Starbucks Corporation (the Employer) operates retail coffee shops throughout the United States. Workers United (the Petitioner) seeks to represent a unit composed of all full-time and regular part-time baristas, shift supervisors, and assistant store managers working at the Employer’s store in Hamilton Township, New Jersey.\(^1\)

The Employer contends that the Petitioner’s petitioned-for single-facility unit is inappropriate and that an appropriate unit must include all 12 stores in the Employer’s District 761.\(^2\) There are approximately 23 employees in the petitioned-for Hamilton unit and approximately 320 employees in the Employer’s preferred district-wide unit. The Employer argues that, in the event an election is held, the Region should utilize the Board’s *Davison-Paxon* voter eligibility formula.\(^3\)

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (the Act), a hearing was held on March 17, 2022, before a hearing officer of the National Labor Relations Board (the Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. The Employer and the Petitioner appeared at the hearing, and the parties filed timely post-hearing briefs, which I have duly considered. I have carefully considered the evidence and arguments presented by the parties, along with relevant legal precedent.\(^4\)

\(^1\) The Hamilton store is # 8964 and is located at 1081 Whitehorse Road, Hamilton Township, New Jersey.

\(^2\) The other 11 stores in District 761 are Store 7853, 800A Denow Road, Pennington; Store 7208, 100 Nassau Street, Princeton; Store 7309, 301 Mercer Mall, Lawrenceville; Store 7332, 649 Route 206 South, Hillsborough; Store 7683, 3535 Route 1, Princeton; Store 10782, 282 Dunns Mill Road, Bordentown; Store 23592, 2673 Main Street, Lawrenceville; Store 48181, 2325 Route 33, Robbinsville; Store 25917, 3804 Route 1 North, South Brunswick; Store 58420, 3100 Quakerbridge Road, Mercerville; Store 64615, 2495 Brunswick Pike, Lawrence Township. All are in New Jersey.

\(^3\) *Davison-Paxon Co.*, 185 NLRB 21 (1970), provides an eligibility formula to determine whether part-time employees are engaged in regular or casual employment.

\(^4\) The parties stipulated that the hearing officer would take administrative notice of the records in six other representation cases between the Employer and Petitioner: Buffalo I (03-RC-282115, 03-RC-282139, 03-RC-282127), Buffalo II (03-RC-285929, 03-RC-285986, 03-RC-285989), Mesa (28-RC-286556), Boston (01-RC-287639, 01-RC-287618), Seattle (19-RC-287954), and Knoxville (10-RC-288098). For clarification, by agreement of the parties, only those transcript pages and exhibits that the parties specifically cited in their briefs
For the reasons set forth below, I find that the petitioned-for unit is appropriate for collective-bargaining. Accordingly, I am directing a mail-ballot election to be conducted among employees in the petitioned-for unit, which is limited to the Employer’s Hamilton store (Store 8964).5

I. ISSUES AND POSITIONS OF THE PARTIES

The parties agree that one issue is presented for decision: whether the petitioned-for single-store unit limited to the Employer’s Hamilton location is an appropriate unit for bargaining, or whether the appropriate unit must include all 12 stores in the Employer’s District 761. The question before me is, therefore, whether the Employer has met its heavy burden to overcome the Board’s longstanding presumption that a single-facility unit is appropriate. *Starbucks Mesa*, 371 NLRB No. 71, slip op. 1 (2022). To rebut that presumption, “the Employer ‘must demonstrate integration so substantial as to negate the separate identity’ of the single store unit.” *Id.* (quoting *Cal. Pac. Med. Ctr.*, 357 NLRB 197, 200 (2011)). *See also Starbucks Buffalo I*, 2021 WL 5848184 (denying the Employer’s Request for Review).

The Employer acknowledges the Board’s single-facility presumption and argues both (1) that it has rebutted the presumption through its evidence of employee interchange, centralized operations, functional integration, employee skills and working conditions, and geographic proximity, and (2) that ordering an election in a single store would give controlling weight to extent of organizing in violation of Section 9(c)(5) of the Act. The Petitioner counters that the Employer failed to rebut the presumption because its store managers, including the manager of the Hamilton store, have significant autonomy to make operational and labor relations decisions, such as scheduling, hiring, coaching and evaluations, granting leave, and resolving employee questions and concerns. The Petitioner further argues that the Employer’s evidence does not establish significant employee interchange at the Hamilton store and that the similarity of employee skills and working conditions are not conclusive in the retail industry.

As discussed below, I find that the Employer has failed to rebut the single-store presumption and that directing an election in a single store does not give controlling weight to the extent of organization in violation of Section 9(c)(5) of the Act.

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5 The parties agreed to allow the Assistant Store Manager to vote subject to the Board’s challenge procedure.
II. RECORD EVIDENCE

A. Overview of the Employer’s Operations

The Employer operates more than 25,000 retail coffee shops around the world, including nearly
9,000 stores nationwide. The Employer divides its U.S. operations into 12 regions, which are further
divided into areas and districts. The Hamilton store, at issue here, is in District 761. District 761 is part
of Area 81 within Region 7 (New York metro area), which covers northern New Jersey. At the time the
pre-election hearing was held, the Hamilton store was managed by interim Manager Justin Rhymer. As
of March 21, 2022, the new permanent Store Manager is Muhammed Shaheen. Shaheen reports to
District 761 Manager Scott Thibedeau. Thibedeau in turn reports to Regional Director Jen Pivarnik.
The Hamilton store employs approximately 23 employees, and the 12 stores in District 761 employ
approximately 320 workers.

