Starbucks Corporation (the Employer) operates a chain of coffee shops with locations across the United States and throughout the world. Workers United (the Petitioner) filed petitions with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent employees at five individual stores in the Philadelphia, Pennsylvania metropolitan area, each in a separate bargaining unit. Each petition seeks to represent a unit of baristas, shift supervisors, and assistant store managers, excluding store managers, office clericals, guards, professional employees, and supervisors.\(^1\)

As it repeatedly has before in many Starbucks representation cases nationwide, the Employer argues that the petitioned-for units limited to single facilities are inappropriate. Instead, the Employer maintains that the smallest appropriate unit must include all 28 facilities in the Employer’s Philadelphia market.\(^2\) The unit sought by the Employer would include approximately 568 employees.

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1 In Case 04-RC-289708, filed on January 28, 2022, Petitioner seeks a unit of approximately 21 employees at Store #07636 located at 1945 Callowhill Street in Philadelphia, PA (Callowhill Store); in Case 04-RC-289746, also filed on January 28, it seeks a unit of approximately 18 employees at Store #9536 located at 600 South 9th St, Philadelphia, PA (9th & South Store); in Case 04-RC-290056, filed on February 4, it seeks a unit of approximately 20 employees at Store #08846 located at 1900 Market Street, Philadelphia (20th & Market Store); in Case 04-RC-290064, also filed on February 4, it seeks a unit of approximately 23 employees at Store #775 located at 3401 Walnut St., Philadelphia, PA 19104 (34th & Walnut Store); and in Case 04-RC-291798, filed on March 7, it seeks a unit of approximately 24 employees at Store #25384 located at 3400 Civic Center Boulevard, Philadelphia (Penn Medicine or Penn Med Store).

2 The 28 facilities in the Philadelphia market are: Store #761 (1201 Market); Store #775 (Walnut & 34th); Store #7743 (16th & Market); Store #8846 (20th & Market); Store #25384 (Penn Medicine); Store #28256 (3901 Walnut St.); Store #60509 (10th & Market St.); Store #753 (16th & Walnut); Store #7636 (Callowhill St.); Store #8720 (Broad & Jackson); Store #17767 (18th & Spruce); Store #22486 (Comcast Center); Store #29964 (22nd & South); Store #52857 (Broad & Washington); Store #54020 (Broad & Spring Garden); Store #752 (Chestnut Hill); Store #11068 (Grant & Academy); Store #13386 (Roxborough); Store #14387 (Red Lion Rd. & Roosevelt Blvd); Store #25617 (Belmont & City Line Ave.); Store #7840 (3rd & Arch); Store #8881 (8th & Walnut); Store #8882 (10th & Chestnut); Store #9536 (9th & South); Store #10407 (12th & Walnut); Store #53979 (1002 N. 2nd St., Northern Liberties); Store #65982 (Cottman & Bustleton); and Store #53980 (2401 Aramingo Ave., Port Richmond). The newest of the 28 stores had not yet opened at the time of the hearing.
The Employer further asserts that the petitioned-for assistant store managers are supervisors within the meaning of Section 2(11) of the Act. Consistent with their practice in other Starbucks cases, the parties have agreed to vote those employees subject to challenge.\(^3\)

On February 11, 2022,\(^4\) I issued an Order Consolidating Cases and Rescheduling Hearing in Cases 04-RC-289708, 04-RC-289746, 04-RC-290056, and 04-RC-290064, and on February 25 and 28, a hearing officer for the Board conducted a hearing by videoconference, during which the parties were invited to present their positions and supporting evidence. Thereafter, the parties submitted post-hearing briefs. The representation hearing in Case 04-RC-291798 was held on March 28. By stipulation, the parties incorporated by reference the record from the prior four consolidated cases, which included evidence about the Penn Med Store. As a result, they offered no testimony or documentary evidence at the March 28 hearing, but they did submit post-hearing briefs. On April 5, I issued an Order consolidating Case 04-CA-291798 with the first four cases for decision.

