UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

STARBUCKS CORPORATION
Employer

and

CHICAGO AND MIDWEST REGIONAL
JOINT BOARD, WORKERS
UNITED/SEIU
Petitioner

DECISION AND DIRECTION OF ELECTION

On December 30, 2021, the Chicago and Midwest Regional Joint Board, Workers United/SEIU (Petitioner) filed a petition to represent certain employees of Starbucks Corporation (Employer). 1 Petitioner seeks a single-facility mail-ballot election for a bargaining unit (the petitioned-for unit) that includes all full-time and regular part-time Baristas and Shift Supervisors working at Employer’s Store 10867 located at 2800 Rock Creek Circle, A1, Superior, Colorado (Store 10867 or Rock Creek store). 2 The unit excludes all store managers, office clericals, guards, professional employees, and supervisors. There are approximately 30 employees in the petitioned-for store: 23 baristas and 7 shift supervisors. 3

The Employer contends that the petitioned-for single-facility unit is inappropriate and must include all the facilities in the Employer’s District 460, totaling 11 facilities spanning across six different cities. There are approximately 329 employees in the Employer’s proposed unit. The parties agree that if an election is held, it should be by mail-ballot. 4

A hearing was held before a hearing officer of the National Labor Relations Board (the Board) via videoconference over three days, beginning on January 24, 2022, and ending on January 26, 2022, at which time the parties were afforded the opportunity to present evidence and to state their respective positions on the record. The parties submitted post-hearing briefs, which I have carefully considered.

1 In this decision, “Tr.” references are to the transcript; BDX, ERX, PX refer to the Board’s, the Employer’s and the Petitioner’s exhibits, respectively.
2 The petition mistakenly lists Store 10867’s location as “Louisville.” All parties agree, however, that the petitioned-for store’s address is as set forth above. Inasmuch as there are two stores in Superior, Colorado, petitioned-for Store 10867 is referred to by its street address on Rock Creek Circle rather than city.
3 The Employer refers to their employees as “partners.” Throughout this decision, the terms “employee” and “partner” will be used interchangeably.
4 Petitioner has confirmed that it is willing to proceed to an election in any unit found appropriate and, if an election is directed for a unit other than a single store, the Petitioner agrees to the inclusion of any café attendants in the unit. In that regard, as reflected in BDX 3, café attendants are not employed at the petitioned-for location.
Having considered the parties’ positions, evidence, and the entire record, I find that the petitioned-for unit limited to Store 10867 is an appropriate unit for collective bargaining purposes. I am directing an election by mail-ballot.\(^5\)

I. **Issues and Position of Parties**

The only issue before me is whether the Employer has met its “heavy burden” of overcoming the presumption that the single-store unit sought by the Petitioner is appropriate. See *California Pacific Med. Ctr.*, 357 NLRB 197, 200 (2011).

Petitioner argues that the Employer has failed to rebut this presumption. The Petitioner relies on record evidence that it claims demonstrates that the Employer’s store managers exercise meaningful control over labor relations and store operations without significant oversight from district management. The Petitioner maintains that the employee interchange between district stores is infrequent and voluntary and does not destroy the petitioned-for unit’s homogeneity. Given the store manager’s significant control of areas that most directly affect the employees’ daily working lives, and the lack of significant employee interchange, the Employer’s evidence of corporate-wide policies applicable at each store is insufficient to rebut the presumption of the appropriateness of a single-store unit in a retail industry setting.

The Employer argues that its evidence of centralized operations and substantial interchange between stores rebuts the presumption. The Employer contends that its centralized policies regarding labor relations, employee skills, functions, training, wages, benefits, and working conditions support its claim that the smallest appropriate unit must encompass all 11 stores in District 460. The Employer also relies on the stores’ geographic proximity. Moreover, the Employer contends that anything less than a district-wide unit would upset labor relations and would unlawfully give controlling effect to the Petitioner’s extent of organization.

II. **Record Evidence**

A. **Employer’s Operations and Management Structure and Overview of Store 10867**

The Employer operates in over 80 markets worldwide, and owns and operates over 8,000 stores in the United States. It organizes its stores into 12 regions. A regional vice-president heads each region. The regions are then divided into areas that are headed by regional directors, who report to the respective regional vice-president. Each area is then further divided into districts headed by district managers, who report to the regional director. Each store manager reports to a district manager.

\(^5\) The parties have agreed to the incorporation of certain testimony and exhibits from previous hearings involving the same parties and the same issue. (BDX 2.) Therefore, I have taken administrative notice of the following records: (1) Case Nos. 03-RC-282115, 03-RC-282127, and 03-RC-282139 (*Buffalo I*) (2) 28-RC-286566 (*Mesa I*); and (3) 03-RC-285929, 03-RC-285986, and 03-RC-285989 (*Buffalo II*). “BI” references are to the *Buffalo I* record, “MI” is to the *Mesa I* record, and “BII” references are to the *Buffalo II* record.
The Employer strives to ensure that each facility provides what it refers to as the “Starbucks experience,” which is essentially a consistent environment for its customers nationwide. To do so, the Employer relies on detailed operational plans, devised at the national level. Decisions about store design, equipment, placement, marketing, and promotions, store budgets, hours of operation, and contracts with vendors and contractors are made at the national level. The Employer maintains various technologies (discussed below) administered at the corporate level to assist with supply orders, scheduling, store operations, and consistency in stores’ application of human resource policies.

This case involves Store 10867, which is one of 11 stores located in District 460, and one of two stores in Superior, Colorado. District 460 spans 6 cities. There is a District Manager for District 460 who has been in that position since December 27, 2021, and the Store Manager of the Rock Creek location reports to that District Manager.

The District Manager is accountable for the customer experience and the business at all stores within the district. The District Manager for District 460 estimated that he spends about 75 percent of his time visiting the 11 stores in his district, and that he spends roughly two hours per week at each store. During store visits, he spends his time coaching store managers. In doing so, the District Manager relies on the personal development plan and the store plan (or goal sheet) that the Store Manager has created along with the District Manager’s input and direction concerning what should be added. Though both work to create the plans that are approved by the District Manager, the Store Manager is responsible for implementation, using personal judgment based on what is happening at their store.