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

The parties stipulated that the testimony of Store Manager Misty Knight, District Manager Scott
Thibedeau, and Shift Supervisor Sara Mughal regarding store operations and Store Manager, District Manager
and Shift Manager interactions is incorporated by reference into the record and are applicable to the Hamilton
store.

The parties further agree that the Employer’s operations are highly centralized. As a nationwide
retail chain prizing product consistency, the Employer decides what products each store will sell and
how they will be served and displayed. Seven times each year, the Employer issues a period planning kit
that provides updates to operations, programs, training, and products, such as introducing or
discontinuing coffee or food items or providing new procedures for drive-through operations. District
and store managers have no authority to deviate from the period planning kit. Product ordering is
partially automated through the Employer’s Inventory Management Tool, but for at least some products,
store managers or shift supervisors “use [their] best ability to decide how much to order of each item.”

The Employer’s Partner Guide specifies that the Store Manager is “ultimately in charge of all
store operations and directs the work” of employees and “is responsible for personnel decisions,
scheduling, payroll, and fiscal decisions.” The Store Manager has the authority to resolve employee

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6 In Board Exhibit 7, (Stipulation) number 15, the parties stipulate that the witness testimony and exhibits from
Case Nos. 01-RC-289055; 01-RC-289077, 01-RC-289330, and 01-RC-289350 (Boston II, collectively); 28-RC-
286556 (Mesa I); 10-RC-288098 (Knoxville); 15-RC-289150 (Mesa II); 12-RC-290700; 12-RC-290711
(Tallahassee), and 22-RC-288780 (Hopewell) are incorporated by reference into the record. For clarification, by
agreement of the parties, only those transcript pages and exhibits that the parties specifically cited in their briefs
will be considered part of this record.

7 In Board Exhibit 7, number 16, the parties stipulate that the Hamilton store operates, and the Hamilton Store
Manager interacts with the District Manager and Shift Supervisors, in a manner substantially similar to the
operations and interactions in the Hopewell store as set forth in 22-RC-288780.
issues and concerns. Store Managers are also responsible for hiring employees, subject to business needs. For entry-level barista positions, Hopewell Store Manager Misty Knight has authority to extend an offer of employment and does not have to consult with Thibedeau before doing so (though employment is contingent on the completion of background checks by the Employer), the parties stipulate that Hamilton Store Manager Muhammed Shaheen has the same authority as Misty Knight. Thibedeau is not involved in interviews or hiring, unless he is participating in a district-wide hiring fair.

Applicants typically apply for employment through a centralized website and can apply to work at a specific store or stores. They are hired to work in a specific store, known as their “home” or “assigned” store. Regarding the Hopewell store, Misty Knight testified that because hours are flexible and employees can state their availability to work, she interviews candidates whose availability does not align with the needs of the store. Shaheen takes the identical approach at the Hamilton store. At that point, managers “would find them another location so they would still be a part of Starbucks.”

In addition to hiring, the Store Manager creates the employee work schedule. While Thibedeau uses the Employer’s automated tools to determine the labor hours to allot to each store, the Store Manager is responsible for scheduling employees to work specific shifts within that labor “budget.” Employees fill out a partner availability form, which is given to the Store Manager and lists days and hours the employee is available to work. Knight testified that, at the Hopewell store, she creates the schedules in advance, and the parties’ Stipulation extends the same authority to Shaheen at Hamilton, so that employees always have three weeks of schedules posted; Shaheen is not required to consult with Thibedeau before posting the schedule. Employees request time off through the Employer’s Partner Hours app or directly from Shaheen, who has authority to approve such requests.8 Employees can also swap shifts with co-workers by using the Partner Hours app.

Once employees are scheduled to work, the Manager or Shift Supervisor assigns the employees to specific roles during the shift. While not required to be used, the Employer’s Play Builder app is available on in-store iPads and can be used by Managers and Shift Supervisors to assign employees to particular roles (cash register, beverage bar, warming station) during a shift. The Shift Supervisor testified that in addition to deciding each employee’s role, the Shift Supervisor also decides when to send employees on their breaks.

The Employer’s disciplinary system includes documented coaching, written warnings, and final corrective action. As a Store Manager, Muhammed Shaheen is authorized to issue employee discipline for issues such as dress code violations or attendance issues without consulting with Thibedeau. The Employer’s Corrective Action Form is signed by the Store Manager; there is no space on the form for the approval of a District Manager. Thibedeau expects to be consulted or notified if a Store Manager plans to issue a “final corrective action,” or if a more serious issue arises, such as an employee’s involvement in a verbal altercation in the store. Store Managers and District Managers can also work

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8 If employee callouts or other contingencies (such as COVID exposure) result in a shortage of employees, only Thibedeau has the authority to adjust store hours or close early. Similarly, only Thibedeau can decide to turn off mobile ordering, which has the effect of reducing orders in the store.
through various scenarios in the Employer’s virtual coach to find “the right level of documentation for the specific scenario” if they are unsure what to do.