I have duly considered all testimony, evidence, and arguments of the parties. Based on the entire record\(^5\) and consistent with Board law, I find that the Employer has not sustained its burden of demonstrating that the smallest appropriate unit must include all 28 Philadelphia market facilities. I find that each of the five petitioned-for single-facility units is an appropriate unit for collective bargaining purposes, and I am therefore directing a separate election for each one. The parties have stipulated that any elections that take place should be conducted by mail ballot. Therefore, I am directing five prompt mail ballot elections.

I. ISSUES AND POSITIONS OF THE PARTIES

The Employer asserts that the only appropriate unit is a multi-facility unit that includes the 28 facilities in its Philadelphia market. It argues that I should not apply the same single-facility presumption previously used in prior representation cases for Starbucks locations in, inter alia, Buffalo, New York, and Mesa, Arizona.\(^6\) The Employer further argues that the Petitioner’s request to hold an election in a single-store bargaining unit violates Section 9(c)(5) of the Act.\(^7\)

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\(^3\) While the Petitioner did not include the assistant store manager position in the original petitioned-for units, it argued for their inclusion in its Responsive Statements of Position.

\(^4\) All dates herein are in 2022 unless otherwise noted.

\(^5\) I have also taken administrative notice, and the Petitioner and the Employer agree that it is appropriate to do so, of the records, including transcripts and exhibits, in Cases 03-RC-282115 (Buffalo I – Elmwood), 03-RC-282139 (Buffalo I – Genesee Street), 03-RC-282127 (Buffalo I – Camp Road), 03-RC-285929 (Buffalo II – Walden Avenue), 03-RC-285986 (Buffalo II – Sheridan Drive), 03-RC-285989 (Buffalo II – Transit Road), 28-RC-286556 (Mesa, Arizona), 01-RC-287639 (Boston – Coolidge Corner), 01-RC-287618 (Boston – Commonwealth Avenue), 19-RC-287954 (Seattle, Washington), and 10-RC-288098 (Knoxville, Tennessee).

\(^6\) Since December 7, 2021, the Board has consistently found that the Employer failed to rebut the single-facility presumption, issuing Orders denying the Employer’s Request for Review of Decision and Direction of Election in the following cases: Starbucks (Buffalo I), 03-RC-282115 et al. (Dec. 7, 2021) (unpublished); Starbucks (Mesa), 371 NLRB No. 71 (Feb. 23, 2022); Starbucks (Buffalo II), 03-RC-285929 (Mar. 7, 2022) (unpublished); Starbucks, 19-RC-287954 (Mar. 22, 2022) (unpublished); Starbucks, 10-RC-288098 (Mar. 23, 2022) (unpublished); Starbucks, 01-RC-287618 et al. (Apr. 6, 2022) (unpublished).

In denying review of Buffalo I, the Board observed that the Regional Director correctly applied the standard that an employer bears a “heavy burden” in overcoming the single-facility presumption and “must demonstrate integration
The Employer asserts that it maintains full autonomy and control over the stores in the Philadelphia market and that core operational decisions for the petitioned-for stores, as with all of the stores in the Philadelphia market, are made at the market level or above rather than at the store level. The Employer contends that it uses technology and operating systems and policies that are implemented nationwide for all baristas and shift supervisors. It emphasizes the company’s detailed and centralized operational protocols, claiming they demonstrate functional integration, eliminate distinctions between stores, and facilitate regular and frequent interchange of employees. As to the last of these, the Employer asserts that 48% of baristas and shift supervisors in the Philadelphia market worked in multiple stores during the two-and-three-quarter-year period between April 29, 2019 and January 23, 2022. The Employer maintains that labor relations are standardized nationally and not controlled by store managers. It notes that employees throughout the market have the same skills and are entitled to the same benefits and wages. Finally, it asserts that the geographic proximity and lack of bargaining history within the Philadelphia market support a multi-facility unit.

While urging that the decisions in Buffalo 1, Buffalo 2, and Mesa were wrongly decided, the Employer also asserts there are critical differences between those cases and the instant ones due to the Philadelphia Fair Workweek Law and the high incidence of “disruptive behavior” in Philadelphia, which led the Employer to retain a social worker who works with the homeless population around the stores. Apart from these distinctions, the Employer presented no other arguments to distinguish the Buffalo and Mesa cases.