Each week, the District Manager holds a district “huddle” with all the store managers and assistant store managers to discuss planning, goals for the week and quarter, and needs the store managers may have. “Peer Planning documents” concerning promotions, key learnings, and agendas for upcoming periods or promotions are discussed at these meetings. In addition, the District Manager for District 460 will conduct follow-up meetings with individual store managers within two to five weeks after such discussions. In that regard, the District Manager testified that he contacts the Store Manager for the Rock Creek store by text, telephone, email, video conferencing, or when visiting the store three or four times a week.

The District Manager also conducts observation and coaching visits at the stores in his district. The District Manager gave an example where he observed and discussed the closing practice of a new shift supervisor at a store and gave advice on how to follow up to ensure that employees feel supported and have the requisite skills and resources.

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

The Store Manager for the Rock Creek store has been in that position since July 2021. The Employer describes the store manager position in its employee handbook, called the “Partner Guide,” as follows:

---

6 District 460 is part of Area 121 and the Western Mountain Region, which is overseen by a Regional Vice President. The Western Mountain Region covers about 12 states, including Colorado.
The store manager is ultimately in charge of all store operations and directs the work of the assistant store manager(s), shift managers (where applicable), shift supervisors, and baristas. The store manager is responsible for personnel decisions, scheduling, payroll and fiscal decisions.

Each store has baristas and shift supervisors, while some also have assistant store managers and café attendants, but not at the Rock Creek Store. Baristas are responsible for making the beverages, performing cash register transactions and ensuring store cleanliness; shift supervisors performs barista duties and help guide the work of others.

The Employer maintains a database of job applicants called “Taleo,” where applicants apply online. Applicants can apply for hire at several stores and the store that hires them is considered to be their “home store.” The Store Manager is responsible for interviewing, hiring, and overseeing the training of new applicants, with no involvement by the District Manager - a practice consistent with other districts. The Store Manager at the Rock Creek store testified that she uses the Employer’s standard interview questions and will try interview an applicant along with another Store Manager when scheduling permits. If that is not possible, the Rock Creek Store Manager testified that she would send the candidate to another manager’s store for an interview. The other Store Manager will share the interview responses with the Rock Creek store manager and discuss impressions of the applicant, but the Rock Creek Store Manager makes the ultimate decision. After the selection of the applicant, notification of hire is issued to the employee through the Taleo system. The Store Manager directs the new hire’s orientation and conducts the “first sip,” where the Store Manager discusses the Employer and its operations, reviews various Employer policies, and shares coffee with the new partner. At the first sip, the new partner receives the “Partner Guide,” which details the Employer policies, standards, and procedures.

The Store Manager is responsible for scheduling and approving or denying time-off requests. The record is devoid of any evidence that the District Manager is involved in these requests. The Employer provides the two applications to assist with scheduling: the “Partner Planning” and “Partner Hours” tools. The Partner Planning tool sets forth the allotted partner counts and hours for the store, which the store manager follows. However, a Store Manager can recommend deviations from Partner Planning recommendations to the District Manager, and those recommendations are at times approved. The Partner Hours tool generates schedules. The Rock Creek Store Manager tries to use that tool, but mostly she uses past scheduling reports because Partner Hours is often “not accurate” with how the store is currently conducting business. The Store Manager also processes payroll, verifies the hours a partner works, and fixes any issues that a partner raises regarding their pay. The District Manager is not involved in these tasks.

---

7 A Shift Supervisor testified that she was unaware that a second interview was being conducted for new barista applicants at the Rock Creek store. She testified that when she was first hired in 2016 at a nearby store in Louisville, Colorado, she was interviewed once by the store manager and was offered a position at the end of the interview. The Shift Supervisor left that position for a time and was interviewed and hired for a position in Maine, without going to an interview with another manager. She then transferred to the Rock Creek store in May 2019.
The Store Manager for the Rock Creek Store will typically designate a shift supervisor to be the “keyholder,” the person designated to be in charge of the cash management and funds. A store manager can also serve as keyholder. The keyholder duties also involve being the “play caller,” and that person determines where partners will be on the floor and when. To assist the play caller, the Employer has created, at the corporate level, the “Play Builder” tool that projects in-store workflow, product needs, and employee tasks and assignments. The record establishes that the Rock Creek Store Manager and partners can and do deviate from the Play Builder. The record testimony established that the tool is not widely used at the Rock Creek store, or at the stores at issue in Buffalo I and Mesa I, with partners and shift supervisors testifying that it fails to account for what is actually occurring at the individual store. The Store Manager and the shift supervisors make adjustments to these corporate routines based on the skillset of the scheduled partners and what kind of day they are having.

The Store Manager is responsible for inventory and ensures the accuracy of an inventory order, sometimes assisted by the shift supervisor. To assist in preparing inventory, the Employer makes available the “Inventory Management System” and a “Par Builder Tool,” which details the anticipated amount of product that a store should need to order. In maintaining inventory, the Rock Creek store has lists tailored to its needs that the Store Manager created. At times when ordering inventory, the Store Manager deviates from the par, and has to estimate what is needed based on the storage space available at the store.

The Employer issues each store specific guidance and direction on merchandizing and how it should be displayed in the store. This guidance is known as the “Siren’s Eye.” Store managers do vary from or adjust this guidance to suit their specific facility. Pricing is uniform across stores. However, the Store Manager in Rock Creek has permitted partners to put items on sale so they are not wasted.

The Store Manager has authority to promote a partner to the training barista position, which involves a training process and results in additional compensation. The Store Manager can recommend and effectuate a promotion to shift supervisor from within the store. Partners formally apply for the shift supervisor position using the Employer’s Taleo system. The District Manager for District 460 testified that he is responsible for approving promotions to shift supervisor, but he also confirmed that the Store Manager makes the promotion recommendation. For example, a partner at the Rock Creek store testified that she had conversations with the Store Manager about development opportunities. When shift supervisor positions became available, the Store Manager arranges interviews at neighboring stores, but the home store manager does

---

8 A Shift Supervisor from the Rock Creek Store described the “Play Caller” as an application where the time of day and the number of partners at work are entered and that the program will then state where employees can be placed. The description of the tool provided by this Shift Supervisor is consistent with the testimony provided by the Store Manager concerning the “Play Builder” tool and that of another Shift Supervisor at that store. One Shift Supervisor testified that she does not use the Play Builder application to assign roles but shift supervisors in training are more likely to use it. Another Shift Supervisor at the Rock Creek Store confirmed that she used the tool when she started in that position, but no longer used it once she was trained.