Although there is little record evidence about employee evaluations, testimony showed that Knight conducts twice yearly “partner development conversations” with employees, which serve as their performance evaluations. In addition, Knight holds weekly “one-on-one” conversations individually with Shift Supervisors to discuss any concerns she or the Shift supervisor might have with store operations. The parties agree that Hamilton Store Manager Muhammed Shaheen conducts evaluations and one-on-one conversations in the same manner and with the same frequency. Thibedeau is not involved in either meeting.

Store Managers post open shift supervisor positions on the store iPad so that they can be seen by employees throughout District 761. Every Shift Supervisor applicant receives an interview, and interviews are conducted by two Store Managers to ensure consistency and fairness in the process. Thibedeau testified that Store Managers “generally” discuss promotions with him, but the Managers decide who will be promoted and inform him of the decision. While Knight discussed her recommendations for promotion with Thibedeau, he has never disagreed with her decision. Knight also has authority to promote an employee to barista trainer without consulting Thibedeau. Barista trainers are eligible for additional pay. Starbucks Mesa, 371 NLRB No. 71, slip op. 5. Likewise, Hamilton Store Manager Muhammed Shaheen has the same authority and discretion to hire and promote barista trainers.

District Manager Thibedeau schedules a weekly “huddle” phone call with Store Managers in his district. He also meets with them monthly to discuss staffing needs and schedules an additional period planning meeting when a new period planning kit is issued by the Employer. Thibedeau visits the Hopewell store, and by extension the Hamilton store, at “a minimum” monthly; during the visit, he checks inventory levels, cleanliness, and “make[s] sure that the operation is running as it should.” Thibedeau testified that he also holds roundtable discussions with employees in individual stores but could not remember the last time he held an employee roundtable at the Hopewell store, and by extension at the Hamilton store.

**C. Employee Skills, Functions, and Working Conditions**

Employees in the Employer’s stores within District 761 use the same skills and perform the same functions. As part of its effort to standardize the customer experience, the Employer developed written work rules and routines for preparing and serving food and drink items. In addition to standardized routines, the Employer developed 24 hours of standardized training for new employees. An employee’s initial training (“First Sip”) is conducted by the store manager, and a store co-worker designated as a barista trainer conducts the remainder. The Employer also has centralized training for employees promoted to barista trainer and Shift Supervisor.

Wages and benefits are determined by the Employer at the corporate level, with benefits consistent across the U.S. Employees working in the Employer’s stores are required to wear an employer-branded green apron and to adhere to the Employer’s dress code, which dictates what types and colors of coloring may be worn in addition to the apron.
D. Employee Interchange

Employees are hired to work at their home store but may accept shifts at other stores within the district. The parties refer to these as “borrowed” shifts or “borrowed” employees. Thibedeau testified that picking up shifts is entirely voluntary, declaring “(w)e don’t direct them to work at a different store.”

To support its contention that employees engage in substantial and frequent interchange between stores in District 761, the Employer presented voluminous data regarding borrowed shifts. These included Excel spreadsheets and multiple sets of charts and graphs prepared by Dr. Abby Turner, the Employer’s statistical expert.

Specifically, the Employer proffered a set of seven charts and graphs—and eight different permutations of those charts. The seven charts present statistics showing:

1. the percentage of employees who worked for one or more stores in District 761;
2. the percentage of employees who worked at the Hamilton store who also worked (even for an hour) for another store;
3. the percentage of all employees who worked at individual stores who were borrowed employees;
4. the percentage of store days that individual stores used borrowed employees;
5. the percentage of partner days across the district that were borrowed, by day of the week;
6. the percentage of partner days across the district that were borrowed, by specific dates; and
7. a map representing the amount of borrowing between stores in District 761.

The eight variations of those charts change the date range, change the number of stores included (between 10 and 14 stores), and control for permanent transfers by removing shifts from the analysis.

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9 In Board Exhibit 7, number 19, the parties stipulate that the Charles River Expert Abby Turner, is qualified to testify as an expert.

10 This chart does not appear to be limited to employees who were assigned to Hopewell as their home store. Dr. Turner testified that this chart (and corresponding charts in the other analyses) includes employees “who ever worked” at Hopewell, suggesting that it shows the percentage of all employees who ever worked a shift at Hopewell who also worked in two or more stores. (Tr. 127, 132). The parties rely on Dr. Turner’s testimony as it is also relevant to other stores in District 761, including the Employer’s Hamilton store.

11 Partner days are the equivalent of shifts. (Tr. 133.)

12 The map appears to be color-coded, but no explanation or key is provided.

13 22-RC-288780 EX 22-A, pp. 1-49, includes analyses 1-7. (Tr. 126-44.) The eighth analysis, which includes 14 stores, can be found in EX 21-A. (Tr. 146.) Dr. Turner testified that the 14-store analysis includes Store 50234, which was realigned out of District 761 in 2021, and Store 19504, which closed in 2021. (Tr. 145.) But Employer
Unlike in other cases, the Employer did not provide data by fiscal year and instead provided data either for a 2.5 year period (April 29, 2019 to February 13, 2022) or an almost one year period, pre-COVID (April 9, 2019 to February 29, 2020). The April 29, 2019, date coincides with a change in the Employer's timekeeping system.