The Petitioner argues that the Employer has failed to rebut the strong presumption that a petitioned-for single-facility unit is an appropriate unit. It asserts that the record evidence shows that local store managers exercise meaningful control over labor relations and store operations so substantial as to negate the separate identity” of the single store units. Starbucks Corp., 2021 WL 5848184, at *1 (Dec. 7, 2021). In that regard, the Board rejected Starbucks’ suggestion that a community of interest between petitioned-for employees and excluded employees rebuts the single-facility unit presumption. Id. The Board also found that Starbucks had failed to overcome the Union’s “specific evidence” of store managers’ involvement in such matters as hiring and firing, resolving daily grievances and routine problems, adjusting schedules, approving time off and overtime, evaluating employees, and imposing discipline. Id. (citing Haag Drug, 169 NLRB 877, 878 (1968)). The Board further agreed that “the remaining factors under the Board’s single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange.”

In denying review of Mesa, the Board reiterated that the Employer failed to meet “its heavy burden to overcome the presumption that the petitioned-for single store unit is appropriate; the mere fact that the petitioned-for employees may share some community of interest with excluded employees does not serve to rebut the presumption.” Starbucks Corp, 371 NLRB No. 71, slip op. at 1 (February 23, 2022).

Contrary to the Employer’s contention, Section 9(c)(5) of the Act does not prohibit the Petitioner from organizing individual stores in the Philadelphia area. The Employer made the same argument and cited the same cases in Buffalo 1, claiming that the Petitioner’s selection of stores was impermissibly controlled by the extent of its ability to organize the Buffalo market. The Acting Regional Director for Region 3 disagreed, and the Board affirmed her decision. Starbucks Corp., 2021 WL 5848184 (Dec. 1, 2021). The cases the Employer cites are distinguishable: all involve situations in which a union arbitrarily attempted to exclude from its bargaining unit certain employees within a single facility, not employees of separate facilities. See NLRB v. Metro. Life Ins. Co., 380 U.S. 438, 442 (1965); Lundy Packing Co., 68 F.3d 1577, 1580-83 (4th Cir. 1995); May Dept. Stores Co. v. NLRB, 454 F.2d 148, 150-51 (9th Cir. 1972).
without significant oversight from district management, including the ability to hire, discipline, train, provide orientation, promote, grant time off, and schedule employees.

The Petitioner further argues that the evidence adduced at the hearing indicates that interchange is the exception and not the rule at the petitioned-for stores. The stores in Philadelphia showed an average “borrowed partner” rate of 2.8% over the course of 22 months, meaning that, on average, only 2.8% of hours worked by all employees in Philadelphia stores were worked by employees away from their “home stores.”

The Petitioner asserts that the infrequent employee interchange does not destroy the petitioned-for units’ homogeneity, but instead bolsters its position that single-facility units are appropriate. It further notes that any interchange is strictly voluntary. While the Employer provided evidence of corporate-wide policies and integration at a national level, the Petitioner argues that such evidence is insufficient to rebut the presumption that a single-facility unit in a retail industry setting is appropriate.

II. RECORD EVIDENCE

The Employer operates around 9,000 retail locations in the United States. Its North American stores are divided into twelve retail regions. The stores at issue here are located in the Mid-Atlantic Region, managed by Regional Vice President Lucious McDaniel III. The Mid-Atlantic Region is divided into “areas”. Area 147 of the Mid-Atlantic Region, overseen by Regional Director Doro Ba, includes the Philadelphia market; Bucks and Montgomery Counties, Pennsylvania; Baltimore and Annapolis, Maryland; and additional surrounding areas of those two states. Area 147 is further divided into districts, each governed by a district manager who reports to Ba. The 28 stores in the Employer’s Philadelphia market fall into four separate districts: 2104, 393, 824, and 2058.