9 The Employer’s Senior Vice-President for Operation Services and Siren Retail corroborates this authority, testifying that store managers can make adjustments to the store inventory. Testimony about other stores confirms this practice.
not participate in those interviews. The Store Manager kept the partner informed about and ultimately facilitated that promotion. Thus, the record shows that a recommended candidate for a shift supervisor position must be interviewed by two other store managers in that district. Although two other store managers interview the candidate, it is the home store manager who facilitates the process and recommends the individual.

The Employer has a progressive disciplinary policy that has the following steps: verbal coaching, documented coaching, final coaching, and separation. The record establishes that the store manager will involve the district manager in the final coaching and separation. To assist with disciplinary decisions and corrective actions, the Employer provides the Virtual Coach tool, which provides a series of questions and then establishes outcomes for certain partner misconduct. The District Manager for District 460 testified that store managers are required to use that tool when issuing discipline. The Store Manager for the Rock Creek Store, however, did not state that she ever used that tool when issuing corrective actions. Rather, the Store Manager testified that when issuing corrective actions she first talks to the employee, and then checks the Partner Guide and consults with other Store Managers to see if they had a similar situation.

When partners have a conflict with another partner, they go to the Store Manager for assistance. The Employer makes available various corporate-wide resources such as the Partner Resource Support Center and the Ethics & Compliance Helpline. While two shift supervisors testified that they were aware of the existence of resources outside of their store for addressing problems, the record does not disclose that any Rock Creek store partner utilized such resources when working at that store. Rather, the two partners testified about relying on their Store Manager for assistance. The Partner Guide directs employees to contact their store manager on various matters, including questions regarding employee dress code and time-off requests.

C. Employee Skills, Functions, and Working Conditions

The employees in the 11 stores throughout District 460 share the same wages and benefits that are uniform throughout all Employer facilities; details of these terms and conditions are set forth in the Partner Guide, which is applicable to all partners. Partners receive additional compensation as barista trainers, and all partners are eligible for bonuses, either for performance or by referring a candidate to the Employer. Employees receive the same vacation, time-off, and family leave benefits; health, dental, vision, life and disability insurances; stock grants; investment and 401(k) plans; education benefits; COVID-19 benefits; food discounts; and free coffee and food while working.

All District 460 employees are subject to the same national personnel policies and operating procedures as set forth in the Partner Guide. These procedures govern opening the store, clocking in and out, stocking and displaying merchandise, placing and closing transactions, preparing food and drinks, using the same uniforms and equipment, employee orientation and training and development. The store hours within District 460 are set at the corporate level. The hours, however, are not entirely uniform and vary throughout the district. A store manager cannot vary these hours, and the district manager can make decisions regarding temporary hours.
While the Employer does provide the training modules and instructions for the “first sip,” the evidence shows that training may vary. A Shift Supervisor from the Rock Creek Store testified that an outline is followed to get the role (such as the espresso bar) done, but that training is “unique, depending on the situation, the people, and the person.” She also explained that training is usually tailored to the individual store and store culture, stating that this is necessary because each store is geographically different and has different customers. The store manager can vary the training based on the availability of the barista trainer and can also tailor the training to the individual partner and to the store’s culture.

D. Employee Interchange

When a partner needs to find someone to cover their shift, the partner is responsible for finding a replacement and uses a variety of methods to do so. Partners at the Rock Creek store may send a message to other partners to see if they would be willing to work on their day off or to switch shifts. The Store Manager will also provide assistance in finding coverage by calling partners on the roster. When a store needs to fill a vacant shift and no partners from that store are available, stores can rely on “borrowed partners,” which is a partner that works outside of their home store.

The Store Manager for the Rock Creek Store testified that she believed she could require a partner to work at another store. In making this statement, the Store Manager relied on a partner availability form that employees sign when hired which states, “depending on business needs a partner may be assigned to work at a [Company] store other than the normal place of work and the partner will be expected to do so.” The Store Manager explained, however, that she has never done so and has in fact never scheduled a borrowed partner at the Rock Creek Store. Two Shift Supervisors testified that partners are not required to work at other stores, that no discipline results from refusing to do so, and they have very infrequently worked at other stores.

Two Shift Supervisors testified to limited contact with borrowed partners in their store. A Shift Supervisor testified that when there was an all-staff meeting when the new Rock Creek Store Manager was being introduced, the store was staffed by borrowed employees on that occasion. The Shift Supervisor further testified that she had not seen many borrowed partners at her store. Another Shift Supervisor testified that there were borrowed partners at the Rock Creek store for a period of about three weeks when there were a number of employees who called-out due to illness. Otherwise, the Shift Supervisor did not recall seeing borrowed partners at the store.

10 One Shift Supervisor at the Rock Creek store testified that when she needed coverage when she was ill, the Store Manager provided the telephone numbers for two other stores so she could call to look for coverage. She was told that they would ask around, but the witness was unsure whether anyone volunteered to work her shifts.

11 This testimony is consistent with testimony from other districts, see, e.g., BI Tr. 538-39, 555, 674-76, 706; BII Tr. 225, 286; MI Tr. 300, 392.

12 There is limited evidence concerning the store managers’ role in permanent transfers into or from their stores. Although there was testimony by a Shift Supervisor that she transferred into the Rock Creek store from a store in Maine, there was little evidence about what role, if any, the Store Manager may have had in that transfer. The District Manager testified that the partner completes a transfer request form and that he is responsible for approving transfers in his district to another.
The Employer provided data regarding the use of “borrowed partners” in District 460 during the time period covering April 29, 2019 through December 26, 2021, and called a witness, economist Dr. Abby Turner, to explain that data.13

Ms. Turner testified that the data showed the following regarding the district-wide use of borrowed partners in District 460:

- Approximately 66% (about two-thirds) of partners worked in only one store during that period
- Approximately 34% worked in two or more stores
- Approximately 24.3% of store days use borrowed labor
- On any given day, the average percentage of borrowed partners district-wide is 3.1%. (Conversely, about 97% of partners district-wide are not borrowed.)