The Employer also presented two additional sets of charts, which compare shifts worked by, and overall numbers of, currently active employees and all other employees (including employees borrowed from another store, or who quit, were fired, or transferred to another store). The exhibits include average and median employee tenure; for the Hamilton store, the average tenure is 29.3 months, and the median is 14.6 months.

The Employer relies on its data to argue that employee interchange is widespread and expected of all employees. In support, the Employer cites one statistic in its post-hearing brief: that 38.7 percent of Hamilton store employees worked in two or more stores. As Dr. Turner acknowledged, however, employees are counted as having worked in another store even if they worked in another store only once. The Employer further notes that employee witnesses testified that they worked at stores other than Hopewell and saw borrowed employees working at the Hopewell store. The parties stipulate that this reality is the same with employees at the Hamilton store.

The Petitioner counters that employee interchange is entirely voluntary and points out that the Employer failed to include the more relevant “Borrowed Partner Analysis” calculations that it included in other cases. That additional analysis showed the percentage of hours and shifts worked at the petitioned-for store by borrowed employees, by fiscal year. Those exhibits indicate that at the petitioned-for stores in Buffalo 1, Buffalo 2, Mesa, and Knoxville, the vast majority of available hours and shifts were worked by employees assigned to those stores, not borrowed employees.

The Employer did not provide the same store-specific data in this case. It did provide the percentage of shifts worked by borrowed employees across District 761, in a note on charts created to show the amount of interchange by day of the week. Those charts, which again reflect the multiple analyses conducted by the Employer, demonstrate that between 0.9 percent and 2.9 percent of all the shifts worked in District 761 were worked by borrowed employees.

Exhibit 20(c) shows that Store 19504 was in District 705, not District 761, and in Area 77, not Area 81. The record does not explain the discrepancy. (Nor does the record explain why Employer Exhibit 20(c) includes stores located outside the state of New Jersey, including Washington state, Arizona, and North Carolina, or the significance of the stores listed in that exhibit.)

14 EX 22-B includes only the 12 current stores in District 761; EX 21-B includes 14 stores.

15 Although Buffalo 1 EX 24 did not compute percentages, those could be easily determined from the data provided. For example, in FY 20 at Store 7381, 3.5% of shifts (133/3759) and 3.6% of hours (792.82/22270.47) were worked by borrowed partners.

16 EX 22-A, pp. 5, 12, 19, 26, 33, 40, 47. See also EX 20(a), which shows each shift worked in District 761 and whether that shift was “borrowed” (marked as “true”) or not borrowed, meaning the employee worked the shift at
E. Distance Between Locations

District 761 includes all of the Employer’s stores in Mercer County, as well as, one store in Middlesex County, one in Somerset County, and one in Burlington County. Based on the store addresses, the Mercerville location is closest to the Hamilton store at a distance of 3.0 miles. Hillsborough is the farthest at 23.1 miles. The other stores range from 4.2 miles to 18.8 miles from the Hamilton store.

F. Bargaining History

There is no history of collective bargaining at the Hamilton store or at any store in District 761.

III. ANALYSIS

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

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 thus does not render the petitioned-for unit inappropriate, AVI Foodsystems, Inc., 328 NLRB 426, 429 (1999).

A single-facility employee bargaining unit is presumptively appropriate, unless 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). The party seeking to rebut the single-facility presumption bears a “heavy burden.” Starbucks Mesa, 371 NLRB No. 71, slip op. 1; Cal. Pac. Med. Ctr., 357 NLRB 197, 197 (2011). In making that determination, the Board considers “(1) central control over daily operations and labor relations, including extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) degree of employee interchange; (4) distance between locations; and (5) bargaining history, if any.” Hilander Foods, 348 NLRB 1200, 1200 (2006). Whether the single-facility presumption has been rebutted requires a case-by-case, fact-intensive analysis, as “[e]ach case must be assessed on its own facts.” Dattco, Inc., 338 NLRB 49, 50 (2002).

As it has in other representation cases, the Employer suggests that the appropriate unit should include all stores in District 761 because district employees share some community of interest. But as the Board explained, the relevant legal question “is whether the Employer has met its heavy burden to overcome the [single-store] 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 Mesa, 371 NLRB No. 71, slip op. 1.

her home store (marked as “false”). Of the 131,963 shifts listed in the exhibit, only 3,916, or 2.9 percent, were borrowed.
Applying those principles to the facts of this proceeding, I find that the petitioned-for single-store unit at the Hamilton store is appropriate for collective-bargaining. As a single-store unit, the petitioned-for unit is presumptively appropriate, and the Employer has not met its heavy burden to rebut that presumption.

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**

There is no dispute that the Employer operates an integrated, centrally controlled retail chain of stores. It controls, among other things, pricing, product selection, store layout, marketing, promotions, and how employees prepare and serve its products. An employer’s centralized control over multiple facilities weighs in favor of a multi-facility bargaining unit. *Trane*, 339 NLRB 866, 867-68 (2003). But, “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.