Michael Rose is the district manager for District 824, which encompasses eight stores including the petitioned-for Callowhill Store. Juan Rivera is the district manager for District 393, which has seven stores, among them the petitioned-for 20th & Market Store, 34th and Walnut Store, and Penn Med Store. Les Fable is the district manager for District 2104, covering seven stores including the petitioned-for 9th and South Store. Albert Millan is temporarily overseeing District 2058, which has six stores. While the stores of Districts 824, 393, and 2104 are located entirely in the Employer’s Philadelphia market, some stores in District 2058 are located in the suburbs of Philadelphia and not within the Employer’s proposed unit.

A store manager heads each individual store and reports to the appropriate district manager. Some stores also employ an assistant store manager, a temporary position used to train new store managers. Shift supervisors support and cover for store managers while working alongside baristas. Among the petitioned-for stores, Michelle Conway is the store manager for the Callowhill Store; Maura Dengel is the store manager for the 9th and South Store; Whitney Grubbs is the store manager for the 20th & Market Store; Jonah Pettinato is the store manager for the 34th and Walnut Store; and Navy Ross is the store manager for the Penn Med Store. Of the
five, only the Penn Med Store presently employs an assistant store manager. In the Employer’s preferred market-wide unit, there are approximately four assistant store managers.

The Employer notes that, in order to comply with the Philadelphia Fair Workweek law, it altered its hiring and scheduling practices in the Philadelphia market, including a requirement that Philadelphia-based employees trade shifts only with other Philadelphia-based employees. Additionally, employees in Philadelphia do not have to launder their own Starbucks-provided aprons, unlike employees at stores outside Philadelphia. Finally, the Employer emphasizes that stores in the Philadelphia market tend to have high “incident rates,” and, accordingly, the Employer has retained a social worker who visits stores on a daily basis and works with the homeless population around the stores.

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

The Employer’s job descriptions indicate that while district managers are responsible for store managers (“The majority of [a district manager’s] time is spent staffing, coaching, developing and managing the performance of store managers”), store managers are responsible for their own stores’ workforces (“a majority of [a store manager’s] time is spent supervising and directing the workforce, making staffing decisions (i.e., hiring, training, evaluating, disciplining, discharging, staffing and scheduling), ensuring customer satisfaction and product quality, managing the store’s financial performance, and managing safety and security within the store.”) Store managers are responsible for maintaining personnel, business, timekeeping, and payroll records at their stores.

District Manager Michael Rose testified that his role is to support and develop the store managers in his district, and to oversee their key decisions. At a minimum, he speaks to the store managers twice per week, including a short call each Monday and a more in-depth call each Thursday. He typically visits each store once per week. The length of these visits varies from a swift check-in with the store manager to a dedicated meeting spent “shoulder to shoulder” with the store manager. District Manager Juan Rivera likewise testified that he visits each of his stores weekly or biweekly. During these visits, Rivera spends the majority of his time with the store managers, to whom he speaks multiple times per week by phone. The district managers also speak to baristas and shift supervisors when they visit the stores.

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8 See The Philadelphia Code § 9-4600 et seq.
9 The Fair Workweek law in Philadelphia requires covered employers to provide service, retail, and hospitality workers with a predictable work schedule. It further requires good faith estimates and 14 days advance notice of schedule. Covered employers include those with 250 or more employees worldwide and 30 or more locations worldwide, including chain establishments and franchises. Employers were required to be compliant with this law as of April 1, 2020. See [https://www.phila.gov/documents/fair-workweek-resources/](https://www.phila.gov/documents/fair-workweek-resources/), last visited April 11, 2022.
10 The record is unclear as to the precise amount of time district managers spend with store-level employees who are not managers. Alexandra Rosa, a shift supervisor at the 20th & Market Store, testified about discussing career paths with Rivera. Tiernan Low, a shift supervisor at the 34th and Walnut Store, testified to rarely seeing Rivera because Low works nights and Rivera’s visits take place earlier in the day.
Store managers cannot independently determine their stores’ operating hours, nor can they decide whether their stores will be closed, relocated, or remodeled. Further, store managers have no input into store layout, equipment, products, pricing, or supplies. Any employee may fill out a request for maintenance, and the Employer’s centralized Facilities Call Center determines the priority of the request and takes any steps necessary to resolve the issue. Approximately six times per year, the Employer issues a national planning guide, which includes promotions to be implemented and special food or drink items to be offered at all stores. Individual store managers cannot choose to ignore the planning guide’s instructions; rather, they must make certain that the planning guide is followed at their stores. Additionally, an organizational tool called Siren’s Eye identifies and dictates exactly how and where each store should display its merchandise. Store managers do not participate in the creation of the Siren’s Eye protocols.