The data showed the following regarding the Rock Creek store’s borrowed partner practice during the same period:

- Approximately 61% of partners ever working in that store worked in 2 or more stores.
- Less than half (about 39%) of Rock Creek store partners work only in that store.
- Approximately 58% of partners working in Store 10867 are working in that store as their home store, while the other 42% of partners are assigned to other home stores.
- Applying all sensitivity controls, about 6% of the days that the Rock Creek store was open, it used at least one borrowed partner.

The Union, using the Employer’s own data,14 presents its analysis with an emphasis on the specifics of the shifts and hours worked by borrowed partners at the Rock Creek store:

- In the prior 2020 fiscal year ending October 3, 2020, borrowed partners worked 2.29% of the shifts and 1.95% of hours at the Rock Creek store.
- The Employer’s 2021 fiscal year data that ended October 3, 2021, shows that borrowed partners worked 0.43% of shifts, and 0.32% of hours at the Rock Creek store.

E. Distance Between Locations

District 460 covers 11 stores and spans six different cities located between Denver and Boulder, Colorado: Westminster, Louisville, Lafayette, Superior, Broomfield, and Erie. The Employer provided maps showing the location of the various stores, but did not provide the distances between the stores. As such, I have taken administrative notice of the approximate

---

13 The Employer presented its interchange data through a series of just under 50 pages of graphs and charts, which Dr. Turner explained. (ERX 314; pdf pp. 607-655.) The data underlying this analysis is presented in ERX 301(b) (pdf pp. 493-502) and ERX 315. In some of the charts and graphs, Dr. Turner took into account special circumstances (sensitivity controls) that could affect the data, such as the Covid-19 pandemic, the opening and closing of stores, and the practice of borrowing store managers.

14 ERX 301(b) (pdf p. 501.)
distance between the Rock Creek store and the other Employer facilities located within District 460. The distance has been determined using Google Maps (https://www.google.com/maps).

The closest stores to Store 10867 are located 2.2 miles away in Broomfield and 2.6 miles away, also in Superior. The farthest store is in Erie, located 8.9 miles away. Two stores are located over 7.5 miles away in Lafayette (7.6 miles and 7.9 miles). Two stores are approximately 6 miles away in Westminster (6.2 miles and 6 miles). Three stores are between 3.5 miles to just under 4.5 miles away in Louisville (3.5 miles), and Broomfield (4 miles and 4.4 miles).

F. Bargaining History

The Employer has no bargaining history with Store 10867 or any store in District 460.

III. Unit Appropriateness and the Single-Facility Presumption

The Board will approve a petitioned-for unit so long as it is an appropriate unit for purposes of collective bargaining. It need not be “necessarily the single most appropriate unit,” Am. Hosp. Ass’n v. NLRB, 499 U.S. 606, 610 (1991), and the fact that another unit may also be appropriate does not render the petitioned-for unit inappropriate.

In deciding unit determination cases involving multi-store retail chain employers, the Board has adopted the view that a single store is a presumptively appropriate unit for bargaining as is the case with other multi-plant enterprises. Haag Drug Company, 169 NLRB 877 (1968). Thus, to rebut the presumption it must be shown that unit “has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” New Britain Transp. Co., 330 NLRB 397, 397 (1999).

In determining whether the presumption has been rebutted, the Board considers (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) degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any. Hilander Foods, 348 NLRB 1200, 1200 (2006). A party seeking to rebut the single-facility presumption bears a “heavy burden.” Cal. Pac. Med. Ctr., 357 NLRB 197, 197 (2011) (internal quotation omitted).

IV. The Petitioned-For Unit is Appropriate

Applying these principles to the facts of this proceeding, I find that the petitioned-for single-store unit is appropriate. As a single-facility unit, the petitioned-for unit is presumptively appropriate and the Employer has not met its heavy burden of rebutting that presumption. Its evidence has failed to demonstrate that the eleven stores within District 460 are so functionally integrated that the petitioned-for store here has lost its separate identity. The Employer has also not shown that

---

15 See Bud Antle, Inc., 361 NLRB 873 (2014), (incorporating by reference Bud Antle, Inc., 359 NLRB 1257 (2013), and specifically footnote 3 of 359 NLRB at 1257, where the Board takes administrative notice of approximate distances based on Google Maps).
employee interchange is so frequent and regular that it has destroyed Store 10868’s homogeneity. In finding the presumption unrebutted, my decision is consistent with a recent Board decision involving another Employer facility and rejecting arguments nearly identical to those that the Employer makes here. See Starbucks Corp., 371 NLRB No. 71 (2022).\(^\text{16}\)

A. Centralized Control Over Daily Operations and Labor Relations

An employer’s centralized control over multiple facilities weighs in favor of a multi-facility bargaining unit. Trane, 339 NLRB 866, 867-68 (2003). However, “the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single location presumption.” Cal. Pac., 357 NLRB at 198. Accordingly, evidence of high-level centralization does not rebut the single-facility presumption where other evidence shows local control over day-to-day operations. New Britain Transp., 330 NLRB at 397. The circuit courts have solidly agreed with the Board that centralized control over labor policies will not preclude a single-store bargaining unit in a retail setting. Friendly Ice Cream Corp. v. NLRB, 507 F.2d 570, 577-78 (1st Cir. 1983); Walgreen Co. v. NLRB, 564 F.2d 751, 754 (7th Cir. 1977); NLRB v. Lerner Stores, 506 F.2d 706, 708 (9th Cir. 1974). These cases have emphasized that tying a bargaining unit to a company’s administrative structure may be unduly prejudicial to the right of self-organization under the Act. Lerner Stores, 506 F.2d at 708. Thus, while “a considerable degree of centralized administration in the functioning of . . . stores” is “common in retail chain operations, and particularly in food chains,” chainwide uniformity “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; accord Lerner Stores, 506 F.2d at 708, Walgreens, 564 F.2d at 754.