For 60 years, the Board has applied its single-facility presumption to retail chain operations, finding that its prior decisions had “overemphasized the administrative grouping of merchandising outlets at the expense of factors such as geographic separation of the several outlets and the local managerial autonomy of the separate outlets.” *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962). The Employer’s “determination of the most efficient form of organization cannot be ascribed controlling significance in matters of unit determination.” *Friendly Ice Cream Corp. v. NLRB*, 705 F.2d 570, 577 (1st Cir. 1983). Thus, the Board will find a single store in a retail chain operation to be an appropriate unit for collective bargaining “absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity.” *Haag Drug Co.*, 169 NLRB 877, 877 (1968). I find that the Employer has not demonstrated that the functional integration in its operations has obliterated the Hamilton store’s separate identity. I further find, as discussed below, that its centralized control of operations is outweighed by evidence of local autonomy in operations and labor relations.

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

While the Employer established that it controls significant aspects of store operations, centralized management cannot displace local, site-specific control over various aspects of day-to-day operations.

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17 Not all aspects of store operation are completely controlled by the Employer, as the Employer suggests. Both Shift Supervisor Sara Mughal and Regional Director Jen Pivarnik testified that at least some aspects of product ordering are decided at the store level. (Tr. 260-61, 288-89.)
Rather, in the context of a retail chain operation, “one of the most weighty factors in determining the appropriateness of a single store unit is the degree of control vested in the local store manager.” Friendly Ice Cream, 705 F.2d at 578. Accordingly, the Board considers “the local manager’s effective control of those areas ‘which most directly affect the restaurant’s employees’” to be significant. Id. (quoting Magic Pan, Inc. v. NLRB, 627 F.2d 105, 108 (7th Cir. 1980)).

The Employer’s Partner Guide very clearly states that the individual Store Manager “is ultimately in charge of all store operations, directs the work [of employees, and] is responsible for personnel decisions, scheduling, payroll and fiscal decisions.” The testimony of District Manager Thibedeau, Store Manager Knight, and Shift Supervisor Mughal confirmed this assessment. Knight and, by stipulation, Shaheen have authority to hire new employees in their respective stores, schedule employees for work and approve their leave requests, conduct the initial training for new employees, have authority to resolve employee grievances, conduct “partner development conversations” with employees (twice yearly evaluation conversations), and have authority to discipline employees for certain infractions.

Knight and by stipulation, Shaheen also recommend and select employees for promotion. Knight testified that she always discusses her selections with Thibedeau before making a promotion. But, Thibedeau testified that Knight possessed the authority to promote, and he only expected to be informed of the decision. Although the Store Manager always consults with Thibedeau, it does diminish Knight’s hiring authority. Accordingly, even if the Store Manager always consults with Thibedeau, the Employer has still failed to meet its burden. He also testified that he had never overridden a Store Manager’s promotion recommendation. The Employer concedes that Knight, and by extension Shaheen, have authority “to unilaterally hire” but argues that hiring and promotions are handled on a district-wide basis because the store managers always consult with Thibedeau. Even if the Store Manager always consults with Thibedeau before hiring or promoting employees, the Employer has failed to meet its burden to rebut the single-store presumption. See Bud’s Thrift-T-Wise, 236 NLRB 1203, 1204 (1978) (finding single-facility presumption not rebutted where local supervisors made hiring and discipline decisions, or effectively recommended such actions). Accord Cal. Pac., 357 NLRB at 201; Walgreen Co. v. NLRB, 564 F.2d 751, 754 (7th Cir. 1977).

The Employer emphasizes that it has created various tools for managers to use that decrease much of their autonomy, such as the Virtual Coach and Play Builder apps. But, Thibedeau explained that the Virtual Coach is used by Store Managers and District Managers when an unusual situation arises and they need to determine the level of “documentation” required for the incident. Play Builder assists Store Managers and Shift Supervisors in deciding which jobs to assign employees to work during a particular shift, however, as Thibedeau testified, it is not required. The Shift Supervisor explained that when she uses the Play Builder app, she retains “complete autonomy” to decide which employee performs which role, and she makes the decision based on employee skills, experience, and how busy the store is. At times, the Store Manager overrides the Shift Supervisor’s decision with regard to a particular employee’s role—a fact that demonstrates the Store Manager’s authority over their stores. The centralization of policies and procedures, and even the involvement of Thibedeau in some decisions, do not establish a lack of local autonomy. The relevant question is whether or not the employees at the petitioned-for store “perform their day-to-day work under the immediate supervision of one who is
involved in rating their performance and affecting their job status and who is personally involved with the
daily matters which make up their grievances and routine problems.” Red Lobster, 300 NLRB 908, 912 (1990) (internal citation and quotation marks omitted). The record demonstrates that the answer here is, yes.

In multiple cases, the Board has found similar levels of local autonomy to support a finding that a single-facility unit is appropriate for bargaining. See, e.g., Cargill, Inc., 336 NLRB 1114, 114 (2001) (local supervisors assign and supervise work, impose discipline, handle employee complaints, and schedule vacations); AVI Foodsystems, 328 NLRB at 426 (cafeteria manager conducted initial interviews and made hiring recommendations, determined level of staffing, assigned employees to work stations, evaluated employees, recommended promotions, scheduled shifts and approved leave, and recommended discipline); Red Lobster, 300 NLRB at 911 (local managers conduct hiring interviews, evaluate employees, address grievances, issue warnings, and schedule and approve leave); Walgreen Co., 564 F.2d at 754 (local manager supervised most day-to-day employment activity; hiring, firing, and promotion decisions were based on manager’s recommendation).