Seasonal items are shipped to stores automatically without any input from the store managers. The automated ordering system does take an individual store’s expected needs – their “par” – into consideration, and store managers may adjust their pars to some extent. To order products not covered by automated shipment, stores use a national inventory management system that suggests order quantities for each store and requires little human input.

Staffing levels at individual stores are also determined at the district level. Store managers cannot independently decide to increase the employee headcount at their stores. Once hiring authority is granted, however, district managers generally do not conduct hiring interviews for new store-level employees; rather, the hiring process is the responsibility of store managers. Prospective employees submit applications through the Employer’s website, a process that is uniform regardless of the store or stores at which the applicants wish to work.

The Employer’s new-hire orientation and training procedures, called First Sip, are standardized; the store managers do not develop the content of the training. A new employee’s orientation is handled by store-level employees, including barista trainers, shift supervisors, and store managers. The certified barista trainer trains new employees pursuant to the First Sip training plan and the store manager is responsible for conducting skills checks at the completion of the training. Training normally takes place at an employee’s home store, although on occasion an employee may be trained at a different store where a barista trainer is available. In October 2021, the Employer conducted market-wide holiday training at a central location, a departure from its usual procedure of having individual stores conduct their own training. Prior to that, the Employer had not held a market-wide training for several years due to the Covid-19 pandemic.

Employees who wish to transfer from one store to another make the request through their store manager. The store managers of the involved stores discuss the employee and then pass the request to the appropriate district manager for approval. The record does not reveal how

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11 A district manager may use the Employer’s online hiring platform to make a candidate visible to a store manager in need of candidates.
12 The store manager is responsible for choosing barista trainers and ensuring that they are certified.
frequently Philadelphia market district managers decline to approve a transfer requested by the store managers.

District Manager Rose testified that the promotion of managers and succession planning is handled on a market-wide basis. As noted above, Alexandra Rosa, a shift supervisor at the 20th & Market Store, testified to discussing career paths with District Manager Rivera. In contrast, the promotion of baristas to shift supervisors is handled in-store by store managers. Store managers also hold “performance and development” conversations with baristas and shift supervisors, as the Employer does not have a formal evaluation process.

All employees in both the Philadelphia market and throughout the country are subject to the same policies, including those found in the Partner Guide and the Operations Manual. The Employer also uses other tools to enforce its standardized policies across multiple locations. Thus, the Play Builder calculates how many employees should be assigned to various stations based on the product mix and time of day and determines what tasks those employees should perform. The Virtual Coach offers guidance on the appropriate disciplinary action to take when a manager inputs data regarding an employee’s policy violation. And the Partner Contact Center acts as a centralized call center to handle employee complaints and inquiries, such as questions about harassment or ethics, regardless of the employee’s home store. Despite the Contact Center’s availability, however, the Employer’s policies also instruct employees to approach store managers with questions of all kinds.

The Employer’s Partner Hours tool forecasts customer demand on a store-by-store basis and determines each store’s scheduling needs; thus, it dictates the number of hours per week a store manager may schedule employees to work. Store managers likewise have no say in assigning overtime, which must be approved by district managers. In Philadelphia, the Fair Workweek law requires that employees be provided with a consistent work schedule. However, actual day-to-day scheduling of employees within a store is handled by a store manager. Consistent with that authority, the Employer’s policies direct employees to discuss their availability with store managers. Store managers also verify hours worked, approve requests for time off, communicate with employees on pay-related matters, and post work schedules.

