ER. Ex. 1 clearly demonstrates that there is very little or no interchange at the Merchant Road store and that any limited interchange is completely voluntary. Although Dr. Turner testified that she was provided a list of the 16 Employer-sought stores, there is no record testimony whether Dr. Turner filtered out the stores in the aggregated data that are not included among the 16 Employer-sought facilities in the Knoxville market, or if she knew that these other stores were included in Employer Ex. 1.

The Employer argues that I should rely on the market wide trends exemplified by Dr. Turner’s statistical analysis as representative of the Employer’s source data in ER. Ex. 1. However, I find that the raw data in Employer Ex. 1 speaks for itself. An analysis of the actual employees whose home store is Store #9780 but who worked at another Knoxville market store and the actual number of borrowed employees who worked shifts at Store #9780 compared to the total number of hours and shifts worked by employees whose home store is Store #9780 show little or no interchange during the relevant time period.40

The following is data extracted from ER. Ex. 1, Vol. 1, and summarized in the chart for Store #9780 employees whose home store is the Merchant Road Store but who worked at another store in the Knoxville market:

<table>
<thead>
<tr>
<th>Home Store</th>
<th>EE Number</th>
<th>Worked Store</th>
<th>Worked Store District</th>
<th>Range of Hours Worked per shift^41</th>
<th>Total hours worked^42</th>
<th>Year</th>
<th># of Shifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>9780</td>
<td>US2766336</td>
<td>10173</td>
<td>447</td>
<td>6</td>
<td>6</td>
<td>2020</td>
<td>1</td>
</tr>
<tr>
<td>9780</td>
<td>US2412518</td>
<td>10173</td>
<td>447</td>
<td>6</td>
<td>6</td>
<td>2020</td>
<td>1</td>
</tr>
<tr>
<td>9780</td>
<td>US2412518</td>
<td>48338</td>
<td>314</td>
<td>6</td>
<td>6</td>
<td>2019</td>
<td>1</td>
</tr>
<tr>
<td>9780</td>
<td>US1753622</td>
<td>11656</td>
<td>314</td>
<td>5-8</td>
<td>78</td>
<td>2021</td>
<td>10</td>
</tr>
<tr>
<td>9780</td>
<td>US2150592</td>
<td>11656</td>
<td>314</td>
<td>16</td>
<td>16</td>
<td>2020</td>
<td>1</td>
</tr>
</tbody>
</table>

40 This data analysis is different from the analysis proffered by the Employer because the Employer’s statistical analysis and percentages did not solely look at the actual number of hours and shifts worked by employees whose home store is Store #9780. Rather, the Employer’s data encompasses the total number of hours worked at Store #9780 (which may include employees whose home store is not Store #9780).

41 Since ER. Ex. 1 had a separate line item for each time an employee’s worked shifts and hours, this number reflects the range of hours worked by one employee if there were multiple shifts. The numbers were rounded to the nearest whole number. This summary did not affect the total number of hours worked by each employee.

42 Since ER Ex. 1 had a separate line item for every shift worked by an employee, the total number of worked hours were calculated for the same employee and rounded to the nearest whole number.
<table>
<thead>
<tr>
<th>Store</th>
<th>US Code</th>
<th>Hours</th>
<th>Days</th>
<th>Year</th>
<th>Shifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>9780</td>
<td>US2454153</td>
<td>1156</td>
<td>314</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>9780</td>
<td>US2569923</td>
<td>1156</td>
<td>314</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>9780</td>
<td>US2767611</td>
<td>1156</td>
<td>314</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>9780</td>
<td>US2767611</td>
<td>1156</td>
<td>314</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>9780</td>
<td>US2793187</td>
<td>1156</td>
<td>314</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>9780</td>
<td>US32107126</td>
<td>1156</td>
<td>314</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>9780</td>
<td>US2952331</td>
<td>48338</td>
<td>314</td>
<td>6-7</td>
<td>27</td>
</tr>
<tr>
<td>9780</td>
<td>US1224702</td>
<td>48338</td>
<td>314</td>
<td>8</td>
<td>88</td>
</tr>
<tr>
<td>9780</td>
<td>US1224702</td>
<td>48338</td>
<td>314</td>
<td>5-8</td>
<td>173</td>
</tr>
<tr>
<td>9780</td>
<td>US1986873</td>
<td>48338</td>
<td>314</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>9780</td>
<td>US2887085</td>
<td>48338</td>
<td>314</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>9780</td>
<td>US2872668</td>
<td>8555</td>
<td>314</td>
<td>4-5</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>493</strong></td>
<td><strong>65</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Removal of outlier</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9780</td>
<td>US2872668</td>
<td>8555</td>
<td>314</td>
<td>4-5</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>475</strong></td>
<td><strong>61</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Removal of SM Bracher</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9780</td>
<td>US1224702</td>
<td>48338</td>
<td>314</td>
<td>8</td>
<td>88</td>
</tr>
<tr>
<td>9780</td>
<td>US1224702</td>
<td>48338</td>
<td>314</td>
<td>5-8</td>
<td>173</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>261</strong></td>
<td><strong>33</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Revised Total</strong></td>
<td><strong>214</strong></td>
<td><strong>28</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The above chart is similar to the total number of borrowed hours and borrowed shifts worked by Store #9780 employees elsewhere in the Knoxville market in ER. Ex. 1, Vol. 1, Q7, and referenced in the Petitioner’s argument, except Q7 does not include the 18 hours worked by EE US2872667 at a store outside the Knoxville market. Store #9780 employees worked 475 hours at other Knoxville stores. However, this number should be reduced by the outlier employee and any hours worked by Store Manager Bracher. The more accurate figure showing the number of hours worked by Store #9780 employees at another Knoxville market store is 214 hours. The above chart also shows that even when Store #9780 employees worked at another store, the employees worked at the same three stores (all located less than 12 miles from Store #9780), rebutting Dr. Turner’s testimony that there is widespread borrowing among multiple stores in the Knoxville market and not just within neighboring stores.

---

43 EE US1224702 is Store Manager Ashley Bracher. ER. Ex. 1, Vol. 3 (punch data); ER. Ex. 1, Vol. 4.

44 Store #8555 is not one of the 16 Employer-sought stores in the Knoxville market. Since the record does not reflect why this employee worked shifts outside the Knoxville market, I find this employee is an outlier and should not be included in the overall calculations along with the other Store #9780 employee who worked in other stores in the Knoxville market.