The Employer argues the District Manager has substantial interaction with each of the stores in his district. The record demonstrates, however, that the contacts are primarily with the store managers rather than the employees. The evidence does not show that the District Manager visits the Rock Creek store frequently or for extended periods, or that the District Manager handles employees’ personnel issues when he visits. Other meetings and contacts described in the record focus on the issues of the store managers in running their stores and such contacts do not evidence a diminished lack of authority on the part of the store managers.

The Employer has demonstrated centralized control over many aspects of the high-level operations at the Starbucks stores within the District and nationwide. It relies heavily on its centralized operating procedures, including distribution channels, store design, product offerings, placement, marketing, and promotions as evidence of functional integration. But, as discussed below, this centralized management has not displaced local, site-specific control over various aspects of day-to-day operations at the Rock Creek store.

B. Local Autonomy over Daily Store Operations

In determining whether the single-facility presumption has been rebutted, the Board emphasizes whether the employees perform their day-to-day work under the supervision of one

\(^\text{16}\) See also, Starbucks Corp., 2021 WL 6824355 (2021); and Starbucks Corp., 2022 WL 685506 (2022).
who is involved in affecting their job status, and who is personally involved with the daily matters that make up their grievances and routine problems. See *Hilander Foods*, 348 NLRB at 1203; *Renzetti’s Market, Inc.*, 238 NLRB 174, 175 (1978). This emphasis on local control, notwithstanding the evidence of central control over personnel and labor relations, is quite reasonable. As the Board has explained, “the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location.” *Renzetti’s Market*, 238 NLRB at 175.

Board precedent further elucidates the primary importance of local control over employees’ daily working conditions. For example, in *Renzetti’s Market*, 238 NLRB at 175-76, despite centralization and similarity of employee skills, functions, and pay, the Board found a single-facility unit to be appropriate where immediate supervisors issue oral warnings, granted leave requests, and participated in hiring and discharge decisions. Similarly, in *Hilander Foods*, 348 NLRB at 1202, the Board found that despite the evidence of the company’s centralized control over its seven facilities, the single-store presumption had not been rebutted, partly due to each individual facility’s “strong local autonomy.” There, the record showed that the day-to-day decisions at each facility were handled “in large part, separately within each store” by store management and immediate supervisors, and those decisions included issuing oral warnings, granting leave request, participating in hiring and discharge decisions, and handling “routine problems.” 348 NLRB at 1203. See also *Bud’s Thrift-T-Wise*, 236 NLRB 1203, 1204 (1978) (presumption not rebutted where store manager interviews, hires or effectively recommends hiring, grants time-off, and participates in promotion and discharge decisions.)

The evidence adduced at the hearing is akin to the other *Starbucks* cases discussed above, and demonstrates that store managers exercise discretion over many daily operational and labor relations matters. The evidence shows that the store manager’s level of involvement is not routine but “demonstrate[s] meaningful local autonomy and participation in matters directing the service representatives’ working lives.” *Rental Uniform Service, Inc.*, 330 NLRB 334, 335-36 (1999). To begin, store managers prepare work schedules; they do so independently with no involvement by the district manager. The store manager approves time-off requests and makes all schedule adjustments as needed. When partners need coverage for a shift, they will endeavor to find coverage, and the store manager will assist, if necessary.

Store managers play a significant role in hiring by scheduling and conducting interviews and ultimately making the hiring decision. While the practice appears to be that an applicant will interview with the home store manager as well as a manager from another store, the testimony shows that ultimately the store manager makes the hiring decision, including when hiring shift supervisors from outside the store. While the Store Manager’s role in promoting employees into a shift supervisor position is limited to recommending and facilitating such a promotion, the Store Manager independently determines who will be a training barista.

The Store Manager is responsible for new employee orientation and establishes the training plan. The Store Manager also continues training and coaching partners by using “shoulder to shoulder time,” which refers to time periods when the Store Manager is working one-on-one with a partner and helping them through their shift.
The Store Manager can also take disciplinary action pursuant to the Employer’s progressive discipline policy and involves the District Manager regarding only the final written warning and separation. Notably, the Employer provided no evidence that the district manager has ever rejected a discharge recommendation. There was testimony that a partner could disagree with discipline they have received by contacting the Partner Resources Support Center, but there was no evidence of this occurring or that such discipline was overturned. The two Rock Creek store shift supervisors testified that they had not used that resource to resolve any conflict while working in the store and relied on the Store Manager for assistance. When there are any intra-personal staff conflicts at the store, the partners go to the Store Manager for help. Thus, while the Employer has mechanisms for employees to elevate issues and seek assistance outside of their home stores, the record evidence does not show that the Rock Creek Store Manager’s involvement in resolving problems is negated by the availability of the Employer’s Partner Resource Center or the Ethics and Compliance program, which investigates complaints about harassment, discrimination, and other policy violation concerns.

The Store Manager is also responsible for payroll and making sure Partners’ hours are verified and entered correctly. If an employee thinks there is an error on their paycheck, they contact the Store Manager to intervene and correct the problem. In performing some of these tasks, the Store Manager uses some of the universal tools that the Employer provides, but that use often involves modifications. For example, the Rock Creek Store Manager testified that while she consults the Partner Hours tool when making schedules, she also relies on reports from previous weeks, explaining that the Partner Hours tool is not accurate with the way business is conducted at the store as it generates a report using information from the prior year. Similarly, the District Manager testified that store managers may recommend a partner headcount that deviates from the Partner Planning tool, and the testimony showed that the Employer’s “Play Builder” tool does not account for individual store circumstances and, more often than not, is not used. Moreover, as the District Manager testified, the Play Builder does not recommend who in particular among available personnel would fulfill roles; rather, the store manager exercises judgment in filling those roles or in delegating the task to shift supervisors who, in turn, do not consistently use the tool after they have gained experience. Similarly, testimony was consistent in showing that the Play Builder is not a “well-used” tool at the store.

The Employer makes available the Virtual Coach as a disciplinary guide. The Employer, however, presented no evidence of its use at the Rock Creek Store. The Store Manager did not testify that she ever used it, instead explaining that she consults with other store managers or her district manager regarding disciplinary issues. In that regard, the District Manager testified that he did not know if store managers are using that tool.