Low-level discipline is handled at the store level. The Employer’s Corrective Action Forms expressly state that employees should discuss concerns with their managers, and there is no space on the form for the approval of a district manager. At the same time, store managers are expected to use Virtual Coach to ensure that discipline is issued consistently across the Employer’s many locations. District Manager Rose testified that, while he would not overrule discipline issued by a store manager if that discipline followed Virtual Coach, he has overruled discipline issued by store managers who did not first counsel the affected employees. Likewise, District Manager Rivera testified that he is usually in alignment with his store managers’ disciplinary decisions.\(^{13}\) The district managers do become directly involved in discipline when an employee must be terminated or issued a final warning.

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\(^{13}\) There was no testimony as to how often Rose or Rivera disagree with store managers’ disciplinary decisions.
B. Employee Skills, Functions, and Working Conditions

Employees’ skills and functions are largely the same at the 28 stores which comprise the Philadelphia market and, indeed, at all of the Employer’s stores throughout the United States. Employees perform the same tasks, such as preparing drinks and cleaning, and they sell the same products to consumers. They are subject to the same operating and policy manuals and the same training programs.

All employees also receive the same wages and benefits, which are determined by the Employer’s corporate office. Individual store managers cannot alter wages, wage increases, or benefits. Benefits include medical coverage, disability coverage, life insurance, parental leave, free access to the Headspace meditation app, free coffee and food while working, DACA filing fees, and tuition reimbursement for degrees through Arizona State University. As previously noted, one benefit unique to employees in the Philadelphia market is free laundering of their aprons pursuant to the Fair Workplace law.

C. Employee Interchange

The Employer does not require employees to work in stores other than the specific stores where they were hired to work, their home stores. However, employees are permitted to work in other stores on a voluntary basis, referred to as “borrowed” employees working “borrowed” shifts. The Employer provided detailed data about employees working shifts at locations other than their home stores within the Philadelphia market between April 29, 2019 and January 23, 2022. Specifically, the raw data includes timekeeping information, which identifies when an employee works in a given store as well as that employee’s designated home store; an employee listing, which provides the last position held by each individual; and store listings, which identify opening and closing dates.

The Employer retained Dr. Matthew Thompson, who holds a Ph.D. in economics and public policy, to evaluate the data for evidence of employee interchange within the Philadelphia market. The record includes graphs, charts, and maps created by Dr. Thompson which show the percentage of employees working in multiple stores; the percentage of employees “borrowed” by day of the week and by calendar date; store days requiring at least one borrowed employee; and the flow of employees among the various stores in the Philadelphia market.

Regarding that evidence, the Petitioner highlights that the stores in the Philadelphia market showed an average “borrowed partner” rate of 2.8% over the course of 32 months, meaning that, on average, 2.8% of hours worked by all employees in Philadelphia stores were worked by employees away from their “home stores.”

14 Although the Employer’s Partner Guide states that employees “may be assigned to work at a Starbucks store other than the normal place of work, and the partner will be expected to do so,” there is no record evidence that this has ever happened. Both District Manager Rose and Callowhill Store Manager Michelle Conway testified that all interchange is strictly voluntary.
Conversely, the Employer emphasizes the following:

- Approximately 48% of Philadelphia market baristas and shift supervisors worked in two or more stores during the time period for which data was provided.\(^{15}\)
- Employees working exclusively in their home store during that time period are the minority in every store in the Philadelphia market, including the five petitioned-for stores.\(^{16}\)
- No stores are isolated or excluded from borrowing or lending employees within the Philadelphia market.
- Twenty percent of days require borrowed partners in the Philadelphia market.

D. Distance Between Locations

All of the stores in the Philadelphia market are situated within a 20-mile radius. District Manager Rose testified that he can walk through his district and visit all eight stores in 90 minutes.

E. Bargaining History

The Employer has no bargaining history with any store in the Philadelphia market.

III. ANALYSIS

It is well-established that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). When a party takes the position that a single-facility unit is not appropriate, that party bears the “heavy burden of overcoming the presumption.” *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). To rebut this presumption, the Employer “must demonstrate integration so substantial as to negate the separate identity” of the single store units. Id. at 197.