45 I do not find that including one five-hour shift for one employee in 2022 substantially changes the overall analysis.

46 The second chart detailed below further shows that the majority of borrowed employees to Store #9780 also come from the same three stores, except for two shifts borrowed from Store #8578, eight shifts from #11820 (a store that underwent renovations, and shifts from two stores not included in the Knoxville market.
Dr. Turner confirmed that the results exhibited in ER. Ex. 23 do not show how many shifts employees whose home store is Store #9780 actually worked at another store. However, the above chart shows that a total of only 11 Store #9780 employees actually worked at another Knoxville market store during a two and a half year period. Among the 11 employees, only four employees worked shifts at another Knoxville market store in 2019, only six employees worked shifts at another Knoxville market store in 2020, and only four employees worked shifts at another Knoxville market store in 2021.

Dr. Turner’s statistical analysis showed that 57.5% of all employees who ever worked at Store #9780 (and whose home store may not be Store #9780) only worked in one store, while 43% of all employees who ever worked at Store #9780 worked at two or more stores. By looking at the raw data of Store #9780 employees, only 648 out of 30 employees worked at two or more stores during the relevant time period besides their home store. Therefore, the actual percentage of Store #9780 employees working at two stores is much lower at 20%. Dr. Turner further testified that when she limited the data from April 29, 2019, through February 28, 2020, before COVID-19, Store #9780 had 39.5% of employees working in two or more stores. Again, looking at the raw data, only one employee worked more than two shifts at another store in 2019, only one employee worked two shifts at another store in 2020 (during the entire fiscal year), and two employees worked at two stores in two different years. Therefore, the actual percentage of Store #9780 employees (4 out of 30) who worked at two or more stores besides their home store between 2019-2020 is 13%.

The Employer’s records identify SM Ashley Bracher as US1224702, but her 2021 and 2022 hours should not be included in any analysis regarding employee interchange. ER. Ex. 1, Vol. 3, ER. Ex. 1, Vol. 4. I further find that EE US1753622, who worked 10 shifts, is an outlier since all the other employees only worked 1-2 shifts during a two and a half year period. Although there are references to hours and shifts worked in 2022 in the raw source data, there is no record evidence confirming whether Dr. Turner knew about the 2022 numbers and thus specifically excluded the 2022 figures when she ran the statistical program.

Moreover, the percentage of the total number of hours actually worked by employees whose home store is Store #9780 employees but worked at another Knoxville market is less than 1% and exemplified by the pie chart below. The total number of hours worked by employees during the relevant time period whose home store is Store #9780 equaled 70728. The total number of hours

47 This number excludes the employee who worked in 202; the outlier employee who worked at a non-Knoxville market store; and SM Bracher. This number also only counts each employee once -- two employees volunteered more than once and in two different years.

48 This number includes the two employees who worked one shift in two different years.

49 The Employer’s proffered employee list for Store #9780 included 30 employees.

50 The total number calculated based on all the hours worked by Store #9780 employees whose home store is Store #9780 from 2019-2022 and extracted from ER. Ex. 1 was 82,305 hours. This total number is higher than the total number of hours worked in Q9 because Q9 does not include any hours worked in 2019, but the underlying raw data includes hours worked by employees whose home is Store #9780 in 2019. The final
worked by employees whose home store is Store #9780 but worked at another Knoxville market store is 214 hours. The sum of these numbers is 70,942. Therefore, the percentage of hours actually worked by Store #9780 employees outside of their home store compared to the total number of hours worked by employees whose home store is Store #9780 is close to 0% at 0.30%.

The following data is extracted from ER. Ex. 1, Vol. 1 for borrowed employees who worked at Store #9780.

<table>
<thead>
<tr>
<th>Store worked</th>
<th>Employee Number</th>
<th>Home Store</th>
<th>Home Store District</th>
<th>Range of Hours Worked per shift</th>
<th>Total hours worked$^{51}$</th>
<th>Year</th>
<th># of Shifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>9780</td>
<td>US32052003</td>
<td>8578</td>
<td>447</td>
<td>8-9</td>
<td>17</td>
<td>2022</td>
<td>2</td>
</tr>
<tr>
<td>9780</td>
<td>US2607624</td>
<td>10173</td>
<td>447</td>
<td>6-8</td>
<td>45</td>
<td>2021</td>
<td>6</td>
</tr>
<tr>
<td>9780</td>
<td>US2138521</td>
<td>11656</td>
<td>314</td>
<td>8</td>
<td>8</td>
<td>2021</td>
<td>1</td>
</tr>
<tr>
<td>9780</td>
<td>US2188466</td>
<td>11656</td>
<td>314</td>
<td>0-6$^{52}$</td>
<td>10</td>
<td>2020</td>
<td>3</td>
</tr>
<tr>
<td>9780</td>
<td>US2260856</td>
<td>11656</td>
<td>314</td>
<td>4</td>
<td>8</td>
<td>2021</td>
<td>2</td>
</tr>
<tr>
<td>9780</td>
<td>US2312680</td>
<td>11656</td>
<td>314</td>
<td>7</td>
<td>7</td>
<td>2020</td>
<td>1</td>
</tr>
<tr>
<td>9780</td>
<td>US2399295</td>
<td>11656</td>
<td>314</td>
<td>7-8</td>
<td>106</td>
<td>2020</td>
<td>14</td>
</tr>
<tr>
<td>9780</td>
<td>US2692406</td>
<td>11656</td>
<td>314</td>
<td>0-6</td>
<td>6</td>
<td>2020</td>
<td>2</td>
</tr>
</tbody>
</table>

number excludes 6,779 hours worked in 2022 by Store #9780 employees, and 4,798 hours worked by SM Bracher.

$^{51}$ Since ER Ex. 1 had a separate line item for every shift and the corresponding hours worked by an employee, the total number of worked hours and worked shifts were calculated for the same employee and rounded to the nearest whole number.

$^{52}$ The raw data reported zero hours but working one borrowed shift for this employee. There is no evidence in the record whether Dr. Turner considered this factor in her statical analysis.
The above total numbers match the total number of borrowed shifts and borrowed hours in ER. Ex. 1, Vol. 2, Q9, and referenced in the Petitioner’s argument.

The above chart shows that borrowed employees worked on average between 1-6 shifts at Store #9780 and worked anywhere from 3-8 hours. There are only two borrowed employees (EE 2728414 and EE 2399295 from Store #11656) who worked 14 shifts each at the Merchant Road store. I find these two employees are outliers since the majority of the borrowed employees worked mostly 1-3 shifts, and their shifts occurred in 2020, which may include months during the COVID-19 pandemic. This is consistent with witness testimony that, for about six months during the pandemic in 2020, Store #9780 was the only store open in their district, resulting in borrowed employees arriving mostly from the Emory store, Store #11656. This is the same store the two outlier employees were borrowed from along with a number of other employees from Store #11656.