The cases cited by the Employer in which the Board found the single-store presumption to be rebutted involved local managers whose autonomy was much more circumscribed than here. For example, in Super X Drugs of Illinois, the district manager rather than the local manager decided “total hours to be worked by each employee in each position,” conducted initial hiring interviews, had authority to hire, conducted employee reviews, observed employees’ work and discussed their work with store managers, and discussed problems and grievances with employees. The district manager’s approval was required for all discipline, leaves of absence, promotions, and pay raises. 233 NLRB 1114, 1114-15 (1977). In Budget Rent A Car Sys., Inc., the petitioned-for stores had no local manager at all; each store shared a branch manager with another store, and only district managers had authority to hire, increase wages, approve temporary or permanent transfers, authorize overtime, or impose serious discipline. 337 NLRB 884, 884-85 (2002). And in Kirlin’s, Inc. of Central Illinois, not only were operations, wages, and benefits centralized, but the home office scheduled employee hours. While the store manager could interview and recommend job applicants, the district manager reviewed all employment applications before hiring and shared final authority to fire employees with the home office. In addition, the petitioned-for store was located 100 feet from another company-owned store in the same mall. In those circumstances, the Board found the petitioned-for single-store unit to be inappropriate. 227 NLRB 1220, 1220-21 (1977).

Here, unlike the cases cited by the Employer, the record evidence establishes, and I find, that Store Managers are vested with significant autonomy in handling a range of operational and labor relations matters at the local level, notwithstanding the existence of centralized policies and procedures.

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18 The Employer’s assertion that the district manager in Kirlin’s shared firing authority with individual store managers is a misreading of the facts of that case.
D. Employee Skills, Functions, and Working Conditions

There is no dispute that the employees have similar skills, functions, and working conditions. New employees are trained by either the Store Manager or a co-worker using the Employer’s standardized training program. The Employer’s written routines detail exactly how employees should produce and serve particular food and drink products. The Employer sets wages and benefits for all employees, and Store Managers have no authority to change them. However, company-issued wage increases are not necessarily uniform throughout a district.

While uniformity in working conditions “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. Thus, even where wages and benefits are centrally determined, the more immediate question for the Board is whether employees perform their work under the supervision of a local manager. In that framework, “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. See also Renzetti’s Market, Inc., 238 NLRB 174, 175 (1978) (finding that “the Employer’s centralized administration is not, in our view, the primary factor which we must consider in determining whether the employees working at Store No. 1 enjoy a community of interest separate and distinct from the employees at Store No. 2.”). I, therefore find, that the employees’ uniform skills, functions, and working conditions are outweighed by other factors, including the Store Managers’ significant local autonomy and the lack of significant employee interchange. See Starbucks Mesa, 371 NLRB No. 71, slip op. 2.

E. Employee Interchange

Another factor in the unit-determination analysis is the degree of employee interchange between the multiple facilities and whether that interchange is regular and substantial. Cargill, 336 NLRB at 1114; New Britain Transp., 330 NLRB at 397 & 399 n.8. For evidence of interchange to cut against the single-facility presumption, the employer must present such evidence in context, such as by demonstrating the percentage of work or employees impacted by the interchange. New Britain Transp., 330 NLRB at 398. Permanent transfers are less probative than temporary transfers, and voluntary transfers are less probative than mandatory ones. Id.; Starbucks Mesa, 371 NLRB No. 71, slip op. 1, n.5.

Here, as in other cases, the Employer has presented data to support its contention that employees engage in regular and substantial interchange. The Employer emphasizes that its employees are trained and expected to work at multiple stores and argues that its charts prove this is a regular occurrence. But much of the Employer’s data pertains to District 761 as a whole, rather than the Hamilton store, and most of it fails to shed light on whether Hamilton employees engage in frequent, regular interchange with other employees. Thus, the charts do not analyze how often Hamilton employees work at multiple stores, show whether they work an entire shift or pick up an hour or two after working their assigned store shifts, or indicate whether they work one hour or 40 at a different store.
Further, the Employer seems to acknowledge that employee interchange is voluntary and that Board law finds voluntary transfers to be less probative. Nevertheless, the Employer argues that the Board’s focus should not be on whether the interchange is voluntary but on whether an employer has “created a staffing model that is specifically designed to ensure that staffing needs are met by partners who regularly work in multiple stores.” (ER PHB p. 32, emphasis in original.) The Employer cites no case law in support of its position, and I am bound by extant Board law that applies the single-facility presumption to retail chain operations and considers voluntary employee transfers to be less significant than involuntary transfers in assessing whether the single-facility presumption has been rebutted. See Starbucks Mesa, 371 NLRB No. 71, slip op. 1 n.5.