The Board examines several factors when it determines whether the single-facility presumption has been rebutted. These factors include: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills,

\(^{15}\) I note that while 48% of Philadelphia market baristas and shift supervisors worked in stores other than their home stores on at least one occasion during the 32 months for which data was provided, the vast majority of employees did not do so routinely. Thus, less than 3% of shifts worked throughout the Philadelphia market during that time period were worked by “borrowed” employees.

\(^{16}\) 32.7% of 34th and Walnut Store employees worked only in their home store; 38% of Callowhill Store employees worked only in their home store; 34.4% of 20th & Market Store employees worked only in their home store; 48.4% of 9th & South Store employees worked only in their home store; and 32.1% of Penn Med Store employees worked only in their home store.
functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866, 867 (2003); *J & L Plate, Inc.*, 310 NLRB 429, 429 (1993). These same factors apply in the retail chain setting. See, e.g., *Red Lobster*, 300 NLRB 908, 910-11, 912 (1990); *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997).

In *Sav-On Drugs, Inc.*, 138 NLRB 1032 (1962), the Board abandoned its prior policy of making unit determinations coextensive with the employer’s administrative division or the involved geographic area in the retail chain context. The Board decided that it would apply to retail chain operations the same unit policy that it applies to multiplant enterprises in general, that is, in the light of all the relevant circumstances of the particular case. Id. at 1033.

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

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

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

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

Id. at 879.

Here, the Employer has failed to carry its burden that the only appropriate unit must consist of the 28 stores in its Philadelphia market. In so finding, I note that the unit sought by a petitioner is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). Moreover, “although other combinations of employees here may also constitute an appropriate unit,” the issue is only whether the employees at each petitioned-for store “alone constitute an appropriate unit.” *Foodland of Ravenswood*, 323 NLRB at 666. “There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be ‘appropriate.’” Id. (quoting *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950)); see also *Haag Drug Co.*, 169 NLRB at 877 (“It is elementary that more than one unit may be appropriate among the employees of a particular enterprise….”).
As detailed below, based on the parties’ arguments and the record as a whole, I find that the petitioned-for single-facility units are appropriate.

**A. Control over Daily Operations, Labor Relations, and Local Autonomy**

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

The Employer operates a highly centralized national retail chain operation and takes great care and pride in executing a standardized customer experience across its locations. To accomplish this, it relies heavily on its centralized operating procedures, including distribution channels, store design, and product offerings, placement, marketing, and promotions, as evidence of functional integration. Notwithstanding the Employer’s evidence of centralized operations, such a circumstance is not considered a primary factor in the consideration of single-store units in the retail industry. *Id.*

Thus, while the functional integration of two or more plants in substantial respects may weigh heavily in favor of a more comprehensive unit, it is not a conclusive factor. See *Dixie Belle Mills, Inc.*, 139 NLRB 629, 632 (1962); *J&L Plate*, 310 NLRB 429 (1993). The Board has held that a single facility could constitute a separate appropriate unit if the requested facility retained a substantial degree of autonomy, even where there was substantial centralization of authority and considerable product integration between facilities. *The Black and Decker Manufacturing Company*, 147 NLRB 825 (1964).

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

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

More significant is whether or not the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the
employees, and is personally involved with the daily matters which make up their grievances and routine problems. It is in this framework that the community of interest of the employees in a single store takes on significance, for the handling of the day-to-day problems has relevance for all the employees in the store, but not necessarily for employees of the other stores.

Ibid.

In the instant matter, the evidence demonstrates that store managers exercise discretion over many daily operational and labor relations matters. Store managers are responsible for interviewing, hiring, and training employees. They schedule employees to work and issue discipline as needed, other than final warnings and terminations. They determine which employees should be promoted and are the usual point of contact when employees have a question or concern. The district manager plays no role in these activities, which help form the core of labor relations, on a consistent basis. Indeed, the district manager is rarely present in any given store in order to directly supervise the baristas.