---

53 This store is not located in the Knoxville market.

54 This store is not located in the Knoxville market.
in 2020. Witness testimony also reflects that borrowed employees worked at the Merchant Road store due to renovations at their home store, a factor not considered in the Employer’s statistical analysis. Witness testimony is consistent with the borrowed employee numbers above showing that an employee from the Marysville store (Store #11820) worked at the Merchant Road store for two weeks due to renovations at her home store. Though a specific store was not identified, another witness confirmed that two employees from a Knoxville market store worked at Merchant Road because of renovations at their store but left once the renovations were completed. During her testimony, Dr. Turner acknowledged that she was not provided with any information regarding temporary store closures within the Knoxville market that could have affected the borrowing status of employees in her analysis.

That some hours were reported as zero but still reflected in the raw data as a worked shift further calls into question whether Dr. Turner’s statistical analysis took this factor into consideration. Critically, Dr. Turner’s statistical analysis includes borrowed employees involving Store #9780 from April 29, 2019, through December 31, 2019, yet there is no raw data information for any borrowed employees to Store #9780 during fiscal year 2019. Since there is no evidence of borrowed employees working at Store #9780 in 2019, this rebuts the statistical analysis that there was consistent interchange among the stores in the Knoxville market during the entire two and a half year period. Even though there is no data in 2019 for Store #9780, I note that ER. Ex. 1, Volume 1, does have interchange data for borrowed employees working at other Knoxville market stores in 2019.

Dr. Turner confirmed that her analysis exhibited in ER. Ex. 23 does not include the number of times that a borrowed employee actually worked at Store #9780 during the relevant time period. The raw data in ER. Ex. 1 provides this information. Using the same base number of 70,728 as the total number of hours worked at Store #9780 by employees whose home store is Store #9780 and then adding the total number of hours worked by borrowed hours at 693, the sum equals 71,421 total hours worked at Store #9780 during the relevant time period. Therefore, the percentage of hours worked by borrowed employees at Store #9780 compared to the total number of hours worked by all the employees at Store #9780 is less than 1% at 0.97%.

---

55 The Employer argues that Stores #8536, #11820 and #47932 remained open during the pandemic and did not close. I note that all three stores are located in District 447 and are managed by a different district manager, not District 314 where the petitioned-for unit store is located.

56 The witness testified that since her employment began in August 2020, she has only worked with a borrowed employee on two shifts.

57 This number did not exclude the limited reference to 2022 listed in the chart, since ER. Ex. 1, Vol. 2, Q9, included the three shifts and 22 hours worked in 2022.
As there is no borrowing data for 2019, I note that the percentage of borrowed hours worked at Store #9780 in 2020 and 2021 is only at 1.05% based on the totals provided by the Employer in ER. Ex. 1, Vol. 2, Q9. The total number of worked hours at Store #9780 in 2020 – 2021 is 63,893. The percentage for the total number of hours worked by borrowed employees at Store #9780 (671 borrowed hours) compared to the total number of hours worked at Store #9780 (63,893 total hours) in 2020 and 2021 amounts to 1.05%.

The following is a chart of stores included in the interchange data, where both the home store and the worked store are not listed as one of the 16 Employer-sought facilities, but were included in the raw date in ER. Ex. 1, Vol. 1, as having borrowed shifts.

<table>
<thead>
<tr>
<th>Home Store</th>
<th>Home Store District</th>
<th>Worked Store</th>
<th>Worked Store District</th>
<th>Number of borrowed shifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2869</td>
<td>328</td>
<td>8602</td>
<td>314</td>
<td>5</td>
</tr>
<tr>
<td>2975</td>
<td>156</td>
<td>13505</td>
<td>314</td>
<td>5</td>
</tr>
<tr>
<td>8602</td>
<td>314</td>
<td>13504</td>
<td>314</td>
<td>23</td>
</tr>
<tr>
<td>8602</td>
<td>314</td>
<td>24260</td>
<td>314</td>
<td>57</td>
</tr>
<tr>
<td>8602</td>
<td>314</td>
<td>28224</td>
<td>314</td>
<td>1</td>
</tr>
<tr>
<td>8555</td>
<td>314</td>
<td>9926</td>
<td>314</td>
<td>115</td>
</tr>
<tr>
<td>8555</td>
<td>314</td>
<td>13505</td>
<td>314</td>
<td>130</td>
</tr>
<tr>
<td>9926</td>
<td>314</td>
<td>8555</td>
<td>314</td>
<td>18</td>
</tr>
<tr>
<td>9926</td>
<td>314</td>
<td>13505</td>
<td>314</td>
<td>11</td>
</tr>
<tr>
<td>11481</td>
<td>805</td>
<td>28224</td>
<td>314</td>
<td>1</td>
</tr>
<tr>
<td>13504</td>
<td>314</td>
<td>8602</td>
<td>314</td>
<td>3</td>
</tr>
<tr>
<td>13504</td>
<td>314</td>
<td>24260</td>
<td>314</td>
<td>4</td>
</tr>
<tr>
<td>13504</td>
<td>314</td>
<td>28224</td>
<td>315</td>
<td>19</td>
</tr>
</tbody>
</table>

58 This number excludes the total number of hours worked in 2022 listed in ER. Ex. 1, Vol. 2, Q9.

The above chart shows 631 shifts that were worked by borrowed employees who have no relationship with the 16-Employer sought facilities. Although the chart does now show the employee numbers or the number of hours worked by those employees, the mere existence of interchange data for stores outside the 16 Employer-sought facilities in ER. Ex. 1 raises the question whether Dr. Turner specifically excluded this information for any statistical analysis on interchange pertaining to the Knoxville market or to Store #9780. In addition, the above chart identifies more than ten stores in District 314, the same district as the petitioned-for unit Store #9780, that were excluded as one of the stores in 16 Employer-sought facilities in the Knoxville market.

**E. Distance Between Locations**

The Knoxville Market comprises of two districts, 314 and 447. The petitioned-for unit Store #9780 is located within District 314 with three other stores (Store #48688, Store #11656, and Store #48338). All three stores are located between 4 and 11 miles from Store #9780. The remaining 12 other stores are located in District 447. Of these (Store #10173, Store #8536 and Store #11655) are less than 10 miles from Store #9780. The remaining nine stores in District 447 are located more than 12 miles and as far as 26 miles from Store #9780.

---

60 The Employer’s raw data includes the number of hours worked for employees whose home store is one of the 16 Employer-sought facilities. At the same time, the raw data includes the number of hours worked by employees whose home store is, for example, Store #13504 and Store #13504, which are not included in the Knoxville market. In other words, Employer Ex. 1 also includes hours and shifts worked by employees at a home store not included as one of the 16 Employer-sought facilities. I note that the source data created by Dr. Turner in ER. Ex. 24 does specifically reference the 16 Employer-sought facilities by store number. However, the record is unclear if the hours and shifts worked by employees whose home store is not one of the 16 Employer-sought facilities were specifically excluded from Dr. Turner’s statistical analysis.

61 The distances were calculated using Google Maps.
F. Bargaining History

The Employer has no bargaining history with Store #9780 or any store in the Knoxville market.