That said, employee testimony confirmed that borrowing shifts is voluntary, infrequent, and insubstantial. For example, the Shift Supervisor testified that she has worked a borrowed shift at another store three times in her two-year career. In addition, she has observed borrowed employees working at her store less than once per month; only once did she see a borrowed employee work more than one shift. Hopewell Barista Hailey Kinney testified that she has observed borrowed employees at her store four or five times recently (due to store closures for maintenance and COVID isolation), and those employees worked only once. Kinney herself has worked a borrowed shift only once, when she volunteered to work at another store that needed help. The parties stipulated that the interchange here is indistinguishable. Thus, the testimony shows that the use of borrowed employees at the Hamilton store is not so frequent and regular as to rebut the strong presumption that the Hamilton store is an appropriate unit for bargaining. See AVI Foodsystems, 328 NLRB at 426 (employer’s interchange data failed to indicate the duration of the transfer, the hours worked, or whether employees simply picked up additional hours after their regular shifts).

As discussed above, the Employer did not provide the same “Borrowed Partner Analysis” calculations that it included in other cases to show the percentage of hours and shifts worked at the petitioned-for store by borrowed employees, by fiscal year. Nonetheless, the record shows that the percentage of all shifts worked in District 761 that were worked by borrowed employees, ranges from 0.9 percent to 2.9 percent depending on which analysis is chosen. In other words, at least 97 percent of all shifts worked over the timeframe presented by the Employer are worked by employees at their home stores. While the Employer’s district-wide interchange data are not dispositive, this statistic is the most relevant provided by the Employer.19 In its recent decision in the Mesa case, the Board relied on similar store-level data showing that fewer than 2 percent of shifts at the petitioned-for store were worked by “borrowed” employees. The Board concluded that the data “do not establish that the petitioned-for employees regularly or frequently interchange with other employees in [the district], and instead indicate that any interchange is limited and infrequent.” Starbucks Mesa, 371 NLRB No. 71, slip op. 1. See also Starbucks Buffalo I, 2021 WL 5848184 n.2 (finding that the Employer’s data “indicate that the

19 See Friendly Ice Cream, 705 F.2d at 579 (“Evidence as to employee interchanges not involving the [petitioned-for store], however, did not bear directly on the issue of the appropriateness of the [petitioned-for] unit.”); Walgreen Co., 564 F.2d at 754 (finding employee transfer data to be “substantially inflated” because it included employees not in the petitioned-for unit).
petitioned-for stores ‘borrow’ only a very small percentage of their labor from other stores.”);  

_starbucks buffalo II*, Mar. 7, 2022 Order Denying Request for Review, at 1 n.1 (finding “that the statistics provided by the Employer here have the same shortcomings that we identified in *starbucks mesa*: they fail to establish _regular_ interchange, and demonstrate instead that interchange between the petitioned-for employees and other employees in the Buffalo area is limited and infrequent”).

Accordingly, I find that the level of employee interchange supports the petitioned-for single-store unit. The data provided (that at most 2.9% of all shifts worked in District 761 are worked by borrowed employees) do not establish that employees engage in regular interchange sufficient to defeat the single-facility presumption.\(^20\)

**F. Distance Between Locations**

The Employer argues that the geography proximity of the 12 stores in District 761 rebuts the single-store presumption. The testimony showed that the stores are located throughout Mercer County and in three adjacent counties. A review of the store addresses shows that the closest store is 3 miles from Hamilton, and the furthest is over 20 miles away. Moreover, Regional Director Jen Pivarnik testified that she is authorized to add or remove stores from a district. She bases her decisions not only on geography, but to maintain an average of 12 stores in each district and to align districts with counties because of differing food-safety regulations.

The Board has found facilities located in close proximity to be geographically separate and appropriate units for collective bargaining. *see cargill*, 336 nlrb at 1114 (facilities two miles apart); *renzetti’s market*, 238 nlrb at 174 (two locations were 4 miles apart).\(^21\) Given the greater distance between the stores here, the Employer has failed to show that the Hamilton store has lost its separate identity.

**G. Bargaining History**

There is no history of bargaining at the Hamilton store, and there is no request for bargaining on a broader basis. This factor is thus neutral in the unit-determination analysis. *trane*, 339 nlrb at 868 n.4. *see also red lobster*, 300 nlrb at 912; *renzetti’s market*, 238 nlrb at 176.

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\(^{20}\) The cases cited by the Employer do not compel a different conclusion. As the Board explained, nearly all of the cases cited by the Employer “are distinguishable insofar as they involved a higher degree of interchange than what is present here.” *starbucks mesa*, 371 nlrb No. 71, slip op. 2 n.6.