As to the inventory list, the Store Manager must confirm that the inventory list is correct. The Employer creates each store’s inventory list, but the Rock Creek store has inventory lists that the Store Manager creates that are specific and tailored to the store. The Employer distributes the “Siren’s Eye,” which dictates how the store will display products to ensure consistency of products and customer experience between stores. The Store Manager, however, has the authority and discretion to vary from the Siren’s Eye to adjust it to the individual store’s allotted space and layout.
This evidence demonstrates substantial local autonomy that is not outweighed by the Employer’s high degree of administrative centralization. Indeed, the Board has recently rejected the Employer’s nearly identical claim that its centralized control rebuts the single-facility presumption. In doing so, the Board explained that “[a]lthough the Employer maintains nationwide tools and policies, it is the Store Managers who implement these tools and policies at the local level, and make adjustments as needed in real time.” *Starbucks Corp.*, 371 NLRB No. 71 slip op. at 2. See also *Starbucks Corp.*, 2021 WL 6824355, at *1 n.2 (rejecting employer’s conclusory and generalized claim that its automated tools and company-wide policies limit store managers’ discretion over daily matters and finding it failed to rebut specific testimony of store managers’ “significant role” in daily operations). In rejecting the Employer’s argument, the Board was not persuaded that the Employer’s business operations were akin to those in *White Castle Systems* and *Kirklin’s Inc.*, the same precedent relied on by the Employer here. 371 NLRB No. 71, slip op. at 2, n.7 (2022) (explaining that *White Castle System*, 264 NLRB 267, 268 (1982) and *Kirklin’s Inc.*, 227 NLRB 1220-21 (1977), each involved a “single individual or centralized office [that] exerted extensive, hands-on control over a relatively small number of stores and had final (or shared) authority for almost all personnel decisions). In doing so, the Board noted that the facts of those cases were in contrast to the autonomy provided to the Employer’s store managers. *Id.* The Employer’s cited precedent is similarly unpersuasive for the same reasons here.

The Employer has shown that it has nationwide policies applicable at all its stores, but these claims do not rebut the specific evidence demonstrating that the Store Manager plays a direct role in implementing these policies and exercises considerable authority in personnel matters. Because the Employer bears the burden of proof here, “it must establish more than conclusory evidence to establish that its Store Managers have little discretion in personnel matters, especially where there is specific evidence indicating otherwise.” *Id.* This it has failed to do. Rather, I find that the evidence establishes that the Rock Creek Store Manager has a significant role in resolving employees’ problems, overseeing and providing training, granting time off, adjusting schedules, disciplining employees, promoting employees to be barista trainers, conducting interviews, and hiring employees.

C. Similarity of Skills, Functions and Working Conditions

Also relevant to the unit-determination analysis is whether employees at the various facilities perform similar functions using similar skills, and whether they share common terms and conditions of employment. *Hilander Foods*, 348 NLRB at 1200. There is little dispute that the Partners perform similar jobs using a similar skillset, and that wages and benefits are established companywide. The Employer notes that its various operating and policy manuals, such as the Siren’s Eye, the Partner Guide, and the Operations Manual establish uniform conditions across all its stores and ensure the consistency of the partner and the customer experience. The Employer also notes that employees receive identical training. The Employer

---

17 The Petitioner argues that the employees do have different working conditions, noting that the stores operating within the district have different opening and closing times. While true, those differences are set at a corporate-wide level. Similarly, the Petitioner points to the testimony of a Shift Supervisor regarding a wage increase that she received. But the circumstances of that raise - the reason and the amount - are less than clear. I therefore do not rely on this distinction.
posits that these uniform working conditions are sufficient to overcome the single-store presumption.

The evidence does show some variance between stores. As noted, training is usually tailored to the individual store and store culture. This is necessary because each store is geographically different and has different customers. The Store Manager can vary the training based on the availability of the barista trainer and can also tailor the training to the individual partner and to the store’s culture. Adjustments are made to the routines set forth in the Play Builder based on what is happening in the store. Moreover, the partners’ daily job duties are not circumscribed to particular plays set forth in the Play Builder. Rather, testimony showed that stores have flexibility to deviate from these plays and often do so, with each store having different routines and plays that they prefer to follow.

To the extent the employees do share uniform skills and working conditions, these similarities are expected in a retail setting, and the Employer’s reliance on them is insufficient to rebut the presumption. Indeed, the Board rejected a similar argument in Haag Drug, explaining that “[w]hile employee benefits have been centrally established and the uniformity thereof is of some significance, no greater control of uniformity has been shown here than is characteristic of retail chain store operations generally.” 169 NLRB at 879. The Board and the courts has consistently rejected such claims in cases involving significant local autonomy, even where the employer’s operations were a “casebook study in centralized control.” Friendly Ice Cream Corp. v. NLRB, 507 F.2d 570, 577-78 (1st Cir. 1983) (company’s centralized control does not outweigh the degree of control vested in local store manager). See also Cargill, Inc., 336 NLRB 1114, 1116 (2001) (finding single-facility unit appropriate despite fact that “[b]oth facilities have the same employee handbook”); D&L Transportation, Inc., 324 NLRB 160 (1997) (headquarters’ involvement in formal discipline and approval of wage increases was not sufficient to rebut the presumption where store managers had local control over hiring, assignments, and dispatching, time off, and minor discipline); Red Lobster, 300 NLRB 908, 908 (1990) (approving single-facility unit even policies established terms and conditions were “centrally established and uniformly applied”); Renzetti’s Market, 238 NLRB at 175-76 (companywide similarity of employee job skills, functions and classifications as well as uniformity of wages and benefits insufficient to rebut single-facility presumption where evidence demonstrated significant local autonomy). In short, the Employer’s “uniform policies,” and “its determination of the most efficient form of organization, cannot be ascribed controlling significance in matters of unit determination.” Friendly Ice Cream, 705 F.2d at 577-78. Overall, I find that this factor does not weigh in favor of the single store unit but is outweighed by other factors including local autonomy and extent of interchange.