III. ANALYSIS

A. The Appropriateness of a Single-Facility Petitioned-For Unit.

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity. Dixie Belle Mills, Inc., 139 NLRB 629, 631 (1962). The party contesting a single-facility unit bears a “heavy burden of overcoming the presumption.” California Pacific Medical Center, 357 NLRB 197, 200 (2011). To rebut this presumption, the Employer “must demonstrate integration so substantial as to negate the separate identity” of the single store units. Id.

To determine whether the single-facility presumption has been rebutted, the Board examines: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., Trane, 339 NLRB 866, 867 (2003); J & L Plate, Inc., 310 NLRB 429, 429 (1993). These same factors apply in the retail chain setting. See, e.g., Red Lobster, 300 NLRB 908, 912 (1990); Foodland of Ravenswood, 323 NLRB 665, 666 (1997).

Nearly sixty years ago, in Sav-On Drugs, the Board abandoned its prior general policy in the retail chain context of making unit determinations coextensive with the employer’s administrative division or the involved geographic area. 138 NLRB 1032 (1962); accord Frisch’s Big Boy Ill-Mar, Inc., 147 NLRB 551 (1964). The Board decided that it would “apply to retail chain operations the same unit policy that it applies to multi-plant enterprises in general, that is . . . in the light of all the relevant circumstances of the particular case.” Frisch’s Big Boy, 147 NLRB at 551, 552.

The Board expanded upon this policy in Haag Drug, stating, “[o]ur experience has led us to conclude that a single store in a retail chain, like single locations in multilocation enterprises in other industries, is presumptively an appropriate unit for bargaining.” 169 NLRB 877 (1968) (emphasis in original). It elaborated:

Absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity, the employees’ ‘fullest freedom’ is maximized, we believe, by treating the employees in a single store … as normally constituting an appropriate unit for collective bargaining purposes. Id. at 877.

However, as in other contexts, the single-facility presumption is rebuttable. The Board explained:

…(W)here an individual store lacks meaningful identity as a self-contained economic unit, or the actual day-to-day supervision is done solely by central office
officials, or where there is substantial employee interchange destructive of homogeneity, these circumstances militate against the appropriateness of a single-store unit. *Id.* at 879.

Here, the Employer has failed to carry its burden that the unit must consist of the 16 Employer-sought stores in the Knoxville market comprising of District 314 and 447. In so finding, I note first that the unit sought by a petitioner is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). “Although other combinations of employees here may also constitute an appropriate unit,” the issue is only whether the employees at each petitioned-for store “alone constitute an appropriate unit.” *Foodland of Ravenswood*, 323 NLRB at 666. “There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the most appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Id.* (quoting *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950)); see also *Haag Drug*, 169 NLRB at 877 (“It is elementary that more than one unit may be appropriate among the employees of a particular enterprise.”)

As detailed below, based on the parties’ arguments and the record as a whole, I find that the petitioned-for single-facility unit is appropriate.

**B. Centralization of Operations**

The Board has long recognized that it “is common in retail chain operations, and particularly in food chains, [for there to be] a considerable degree of centralized administration in the functioning of ... stores.” *Angeli’s Super Valu*, 197 NLRB 85, 85 (1972). It has noted that, “though chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation.” *Haag Drug*, 169 NLRB at 878.

The Employer operates a highly centralized national retail chain operation and takes great care and pride in executing a standardized customer experience across its locations. To

---

62 This point is relevant to the rebut the Employer’s argument that the Petitioner’s effort to hold elections in a single store in the Knoxville market violates Section 9(c)(5) of the Act. Contrary to the Employer’s contention, Section 9(c)(5) of the Act does not prohibit the Petitioner’s approach to organize a single store in the Knoxville area. The Employer made the identical argument and cited the same cases in Buffalo 1, except Buffalo 1 involved three individual stores and not a single store; the Employer argued that the Petitioner’s selected stores was impermissibly controlled by the extent of its ability to organize the Buffalo market. The Board affirmed the decision in Buffalo 1. *Starbucks Corp.*, 2021 WL 5848184 (Dec. 1, 2021). The cases the Employer cited in Buffalo 1 and in the instant case are distinguishable. All involve situations in which a union arbitrarily attempted to exclude from its bargaining unit certain employees within a single facility, not employees of separate facilities. See NLRB v. Metro. Life Ins. Co., 380 U.S. 438, 442 (1965); *Lundy Packing Co.*, 68 F.3d 1577, 1580-83 (4th Cir. 1995); *May Dept. Stores Co. v. NLRB*, 454 F.2d 148, 150-51 (9th Cir. 1972). The Board examines multiple factors for assessing the appropriateness of a single-facility unit for a multi-facility employer. See, e.g., *Trane*, 339 NLRB at 867; *J & L Plate, Inc.*, 310 NLRB at 429. The presumption favoring a single-facility unit simply recognizes that organizing a single facility is presumptively less arbitrary than organizing only select employees performing similar work at the same location. An employer satisfies its burden of overcoming the single facility presumption when, in essence, it demonstrates that a single-facility unit is nevertheless arbitrary under the Board’s multi-factor analysis. The remaining analysis of this section addresses that question and answers Starbucks’ Section 9(c)(5) concern.
accomplish this, it relies heavily on its centralized operating procedures, including distribution channels, store design, and product offerings, placement, marketing, and promotions as evidence of functional integration. Notwithstanding the Employer’s evidence of centralized operations, such a circumstance is not considered a primary factor in the consideration of single-store units in the retail industry. *Id.*


In this regard, I find that the stores’ standardization is outweighed by other evidence of local autonomy in operations and labor relations.

**C. Control over Daily Operations and Labor Relations, Including the Extent of Local Autonomy**

Even where there was substantial centralization of authority and considerable product integration between facilities, the Board has held that a single facility could constitute a separate appropriate unit if the requested facility retained a substantial degree of autonomy. See *The Black and Decker Manufacturing Company*, 147 NLRB 825 (1964).

