DECISION AND DIRECTION OF ELECTIONS

Starbucks Corporation (“Starbucks” or “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 February 1, 2022, Workers United (“Petitioner” or “Union”) filed three representation petitions with the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act (“Act”). By these petitions, the Union seeks single-facility elections in wall-to-wall units at the Employer’s store located at 402 College Avenue, Suite 402, Ithaca, New York 14850 (Case 03-RC-289793); the Employer’s store located at 722 South Meadow Street, Ithaca, New York 14850 (Case 03-RC-289796); and the Employer’s store located at 130 East Seneca Street, Ithaca, New York 14850 (Case 03-RC-289805). On February 8, I issued an order consolidating these cases.

Petitioner asserts that the petitioned-for units are presumptively appropriate. The Employer failed to timely serve its Statements of Position raising an issue to the conduct of elections in the petitioned-for units. Section 102.66(d) of the Board’s Rules and Regulations

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1 All dates are in 2022 unless specified.
2 The proposed units consist of the following employees:

**Including:** All full-time and part-time Baristas, Shift Supervisors, and Assistant Store Managers.

**Excluding:** Office clerical employees, guards, professional employees and supervisors as defined in the Act.
precludes a party from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue where the party fails to raise the issue in its timely Statement of Position. See, e.g., *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13 (2017) (adopting Regional Director’s decision to reject employer’s statement of position and preclude litigation of issues raised therein based solely on the employer’s failure to timely serve its statement of position on the petitioner); see also *Brunswick Bowling Prods., LLC*, 364 NLRB No. 96 (2016) (overturning Regional Director’s decision to accept statement of position that was timely filed, but served 3 hours and 20 minutes late, and allow union to litigate issues raised therein). As a result, on February 18, I issued an Order precluding the Employer from raising arguments, presenting evidence, or otherwise litigating any issues raised in its untimely served Statements of Position.

On February 22, a hearing officer for the Board held a hearing by videoconference, which was conducted in accordance with the February 18th Order. The parties presented, and I have duly considered, their positions as to the instant proceeding. Thereafter, the parties filed, and I duly considered, their post-hearing briefs.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. In view of Section 102.66(d) and my February 18th Order, I instructed the hearing officer to decline to take evidence or allow argument from the Employer on the question of whether the petitioned-for units are appropriate. I hereby affirm those instructions based on Section 102.66(d) of the Board’s Rules and Regulations. I also find that the hearing officer’s other rulings are free from prejudicial error and hereby affirm them; the Employer is engaged in commerce within the meaning of the Act; it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner is a labor organization within the meaning of the Act; and a question affecting commerce exists concerning the representation of certain of Starbucks’ employees.

The Board has long held that it has a statutory obligation to determine the appropriate bargaining unit in each case and that “absent a stipulated agreement, presumption, or rule, the Board must be able to find—based on some record evidence—that the proposed unit is an appropriate one for bargaining before directing an election in that unit.” *Allen Healthcare Servs.*, 332 NLRB 1308, 1309 (2000); *Williams-Sonoma Direct*, 365 NLRB No. 13. Pursuant to this precedent, I make the following determinations.
A 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.” *Sutter West Bay Hosps.*, 357 NLRB 197, 200 (2011). This presumption applies in the retail setting. *Sav-On Drugs*, 138 NLRB 1032 (1962); accord *Frisch’s Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964). As the Board stated in *Haag Drug*, “Our 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, 877 (1968) (emphasis in original). Here, the Employer has been precluded from presenting evidence or argument with respect to the appropriateness of the units and, accordingly, cannot overcome this presumption. I therefore find that the Employer has not sustained its burden of demonstrating that the petitioned-for, single-facility units are inappropriate.

Similarly, Congress expressly contemplated facility-wide units in Section 9(b) of the Act. Thus, the Board has long held that “[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.” *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962). The burden is on the Employer to demonstrate that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit. *Airco, Inc.* 273 NLRB 348, 349 (1984). Here, the Employer has been precluded from presenting evidence or argument with respect to the appropriateness of the proposed facility-wide units and, accordingly, cannot meet that burden. I therefore find that the petitioned-for wall-to-wall units are appropriate.

Accordingly, I shall direct elections in each of the petitioned-for units.

**Conclusion**

Consistent with the precedent set forth herein, the petitioned-for units are appropriate for bargaining.

It is hereby ordered that Starbucks’ store located at 402 College Avenue, Suite 402, Ithaca, New York 14850 (Case 03-RC-289793) proceed to an election in the following unit:

Including: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 402 College Avenue, Suite 402, Ithaca, New York 14850.
Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.

It is hereby further ordered that Starbucks’ store located at 722 South Meadow Street, Ithaca, New York 14850 (Case 03-RC-289796) proceed to an election in the following unit:
Including: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 722 South Meadow Street, Ithaca, New York 14850.
Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.

It is hereby further ordered that Starbucks’ store located at 130 East Seneca Street, Ithaca, New York 14850 (Case 03-RC-289805) proceed to an election in the following unit:
Including: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 130 East Seneca Street, Ithaca, New York 14850.
Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.

Method of Elections

The parties stipulated that mail ballot elections are appropriate. Accordingly, I find that the elections should be conducted by that method.

DIRECTION OF ELECTIONS

Elections by secret ballot will be conducted by the undersigned among the employees in the units found appropriate in this Decision on the dates, times, places and manner set forth in the Notices of Election which will issue subsequent to this Decision. Employees will vote on whether they wish to be represented for purposes of collective bargaining by Workers United.

A. Elections Details

The elections will be conducted by mail ballot. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining units. At 5:00 p.m. on March 16, 2022, ballots will be mailed to voters by National Labor Relations Board, Region 3 Office. 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 3 office by close of business on April 6, 2022.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by March 28, 2022 should communicate immediately with the National Labor
Relations Board by either calling the Region 3 Office at (716) 551-4931 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot counts will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) at 1:00 p.m. on April 8, 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 units who were employed during the payroll period ending March 6, 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 elections 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.

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 elections date; and (3) employees who are engaged in an economic strike that began more than 12 months before the elections date and who have been permanently replaced.

C. Voter Lists

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 for each voting unit. The Employer must provide a separate voting list for each voting unit.

The Petitioner waived the full ten days to receive the list. To be timely filed and served, the list must be received by the Regional Director and the parties by March 9, 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 lists in the required form, the lists 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 lists must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because each list will be used during the elections, 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 each 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, each list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The lists 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(s) whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve each list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter lists for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notices of Election forthcoming in conspicuous places, including all places where notices to employees in the units found appropriate are customarily posted. The Notices must be posted so all pages of the Notices are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the units found appropriate, the Employer must also distribute the Notices of Election electronically to those employees. The Employer must post copies of the Notices at least 3 full working days prior to 12:01 a.m. of the day of the elections and copies must remain posted until the end of the elections. 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.
Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request(s) 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(s) for review of this decision after the elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request(s) for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations. The request(s) for review must further identify by case number(s) which decision(s) directing election the party is asking the Board to review.

A request(s) for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request(s) for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number(s), and follow the detailed instructions. If not E-Filed, the request(s) for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request(s) for review must serve a copy of the request(s) on the other parties and file a copy with the Regional Director. A certificate(s) of service must be filed with the Board together with the request(s) for review.

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

Dated: March 7, 2022.

/s/LINDA M. LESLIE

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465