D. Employee Interchange

Another factor in the unit-determination analysis is the degree of employee interchange between the multiple facilities. New Britain Transp., 330 NLRB at 397. Employee interchange must be considered in total context. Gray Drug Stores, Inc., 197 NLRB 924 (1972), and in order for employee interchange to overcome the single-facility presumption, it must be “substantial” and “destructive of homogeneity.” Haag Drug Co., 169 NLRB at 878. Voluntary transfers are less probative than mandatory ones in determining whether employees from different locations
share a common identity. *Red Lobster*, 300 NLRB at 911. Here, the evidence demonstrates that the borrowing of partners between district stores and at Store 10867 is done on a voluntary and ad-hoc basis, and is insufficient to rebut the presumption. See *Starbucks*, 371 NLRB No. 71, slip op. at 1 (Employer’s statistics show interchange is “limited” and “infrequent”).

The Employer claims that its data demonstrates a high level of partner interchange. The Employer argues that each district store regularly relies on “borrowed partners” to cover shifts, and that this consistent and regular use establishes sufficient interchange to overcome the single facility presumption. To support this argument, the Employer relies on the testimony of an expert witness, Dr. Abby Turner, who used various graphs to share her statistical analysis of the data that measured interchange measured between April 29, 2019 and December 26, 2021.

Pointing to this analysis, the Employer makes the following claims regarding the use of borrowed partners district-wide and at Store 10867:

- District wide, the data showed that approximately two-thirds (66%) of partners worked in a single store. There are no stores in the district that are staffed entirely by partners working from their home store. On average, on 24% of the days that district stores are open, they have at least one borrowed partner working in a store.

- Focusing on Store 10867, about 61% of partners ever working in that store worked in 2 or more stores, and less than half (about 39%) of those partners work only in one store. About 58% of partners working in Store 10867 are working in that store as their home store, while the other 42% of partners are assigned to other home stores.

The Employer’s presentation and reliance on this data ignores several key and necessary factors. For example, by focusing on the number of partners who had ever worked at more than one store, the Employer fails to capture the actual percentage of hours, shifts, or days worked by borrowed employees and ignores the actual frequency or duration an employee worked at one store or another. Indeed, the Employer’s own expert admitted that the data did not consider if the partner worked just part of a shift, and none of her analyses takes into account the frequency of individual borrowing. She also admitted that the presentation of the data did not reflect the frequency or the duration with which a partner may be working at stores other than their home store. So included within the percentage of partners who worked at Store 10867 and another store would be partners who worked as little as one four-hour shift at that store over the entire time period.

Moreover, the Employer’s expert also testified that the data showed that of all the days that the stores in District 460 were open for business, there were no borrowed partners on 75% of

---

18 See also, *Starbucks Corporation*, 2021 WL 6824355, at *1 n.2 (interchange insufficient to overcome presumption where Employer has shown that its stores “borrow only a very small percentage of their labor from other stores.”); *Starbucks Corporation*, 2022 WL 685506, at *1 n.1 (statistics on interchange have same shortcomings of *Starbucks Mesa*, being limited an infrequent.); and *Starbucks Corporation*, 10-RC-288098, March 23, 2022. (Taking Employer’s data and testimony at face value, evidence of interchange insufficient to rebut the single-facility presumption.)

19 Dr Turner’s analysis did not include any hours worked by store managers at a store other than their home store.
those days. On any given day of the week, within District 460, the average percentage of borrowed partners was 3.1%. When the expert applied all “sensitivity” controls to account for events such as the opening and closing of stores, and permanent transfers, only about 6% of the days that the Rock Creek store was open between the specified time period had any borrowed partners working at all. That is less than one day every three weeks, and again, that one borrowed partner could have worked as little as four hours. When asked specifically about the Rock Creek store’s use of borrowed partners in the pre-Covid time period, the expert explained that during that period, 94% of the days the store was open, there were no borrowed partners working in Store 10867. At most, the Employer’s data shows that a significant percentage of employees work at least one shift per year at another store. This is not evidence of regular interchange sufficient to rebut the single facility presumption.” *Starbucks Corp.*, 2021 WL 6824355, at *1 n. 2 (2021).

The Employer’s own data also shows that the interchange is insignificant when an examination is made regarding the percentage of hours and shifts worked by borrowed partners. Specifically, the Employer’s 2021 fiscal year data that ended October 3, 2021, shows that borrowed partners worked 0.43% of shifts, and 0.32% of hours at the Rock Creek store. In the prior 2020 fiscal year, borrowed partners worked 2.29% of the shifts and 1.95% of hours. *Id.*

The Board recently found similar percentages of borrowed partners insufficient to negate store employees’ shared community of interest. See *Starbucks Corp.*, 371 NLRB No. 71, slip op. at 1-2 (data showing fewer than 2% of shifts at a store were worked by borrowed partners during a fiscal year is “limited” interchange and does not rebut presumption).

Moreover, the Employer has also failed to show that the hours worked by borrowed partners are not voluntary. While the Rock Creek Store Manager testified that she has the power to require partners to work at another store, she could not point to any specific instance of having done so. Notably, she testified that during her first 5-months working at the Rock Creek store, she had neither scheduled borrowed partners at the store, nor required one of Rock Creek store’s partners to work at another store. Further undercutting the Employer’s claims that the partners are required to work at other stores, a Shift Supervisor testified she had worked as a borrowed partner only once in the last seven months, had never been scheduled to work at another store without being asked first, and did not recall ever working with any borrowed partners. Similarly, another Shift Supervisor testified that she has been asked once to take a shift at another store, that there were no consequences when she declined, and that the Rock Creek store only relied on borrowed partners to fill in for discrete purposes, not on a routine and regular basis.²⁰

The Employer has not met its burden to show that the interchange of partners into the Rock Creek store or from that store into other stores in the district is regular or frequent. Accordingly, this factor does not weigh against the single-store presumption.

---

²⁰ While I find that the record fails to show that that working borrowed shifts at another store is mandatory in this case, even if the assignment of borrowed shifts was not voluntary, I would still conclude that the amount of interchange favors the single-store unit given the limited interchange shown.
E. Geographic Proximity

The distance between multiple facilities is a consideration in whether a single-facility unit remains appropriate. *Hilander Foods*, 348 NLRB at 1200. Generally, plants which are in close proximity to each other are distinguished from those which are separated by meaningful geographic distances. *New Britain Transp.*, 330 NLRB at 398.