The Board considers evidence of local autonomy in daily operations and labor relations to be key considerations in assessing the appropriateness of single-store units in retail chain operations. For example, in *Haag Drug*, the Board found that one of 11 restaurants operated by an employer in a geographic area was an appropriate unit despite a “high degree of centralized administration,” including central profit-and-loss records, payroll functions, and chainwide handling of purchasing, vendor payments, and merchandising. 169 NLRB at 878. In finding the single-facility unit appropriate, the Board noted that the centralized operations bore “no direct relation to the employees’ day-to-day work and employee interests in the conditions of their employment.” *Id.* at 879. The Board explained:

More significant is whether or not the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters which make up their grievances and routine problems. It is in this framework that the community of interest of the employees in a single store takes on significance, for the handling of the day-to-day problems has relevance for all the employees in the store, but not necessarily for employees of the other stores. *Id.* at 878.
The evidence adduced at hearing demonstrates that store managers exercise discretion over many daily operational and labor relations matters. Store managers prepare work schedules, secure coverage outside of employees’ stated availabilities, and make work assignments based on their independent judgment of employees’ preferences and strengths. The record further establishes that SM Bracher directly handles hiring, orientation and training, evaluations, discipline, grievance adjustments, and promotions. The Employer maintains that upper-level management is involved behind the scenes, approving and guiding store managers’ decisions in these matters, but offered little specific evidence of this involvement. RD Arnold has only visited the Merchant Road store five to six times in fiscal year 2021, including three times since the Petition was filed in the instant case. Though district managers and the Employer’s human resources team may be involved in disciplinary action and employee terminations, the record contains no examples of district managers conducting independent investigations of disciplines, evaluations, or grievances.63 Regarding the hiring of employees, there is no record evidence of district managers or even the recruiter for the Knoxville market participating in applicant interviews. Moreover, district managers are simply not present in any individual store with enough frequency to serve as supervisory eyes and ears.64 DM Roderick, similar to other district managers, oversees too many stores to be regularly present in each of them.

Record evidence demonstrates that “the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees and is personally involved with the daily matters which make up their grievances and routine problems.” See Haag Drug, 169 NLRB 877, 878 (1968). The Employer generally contends that its automated tools and company-wide policies limit store managers’ discretion over in-store daily matters. However, the conclusory and generalized testimony provided by the Employer’s witnesses fails to rebut the specific record evidence that store managers play a significant role in adjusting schedules, approving time off and overtime, evaluating employees, conducting interviews and hiring employees, and imposing discipline.65

Accordingly, I find that store managers are vested with significant autonomy in

63 See Red Lobster, 300 NLRB at 911 (noting importance of independent investigation by upper-level management on matters such as discharges).

64 Red Lobster, 300 NLRB at 908, fn.4 (finding local autonomy in case where upper level supervisors were present in stores for a full day about once each week and possibly also on store managers’ days off in part because “there is insufficient staffing for persons in these two positions to be present in all restaurants at all times”); Renzetti’s Mkt., Inc., 238 NLRB 174, 175-76 (1978) (emphasizing that daily supervisor is “better able to comment on the job performance of employees over whom he has constant supervision”).

65 In Starbucks Corp., the Board noted that Employer could not rely on such “conclusory evidence to establish that Store Managers have little discretion in personnel matters, especially where there is specific evidence indicating otherwise.” Starbucks Corp., 371 NLRB No. 71.
handling a range of operational and labor relations matters at the local level,66 notwithstanding the existence of centralized policies and procedures.67

D. Employee Skills, Functions, and Working Conditions

66 Cargill, Inc., 336 NLRB 1114, 1114 (2001) (finding local autonomy when supervisors make assignments, supervise work, schedule maintenance inspections, impose discipline, handle initial employee complaints, and schedule vacations); Eschenbach-Baysa Co., 268 NLRB 550, 551 (1984) (finding local autonomy where stores managers conduct interviews, hire employees, grant time off, and resolve employee problems and complaints even though upper-level manager “reserves for himself many management prerogatives [because] he necessarily must leave many of the day-to-day decisions . . . to his managers”); Foodland of Ravenswood, 323 NLRB at 667 (“[R]esponsibility . . . to hire part-time employees, to schedule and assign employees, to approve overtime, to grant time off, to impose and recommend discipline, to evaluate employees and recommend their promotion, and to resolve and handle formal and informal employee grievances, constitutes significant evidence of local authority over employees’ status such that centralized control over other matters does not overcome the appropriateness of a single-store unit.”); Renzetti’s Mkt., 238 NLRB at 174 (finding merit to petitioner’s contention that such factors as centralized administrative control, uniform fringe benefits, and interdependence of the stores’ operations were outweighed by the “factor which is of chief concern to the employees,” the day-to-day working conditions, including discipline, scheduling, requests for leave, and handling routine grievances); Bud’s Thrift-T-Wise, 236 NLRB 1203, 1204 (1978) (finding that, though central labor policies circumscribed authority, store managers exercised autonomy in interviewing, scheduling, granting time-off, adjusting grievances, evaluating employees, and making effective recommendations for hiring, discipline, and firing); Lipman’s, 227 NLRB 1436, 1437 (1977) (“With regard to local autonomy, we find that supervisory personnel at the store level exercise considerable authority in personnel matters. While the personnel director makes final decisions as to discipline, schedules vacations, arranges for transfers, and handles grievances brought to her, in our opinion, the store manager and the personnel clerical at the downtown store also have and exercise substantial authority in the personnel area, in that the store manager evaluates and reprimands employees and the personnel clerical interviews, hires, schedules employee shifts, vacations, and overtime, and adjusts grievances.”); Walgreen Co., 198 NLRB 1138, 1138 (1972) (finding store manager’s autonomy significant where district managers visited individual store, at best, monthly and manager had authority for most hiring); Haag Drug, 169 NLRB at 879-80 (stating that store managers are generally autonomous in rating employee performance, hiring and firing, and handling routine grievances).

67 I have duly considered the cases Starbucks relies upon as support that this factor weighs in favor of a multi-facility unit. These cases are distinguishable. See, e.g., Kansas City Coors, 271 NLRB 1388, 1389-90 (1984) (hearing occurred immediately prior to consolidation into a single facility where employees would regularly work side-by-side); Super X Drugs of Illinois, Inc., 233 NLRB 1114, 1115 (1977) (district manager set hours employees are to work and allocated those hours among employees (ie, set schedules) and was directly involved in routine grievances and problems); Kirlin’s Inc. of Cent. Ill., 227 NLRB 1220 (1977) (upper-level management handled scheduling); Malco Theatres, Inc., 222 NLRB 81, 82 (1976) (greater degree of interchange and presence of district management on location as frequently as four times per week); Big Y Foods, Inc., 238 NLRB 860, 861 (1978) (upper-level managers on location multiple times per week “and may remain at a particular market the entire day,” independently resolved employee grievances, evaluated employee performance, and were responsible for interviewing and selecting prospective employees); Quality Food Mkts., 126 NLRB 349, 350 (1960) (greater interchange and predating presumption that single-store unit is appropriate in retail context).
No meaningful dispute exists that employees’ wages and benefits are uniform throughout the Knoxville market and established by corporate leadership. However, “[w]hile employee benefits have been centrally established, and the uniformity thereof is of some significance, no greater control or uniformity has been shown here than is characteristic of retail chain store operations generally.” Haag Drug, 169 NLRB at 879.