\(^{21}\) The Employer misreads *gray drug stores, Inc.*, 197 nlrb 924 (1972). In that case, the Board did not, as the Employer asserts, find the appropriate unit to encompass multiple locations “located along a 300 mile stretch” of Florida. Rather, the Board rejected the employer’s argument that the unit should include all stores state-wide, and instead found a more limited unit of stores in two counties to be appropriate based not only on geographic proximity of the stores but also on the lack of autonomy of store managers, shared supervision by district managers, and substantial involuntary temporary transfers. 197 nlrb at 925-26. *see also red lobster*, 300 nlrb at 911 n.15.
Finally, the Employer argues that finding the petitioned-for single-store unit to be appropriate would violate Section 9(c)(5) of the Act by giving controlling consideration to the extent of organization.\textsuperscript{22} As discussed above, the Board has relied on a single-store presumption for 60 years, and Board decisions applying that presumption have been upheld by the appellate courts. Indeed, the D.C. Circuit has explained that “Section 9(c)(5) requires only that the extent of organization not be the controlling factor; consideration of that factor among others is entirely lawful.”\textit{San Miguel Hosp. Corp. v. NLRB}, 697 F.3d 1181, 1185 (D.C. Cir. 2012). \textit{See, e.g., Friendly Ice Cream}, 705 F.2d at 576 (the Board’s single-facility presumption “is consistent with the Act, has a rational foundation, and reflects the Board’s expertise.”); \textit{NLRB v. J.W. Mays, Inc.}, 675 F.2d 442, 444 (2d Cir. 1982) (Board’s application of single-facility presumption was not arbitrary).

Relatedly, the Employer also contends that a single-store election “is in no one’s interests,” “will waste significant Agency resources,” and its employees “deserve the right to vote in a multi-location unit election together.” (ER PHB p. 36.) The Employer’s concern for its employees and for Agency resources cannot serve “as a basis for avoiding its duty to bargain with the employees’ selected representative.”\textit{Walgreen Co.}, 564 F.2d at 754 n.7. While “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.” \textit{Haag Drug}, 169 NLRB at 878.\textsuperscript{23}

IV. CONCLUSION

Based upon the record and the evidence discussed above, I find that the Petitioner’s petitioned-for unit limited to Hamilton Store 8964 is appropriate, and the Employer has not rebutted the single-facility presumption.

No determination has been made concerning the eligibility of the Assistant Store Manager(s). Therefore, any employee in this classification is allowed to vote subject to challenge, with a decision on the eligibility of these individuals to be resolved in a post-election proceeding, if necessary.

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

\textsuperscript{22} Section 9(c)(5) states that “[i]n determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling.” 29 U.S.C. § 159(c)(5).

\textsuperscript{23} Cases cited by the Employer in favor of its Section 9(c)(5) argument are inapposite as they do not involve the single-facility presumption. \textit{See Malco Theatres, Inc.}, 222 NLRB 81, 82 (1976); \textit{Quality Food Markets, Inc.}, 126 NLRB 349, 351 (1960). \textit{Cf. Kansas City Coors}, 271 NLRB 1338 (Board rejected petitioned-for two-facility unit where employer planned to consolidate all facilities under one roof). Nothing in these decisions suggests that the application of the long-standing single-store presumption violates Section 9(c)(5).
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 purposes of the Act to assert jurisdiction in this case.\(^{24}\)

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

4. The parties stipulated, 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 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 #8964 located at 1081 Whitehorse Road, Hamilton Township, New Jersey.

   **EXCLUDED:** All office clericals, Store Managers, guards and supervisors as defined in the Act, and all other employees.

   **OTHERS PERMITTED TO VOTE:** At this time, no decision has been made regarding whether employees classified as Assistant Store Manager are included in, or excluded from, the bargaining unit, and individuals in this classification 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.

V. DIRECTION OF ELECTION

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

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\(^ {24}\) The Employer, a corporation headquartered in Seattle, Washington, and with facilities located throughout the United States, including a facility located at 1081 Whitehorse Road, Hamilton, New Jersey, is engaged in the retail operation of coffee shops. During the preceding twelve months, the Employer derived grossed revenue in excess to $500,000 and purchased and received goods and services in excess $50,000 at its Hamilton, New Jersey facility directly from suppliers located outside the State of New Jersey.
A. Election Details

The parties stipulated to a mail-ballot election and that the ballots should be printed in English and Spanish. The Petitioner waived up to seven of the 10 days it is entitled to have the voter list prior to the election.

The Region will mail ballots to employees employed in the appropriate collective-bargaining unit. At 5:00 p.m. (EST) on April 8, 2022, ballots will be mailed to voters from the National Labor Relations Board, Region 22. 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 22’s office by close of business on April 29, 2022. All ballots will be commingled and counted by an agent of Region 22 of the National Labor Relations Board on the earliest practicable date after the return date for mail ballots. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by April 15, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 22 Office at (973) 645-2100; 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 count will take place virtually, on a platform (such as ZOOM, Skype, WebEx, etc.) on a date and at a time to be determined by the Regional Director. Each party will be allowed to have one designated official observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit 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.

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 by mail as directed above.
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. Regarding the voter(s) whose eligibility status is unresolved, the submitted list must specify this individual’s name and other information in a separate section.

To be timely filed and served, the list must be received by the Regional Director and the parties by March 31, 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.

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list must 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.
D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board’s Rules and Regulations requires the Employer to timely post copies of the Board’s official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed no later than 12:01 a.m. on April 5, 2022. If the Employer does not receive copies of the notice by April 1, 2022, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

The Region will provide ballots and election notices in English and Spanish, in accordance with the parties’ stipulation. If additional special accommodations are required for any voters, potential voters, or election participants to vote, please tell the Board agent as soon as possible.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

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.

Dated: March 29, 2022

Suzanne Sullivan
Regional Director
National Labor Relations Board, Region 22
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Newark, NJ 07102-3127