The Employer claims that all District 460 stores are located “relatively close” to one another. To support this claim, the Employer relies on a map, not drawn to scale, showing the approximate location of each store. Notably, the map does not specify where on the map Store 10867 is located, and the Employer provides no other evidence—via testimony or other exhibits—detailing the exact distance between the stores, thereby requiring the Board to take administrative notice of that distance by using Google maps.

Google maps shows the closest store to the Rock Creek store is 2.2 miles away, and the farthest store is 8.9 miles away. It is also significant that the stores are located in six different cities. The Board has regularly found a single-facility unit appropriate in cases involving similar proximitities. See *Lipman’s*, 227 NLRB at n.7 (1977) (finding stores located only 2 miles apart 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.”). The Employer presents no argument why this geographic proximity compels a district-wide unit. Accordingly, in view of other factors supporting the single store unit, I find that the factor weighs in favor of the petitioned-for store unit.

F. Bargaining History

The lack of bargaining history is at best a neutral factor. See *Trane*, 339 NLRB 866, 868 n.4 (2003). It arguably lends some support to the appropriateness of a single-facility unit in the present case. See *Lipman’s*, 227 NLRB at 1438 (in finding single store units in retail chain appropriate, citing “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”).

G. Labor Relations Stability

The Employer argues that allowing a single-store unit is not conducive to stable labor relations. The Employer supports this claim by stating its preference for a district-wide unit, but, other than providing the general claim that its retail stores are highly integrated, provides no specific evidence that a single-store unit would harm labor stability. The Employer’s conclusory argument, if accepted, would disadvantage the organizational interests of all retail-store employees, simply because their employer operates a chain rather than a single-store enterprise. As the Board has explained, in rejecting a similar argument, “[i]t does not necessarily follow that organization of only a portion of the chain would likely result in a lack of uniformity of working conditions through the chain, or if it would, that this necessitates rejecting [a single facility unit].” *Haag Drug Co.*, 169 NLRB at 878.
F. Section 9(c)(5)

The Employer claims that finding the Rock Creek store to be an appropriate unit is contrary to Section 9(c)(5)’s admonition that the extent of a party’s organization cannot control a unit determination. But this argument simply recasts the Employer’s repeated claim that its centralized operations demands a district-wide unit. Contrary to the Employer’s assertion, finding that the single-facility presumption applies here does not run against Section 9(c)(5) by giving controlling weight to the Petitioner’s extent of organization. Rather, the appropriateness of this unit is premised on the well-established single-facility presumption, and the facts of this case demonstrating that the Employer’s centralized operations and infrequent interchange of employees do not detract from the separate identity of the Rock Creek store.

V. Conclusion

I find that the Petitioner’s petitioned-for unit limited to the Rock Creek store is appropriate. The Employer—and its evidence regarding the centralized control of its operations—does not outweigh the strong evidence demonstrating the Store Manager’s effective control of those areas that most directly affect the Employer’s employees, including hiring, promoting employees to the barista trainer position, managing the training program, disciplining, granting time off, and scheduling. Moreover, the Employer has failed to show that there is a substantial and frequent amount of interchange among the employees working at the District 460 stores such that the homogeneity of Store 10867 is destroyed, and, in any event, the interchange that does occur is voluntary. As the Board explained, the “uniform skills, functions and working conditions across [the District] are outweighed by other factors, most significantly the lack of significant interchange and Store Managers’ local autonomy over the personnel functions.” Starbucks Corp., 371 NLRB No. 71, slip op. at 2 (2022). The Employer has failed to show why the same conclusion should not be reached here.

Further, 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.

2. The parties stipulated, 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 Sections 2(6) and (7) of the Act, and it will effectuate the purpose of the Act to assert jurisdiction in this case.21.

3. The parties stipulated, and I find, that the Petitioner is a labor organization as defined in Section 2(5) of the Act.

21 The Employer, Starbucks Corporation, a Washington corporation with headquarters located in Seattle, Washington, and facilities located throughout the United States, is engaged in the retail operation of restaurants. In the past twelve months, a representative period of time, the Employer derived gross revenues in excess of $500,000 and purchased and received at each of its Colorado facilities goods valued in excess of $5,000, which goods were shipped to the Employer’s Colorado facilities directly from points located outside the State of Colorado.
4. The parties stipulated, and I find, that there is no history of collective bargaining between these parties in the proposed bargaining unit identified and there is no contract bar or other bar to an election in this matter.

5. A question of representation exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 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 (the Unit):

**INCLUDED:** All full-time and regular part-time Baristas and Shift Supervisors employed by the Employer at its store # 10867 located at 2800 Rock Creek Circle, A1, Superior, Colorado.

**EXCLUDED:** All office clerical employees, guards, professional employees, and supervisors as defined in the Act.

**VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote on whether they wish to be represented for purposes of collective bargaining by **Chicago And Midwest Regional Joint Board, Workers United/SEIU**.

**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 unit. At **3:00 p.m. on Tuesday, April 5, 2022**, ballots will be mailed by an agent of Region 27 of the National Labor Relations Board. 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.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **April 12, 2022** should communicate immediately with the National Labor Relations Board by either calling the Region 3 Office at (303)844-3551 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 27 by **3:00 p.m. on Friday, April 22, 2022**, at which time the ballots will be commingled and counted by an agent of Region 27 of the National Labor Relations Board. In order to be valid and counted, the returned ballots must be received at the Regional Office prior to the counting of the ballots.
B. Voting Eligibility

Eligible to vote are those in the units who were employed during the payroll period ending March 20, 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.22 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 beenrehired 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 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 in the 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 29, 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.

---

22 The parties agree, and I find, that the Board’s standard formula for determining the eligibility of regular part-time employees is applicable in this matter. See Davison-Paxon, Co., 185 NLRB 21 (1970).
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(s) 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.

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.

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 elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations. The request for review must further identify by case number which decision directing election the party is asking the Board to review.

A request for review may be E-Filed through the Agency’s website but 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. 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 elections 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.

Dated this 25th day of March 2022.

/s/ Paula S. Sawyer

Paula S. Sawyer, Regional Director
National Labor Relations Board, Region 27
Byron Rogers Federal Office Building
1961 Stout Street, Suite 12-103
Denver, CO 80294