Likewise, employees’ skill sets are largely the same in Store #9780 as in any other café store in the Knoxville market. These facts are largely true of all the Employer’s stores nationwide. The 16 Employer-sought facilities are cafés with drive-thrus. As such, similarities in job functions exist across cafés with drive-thru stores in the Knoxville market in similar fashion to stores at a national level. However, the record shows that Store #9780 was the only store operating within its District for about six months during the pandemic, and SM Bracher made the decision to convert Store #9780 to a drive-thru only café. This difference yielded different layouts, equipment and staffing needs, and job responsibilities. The 16 Employer-sought stores also operate in different contexts, as some stores are located in Knox County while others are located in the greater Knoxville area in Loudon County (Store #23875), Anderson County (Store 8883), and Blount County (Store 11820). Store #10173 (the Cumberland store) is located within walking distance of the University of Tennessee, attracting a college student base. The Cumberland store may require additional staff during football games, demonstrating that the characteristics of each location matter to the working conditions of their staff.

Although the pandemic affected the job functions and working conditions of the employees at Store #9780 for a limited period of time and the Knoxville market stores may attract a different customer base, I find that the employees in the Knoxville market overall share similar skills, job functions, and working conditions. I note that standardized wages, benefits and skills are to be expected in a large retail chain. However, I find that any uniform skills, functions, and working conditions across the Knoxville market are outweighed by other factors, especially the lack of significant interchange and store manager’s local autonomy over personnel decisions.

E. Employee Interchange

Employee contact is considered interchange where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. However, a significant portion of the work force must be involved, and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. New Britain Transportation Co., 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant where during a 1-year period there were approximately 400 to

68 See Lipman’s, 227 NLRB at fn.7 (noting that two nearby stores had their own “identity as a distinct economic unit by virtue of the fact that one is known as the downtown store and the other is located in a shopping mall”); Hot Shoppes, Inc., 130 NLRB 138, 141 (1961) (finding operations “functionally distinct” where some workers catered at airport and others served in normal restaurants).
425 temporary employee interchanges among three terminals in a workforce of 87, and the temporary employees were directly supervised by the terminal manager of the terminal where the work was being performed. *Dayton Transport Corp.* 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc.*, 36 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required; the number of permanent employee transfers; and whether permanent employee transfers are voluntary. *New Britain Transportation Co.*, supra.

Employee interchange must be considered in total context. *Gray Drug Stores, Inc.*, 197 NLRB 924 (1972); *Carter Camera Shops*, 130 NLRB 276, 278 (1961). The Employer argues that its data shows significant interchange throughout the Knoxville market. It further emphasizes that employee interchange is facilitated by a corporate culture that “expects” employees to work anywhere in the district. The Employer relies on documentary evidence and the testimony of Dr. Turner to provide a statistical analysis of the mathematical inferences that can be reached based on the data of employee interchange at the petitioned-for store and those located in the Knoxville market. Although the record is replete with data on employee interchange, the Employer’s reliance on market wide trends and Dr. Turner’s statistical analysis is not sufficient evidence of regular interchange among the employees in the petitioned-for unit Store #9780 and within the Knoxville market.

In affirming the DDE in Buffalo 1, the Board affirmed the Regional Director’s conclusion that the level of interchange among the petitioned-for stores supported single-facility units, observing “that although the Employer has demonstrated that a significant percentage of employees work ‘at least one shift’ at another store ‘per year,’ this is not evidence of regular interchange sufficient to rebut the single-facility presumption” considering “that the petitioned-for stores ‘borrow’ only a very small percentage of their labor from other stores.” *Id.* (citing *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001)).69 Most recently, the Board affirmed the Regional Director’s findings in Mesa that the statistics proffered by the parties “must be assessed in the context of the relevant legal test, where the key question is the nature and degree of interchange and its significance in the context of collective bargaining.” *Starbucks Corp.*, 371 NLRB No. 71 (February 23, 2022).

In response to the decisions in Buffalo 1, Buffalo 2, and Mesa and to the Board’s decision, the Employer addressed the interchange data deficiencies provided in the prior cases by eliminating store managers70 and temporary and permanent transfers from its statistical

69 The Board nonetheless disavowed the “suggestion that Lipman’s, 227 NLRB 1436, 1438 (1977), stands for the proposition that permanent transfers are not relevant to the Board’s analysis of employee interchange in this context.” *Starbucks Corp.*, 2021 WL 5848184, at *1 (Dec. 7, 2021).

70 I note that ER. Ex. 1, Volume 3 confirms the employee number for SM Ashley Bracher, and her number is included with the employee data found in ER. Ex. 1, Vol. 1.
analysis and by limiting the data prior to March 2020 (to remove COVID-19 as a factor). The Employer argues that even with removing any data that may have been affected by COVID-19, Dr. Turner’s statistical analysis shows regular exchange among employees in the Knoxville market.

However, even with these corrections, the Employer’s underlying data still has deficiencies and fails to show regular interchange among the employees in the petitioned-for unit store and within the Knoxville market. The raw data provided by the Employer and relied upon by Dr. Turner for her statistical analysis contains numerous stores in District 314, Area 153, that are not included in the list of the 16 Employer-sought facilities. More significantly, the raw data contains employee information involving interchange of employees outside the Knoxville market and not connected to the petitioned-for unit store or any of the 16 Employer-sought facilities. As such, the interchange data may significantly skew Dr. Turner’s statistics related to borrowed partners because she may be relying on data outside the Knoxville market that have no relationship to the petitioned-for unit store.

The Employer’s underlying raw data contained in Employer Exhibit 1 undercuts the validity of the statistical analysis in these ways: 1) the raw data contains employee information, shifts, borrowed shifts, and hours worked for employees working at stores not included in the Knoxville market or to any of the 16 Employer-sought facilities; 2) the raw data contains employee information on shifts, hours and borrowed shifts occurring in 2022 despite the Employer’s representation that the raw data and Dr. Turner’s analysis were limited to April 29, 2019, through December 12, 2021; 3) Dr. Turner’s statistical analysis and charts depicting borrowing trends in the Knoxville market do not factor whether employees were borrowed due to temporary store closures, including store renovations; 4) that the raw data reflects hours reported as zero, but appearing to have been worked raises questions as to Dr. Turner’s statistical analysis took this factor into consideration; 5) Dr. Turner’s statistical analysis refers to market trends from 2019 through 2021 across the Knoxville market store and for Store #9780, yet there is no raw data information for any borrowed employees who worked at Store #9780 during fiscal year 2019; and 6) Dr. Turner provided borrowing trends for specific days of the week and months during the relevant time period, yet the raw data does not include the month and date when employees worked borrowed shifts.

In addition to the data deficiencies, the record evidence further brings into question the Employer’s assertions of a cultural expectation in which employees are expected to cover shifts throughout the market. The record evidence does not support the Employer’s assertions and

---

71 The Employer’s witness testified that the Knoxville market did not have any newly opened stores during the relevant time period and thus would not be included in the data interchange.

72 Numerous stores included in Employer Ex. 1 are located within District 314, but have no interchange with any of the 16 Employer-sought facilities. These include, but are not limited to, Stores #8602, #9926, #8555, #13504, #13505, #24260, and #28224. In addition to District 314, the data includes interchange with stores in other districts that have no interchange with any of the 16 Employer-sought facilities such as Districts 328, 297, 3008, 3136, and 2049.
instead indicates that employees are not required to accept additional work hours or shifts. The record reflects that employee interchange is strictly voluntary. Witness testimony shows that employees who wish to pick up an extra shift may do so voluntarily, and there is no expectation that they are required to do so.\(^73\) Moreover, no specific evidence was provided demonstrating that employees have been disciplined for not volunteering or for declining additional shifts. Ultimately, testimony supports the conclusion that employees have the option of accepting or volunteering for shifts or hours at other stores.

In affirming the Regional Director’s decision in Mesa, the Board noted that the interchange was all voluntary and therefore carried less weight in rebutting the single-facility presumption.\(^74\) *Starbucks Corp.*, 371 NLRB No. 71. Similarly, there is no evidence of any informal group chats used by the employees within the Knoxville market or any contact among any of the employees working at the different Knoxville market stores, including Store #9780 at issue here.\(^75\) There is also no evidence that employees at Store #9780 regularly pick up out-of-stock supplies from nearby locations. Even assuming arguendo that these facts were present, this point speaks more to the standardization of the Employer’s products than to the destruction of homogeneity of individual stores.\(^76\)

It is appropriate to give special consideration to interchange at the petitioned-for Store #9780, since it is the homogeneity of those employees that is the central question in assessing whether those employees constitute an appropriate unit. The Employer’s data is pivotal to this analysis. Namely, during fiscal year 2021, the percentage of hours worked at Store #9780 by borrowed employees amounted to less than 1% (0.57%) of the total number of hours worked by employees at Store #9780 that same year.\(^77\) Additionally, the percentage of shifts worked

\(^73\) The record shows that a sign-up sheet was posted at Store #9780 for additional shifts during the Christmas holiday at both Store #9780 and for the Employer’s store located at 40th and Broadway. The witness testified that the additional shifts at 40th and Broadway were strictly voluntary, and anyone who wished to sign-up merely placed their name on the list.

\(^74\) *New Britain Transp. Co.*, 330 NLRB 397, 398 (1999) (“[V]oluntary interchange is given less weight in determining if employees from different locations share a common identity”); *Red Lobster*, 300 NLRB at 911 (noting that “the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., *it is voluntary*”) (emphasis added).

\(^75\) *Hilander Foods*, 348 NLRB at 1203 (“There is no evidence that . . . employees have had frequent contact with employees at the other facilities as a result of central training, central meetings, community service projects, or the newsletter.”).

\(^76\) *Eschenbach-Boysa Co.*, 268 NLRB 550 (1984) (finding single store units appropriate notwithstanding that “[o]nce or twice a week, uniforms, small equipment, or food is transferred between the two restaurants to relieve temporary shortages”).

\(^77\) See ER. Ex. 1, Vol. 2, Q9. The record is unclear if the total number of worked hours includes only employees whose home store is Store #9780 or if includes all employees (with or without Store #9780 as their home store). This factor, however, does not underscore the fact that the interchange percentage is still less than 1%.
by borrowed employees at Store #9780 in 2021 amounted to only 0.74% of the total shifts worked at Store #9780 that same year. For fiscal year 2020, the percentage of hours worked at Store #9780 by borrowed employees amounted to 1.56% of the total number of hours worked at Store #9780 that year, while the percentage of shifts worked by borrowed employees amounted to 1.72% of the total number of shifts worked at Store #9780. Even though the Employer asserts that the raw data includes information beginning on April 29, 2019, there is no evidence of borrowed employees working at Store #9780 in fiscal year 2019. In Starbucks Corp., the petitioner presented similar statistics, and the Board recently affirmed that the available statistics did not establish that the petitioned-for unit had frequent or regular interchange with other employees in their district, but instead indicated that the interchange was “limited and infrequent.” Starbucks Corp., 371 NLRB No. 71.

The Employer relies on market wide trends to assert widespread interchange among the Knoxville market stores including Store #9780. However, Dr. Turner testified that her statistical analysis does not show how many actual employees from Store #9780 worked at another Knoxville market store or the number of borrowed employees who actually worked at Store #9780 between April 29, 2019, through December 12, 2021. The Employer’s raw data answers this question. In 2021, only four employees whose home store is Store #9780 worked shifts at another Knoxville market store; in 2020, only six employees worked shifts at another store; and in 2019, only four employees worked shifts at another store in 2021. As represented by the pie chart, the percentage of hours worked by employees whose home store is Store #9780 at other Knoxville market stores compared to the total number of hours worked by employees whose home store is Store #9780 was close to 0% (0.30%). The percentage of hours worked by borrowed employees at Store #9780 compared to the total number of hours worked by employees at Store #9780 during the relevant time period only amounted to less than 1% (0.97%).

Even according to the Employer’s own exhibit, the total number of borrowed hours and shifts within the entire Knoxville market during each fiscal year was less than 2%. In fiscal year 2021, the percentage of hours worked by borrowed employees in the Knoxville market was 0.81%, and the total number of shifts worked by borrowed employees was 0.91%.

In fiscal year 2020, the percentage of total hours worked by borrowed employees in the Knoxville market was 1.3%, and the percentage of total shifts worked by borrowed employees in the Knoxville market that same year was 1.26%. In fiscal year 2019, the percentage of hours worked by borrowed employees within the Knoxville market was 1.67%, and the percentage of shifts worked by borrowed employees was 1.95%.

Employer Exhibit 1 further showed that the percentage of borrowed hours worked by an employee whose home store is Store #9780 at another Knoxville market store was still less than 1% when compared to the total number of hours worked by employees at the respective

---

78 See ER. Ex. 1, Vol. 2, Q5.
borrowed stores. The percentage of hours worked at other Knoxville market stores by employees whose home store is #9780 between fiscal years 2019 and 2022 amounted to 0.23% of the total number of hours worked by employees at those borrowed stores. Additionally, the percentage of total shifts worked by Store #9780 employees at other stores in the Knoxville market amounted to 0.20% of the total number of shifts worked at the borrowed stores.

Such minimal numbers are not sufficient to demonstrate that a single facility’s homogeneity of employees has been destroyed or to rebut the single-facility presumption. Consequently, I find that the level of employee interchange supports the petitioned-for single-facility unit. While the Employer argues that a significant percentage of employees work “at least one shift” at another store “per year,” this is not evidence of regular interchange sufficient to rebut the single-facility presumption, especially because the data provided by the Employer indicate that the petitioned-for stores “borrow” only a very small percentage of their labor from other stores. See Cargill, Inc., 336 NLRB 1114, 1114 (2001).

F. Distance between Locations

Geography is frequently a matter of significance in resolving geographical scope issues. Dixie Bell Mills, Inc., 139 NLRB 629, 632 (1962); see also Van Lear Equipment, Inc., 336 NLRB 1059, 1063 (2001); D&L Transportation, 324 NLRB 160 (1997); New Britain Transportation Co., 339 NLRB 397, 398 (1999). Generally, plants that are close in proximity to each other are distinguished from those that are separated by meaningful geography. Id.

---

79 This analysis is different from the percentages represented in the pie charts in this decision, as the hours and shifts are being compared to the hours and shifts worked by the employees at the borrowed stores and not measured against the total number of hours and shifts worked by Store #9780 employees.

80 See ER. Ex. 1, Vol. 2, Q7. Percentages were calculated after totaling the number of total shifts (29,433), total number of borrowed shifts (61), total number of hours (199,423.04), and total number of borrowed hours (474.23).

81 Cf. Cargill, Inc., 336 NLRB at 1114, and New Britain Transportation, 330 NLRB at 398 with Purolator Courier Corp., 265 NLRB 659, 661 (1982) (interchange factor satisfied where 50 percent of the work force worked at other facilities each day and were frequently supervised by managers at other terminals) and Dayton Transp. Corp., 270 NLRB 1114 (1984) (presumption rebutted with 400 to 425 temporary employee interchanges between terminals among a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the point of dispatch).

82 I have carefully considered the cases Starbucks relies upon for support that this factor weighs in favor of a multi-facility unit and find them distinguishable. See, e.g., Budget Rent A Car Sys., 337 NLRB at 884-85 (regular daily contact between employees regarding shared fleet of rental cars and lack of local autonomy of branch managers); McDonald’s, 192 NLRB 878, 878 (1971) (transfers involuntary); Twenty-First Century Rest. of Nostrand Ave. Corp., 192 NLRB 881, 882 (1971) (involuntary transfers and daily visits by upper-level management).
The stores in the Knoxville market are not so proximate as to weigh strongly in favor of a larger 16-store unit. The Knoxville market comprises of two districts, 314 and 447. The petitioned-for unit Store #9780 is not located within District 447 (which contains the bulk of the stores in and around the Knoxville area). All 16 Employer-sought facilities are located within 26 miles from the petitioned-for Store #9780, with locations in the greater Knoxville area that include Lenoir City (26 miles), Oak Ridge (25.6 miles), Maryville (21.6 miles), Alcoa (16.6 miles), and Powell (3.7 miles). The petitioned-for Store #9780 is less than 11 miles from five stores but more than 12 miles from the majority of the 16 Employer-ought facilities. The Board has regularly found a multi-facility unit inappropriate in cases involving closer or similar proximities.\(^8\)

G. Bargaining History

That the Employer lacks a bargaining history for any store in the Knoxville market is at best a neutral factor. *Trane*, supra at 868, fn. 4. If anything, it lends some support to single facility units. *Lipman’s*, 227 NLRB 1436, 1438 (1977) (in finding single store units in retail chain appropriate, emphasizing “the fact that there is no bargaining history for any of these employees, and the fact that no labor organization seeks to represent the employees on a broader basis”).

IV. CONCLUSION

Based upon the record and in accordance with the discussion above, I find that the Petitioner’s petitioned-for single unit limited to Store #9780 is appropriate. I further find that given the lack of centralized control and employee interchange, the factors under the Board’s single facility test – similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history – are not sufficient to rebut the single-facility presumption.

No determination has been made concerning the eligibility of Assistant Store Managers, as such the employees in this classification, if any, are allowed to vote subject to challenge, with a decision on the eligibility of these individuals to be resolved in a post-election hearing accordingly, if necessary.

Based on the foregoing and the record as a whole, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

\(^8\) *Lipman’s*, 227 NLRB at fn.7 (1977) (finding stores located only 2 miles apart appropriate single-facility units); *Red Lobster*, 300 NLRB at 908, 912 (finding stores with an average distance of 7 miles apart and all within a 22-mile radius appropriate single-facility units); *New Britain Transp.*, 330 NLRB at 398 (“[G]eographic separation [of 6 to 12 miles], while not determinative, gains significance where, as here, there are other persuasive factors supporting the single-facility unit”).
2. The parties stipulate and I find that the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

The Employer, Starbucks Corporation, a Washington corporation with headquarters located in Seattle, Washington, and facilities located through the United States, including Store #9780 located at 116 Merchant Drive, Knoxville, Tennessee, is engaged in the retail operation of restaurants. In the past 12 months, a representative period of time, the Employer purchased and received goods at Store #9780 valued in excess of $50,000, which were shipped to Store #9780 directly from points outside of the State of Tennessee.

3. The parties stipulate and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties stipulate and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

   Included: All full-time and part-time Baristas and Shift Supervisors employed by the Employer at its Store #9780 located at 115 Merchant Drive, Knoxville, Tennessee.

   Excluded: All Store Managers, office clericals, guards and supervisors as defined by the Act.

   Employees holding the title of Assistant Store Manager will be permitted to vote subject to challenge, because the issue relates to the eligibility or inclusion of a portion of the unit or units involved, which does not significantly impact the size or character of the unit or units.

**DIRECTION OF MAIL BALLOT ELECTION**

The National Labor Relations Board will conduct a secret mail ballot election among the employees in the unit found appropriate as described above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Workers United.

**A. Election Details**
The elections will be conducted by mail ballot. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. At 2:00PM on **Monday, March 7, 2022**, ballots will be mailed to voters from an office of the National Labor Relations Board, Region 10.

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 automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 10 office by close of regular business on **Monday, March 28, 2022**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by March 14, 2022 should communicate immediately with the National Labor Relations Board by either calling the Region 10 Office at (404) 331-2896 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19, I further direct that the ballot count will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) at 1:00PM on **Tuesday, March 29, 2022**. Each party will be allowed to have an observer attend the virtual ballot count.

**B. Voting Eligibility**

Eligible to vote are those in the above unit who were employed during the payroll period ending Sunday, February 13, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

OTHERS PERMITTED TO VOTE: At this time, no decision has been made regarding whether Assistant Store Managers are included in, or excluded from, the bargaining unit, and individuals in this classifications may vote in the election but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3)
employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the voter list must be received by the regional director and the parties by Monday, February 28, 2022. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list. Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, 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. Because the list will be used during the election, 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. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters. The Petitioner has waived the full ten days to have the voter list.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be
posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

A request for review must be E- Filed through the Agency’s website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency’s E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.
Starbucks Corporation
Case 10-RC-288098

Dated: February 24, 2022

Lisa Y. Henderson
Regional Director
National Labor Relations Board
Region 10
401 W Peachtree St NW Ste 472
Atlanta, GA 30308