The Employer argues that the store managers do not enjoy true autonomy because the district manager may overrule them on operating decisions, including discipline. However, both District Manager Rose and District Manager Rivera testified that they generally follow store managers’ recommendations in disciplinary matters. The district managers’ paper authority to overrule store managers’ decisions is used so rarely in practice that it does not negate the store managers’ day-to-day autonomy. See Red Lobster, 300 NLRB at 908 fn. 4 (finding local autonomy where upper level supervisors were present in stores for a full day about once a week and possibly also on store managers’ days off, in part because “there is insufficient staffing for persons in these two positions to be present in all restaurants at all times”); Renzetti’s Market, Inc., 238 NLRB 174, 175-76 (1978) (emphasizing that daily supervisor is “better able to comment on the job performance of employees over whom he has constant supervision”). See also Haag Drug, 169 NLRB at 878 (finding local autonomy where “the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees and is personally involved with the daily matters which make up their grievances and routine problems”).

The Board has often reached a finding of local autonomy under facts similar to those present here. In Cargill, Inc., 336 NLRB 1114, 1114 (2001), the Board found local autonomy where supervisors made assignments, supervised work, scheduled maintenance inspections, imposed discipline, handled initial employee complaints, and scheduled vacations. Likewise, in Eschenbach-Boysa Co., 268 NLRB 550, 551 (1984), the Board found local autonomy where store managers conducted interviews, hired employees, granted time off, and resolved employee problems and complaints even though an upper-level manager “reserved for himself many management prerogatives [because] he necessarily must leave many of the day-to-day decisions… to his managers.” In Foodland of Ravenswood, 323 NLRB at 667, the Board noted

17 The district managers do review the schedules, but they do so to ensure that staffing levels are appropriate rather than to determine which employees should work at which times.
that “responsibility… to hire part-time employees, to schedule and assign employees, to approve overtime, to grant time off, to impose and recommend discipline, to evaluate employees and recommend their promotion, and to resolve and handle formal and informal employee grievances, constitutes significant evidence of local authority over employees’ status such that centralized control over other matters does not overcome the appropriateness of a single-store unit.” In Renzetti’s Market, 238 NLRB at 174, 175, the Board found merit to petitioner’s contention that such factors as centralized administrative control, uniform fringe benefits, and interdependence of the stores’ operations were outweighed by the “factor which is of chief concern to the employees,” that is, the day-to-day working conditions, including discipline, scheduling, requests for leave, and handling routine grievances. See also Bud’s Thrift-T-Wise, 236 NLRB 1203, 1204 (1978) (finding that, although central labor policies circumscribed authority, store managers exercised autonomy in interviewing, scheduling, granting time-off, adjusting grievances, evaluating employees, and making effective recommendations for hiring, discipline, and firing); Lipman’s, 227 NLRB 1436, 1437 (1977) (“With regard to local autonomy, we find that supervisory personnel at the store level exercise considerable authority in personnel matters. While the personnel director makes final decisions as to discipline, schedules vacations, arranges for transfers, and handles grievances brought to her, in our opinion, the store manager and the personnel clerical at the downtown store also have and exercise substantial authority in the personnel area, in that the store manager evaluates and reprimands employees and the personnel clerical interviews, hires, schedules employee shifts, vacations, and overtime, and adjusts grievances.”); Walgreen Co., 198 NLRB 1138, 1138 (1972) (finding store manager’s autonomy significant where district managers visited individual store, at best, monthly, and manager had authority for most hiring); Haag Drug, 169 NLRB at 879-80 (stating that store managers are generally autonomous in rating employee performance, hiring and firing, and handling routine grievances).

Accordingly, 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.

B. Employee Skills, Functions, and Working Conditions

The employees’ skills, functions, wages, and benefits are virtually identical throughout the Philadelphia market. Indeed, those terms of employment are virtually identical for employees across the Employer’s thousands of locations nationwide, as is to be expected in a large retail chain. The Board has long held that while the standardization of centrally established benefits is of some significance, it should not overshadow other important factors where the uniformity is not greater than is characteristic of retail chain store operations generally. Haag Drug Co., 169 NLRB at 877.

The Employer emphasizes that working conditions in the Philadelphia market stores differ from working conditions in most other geographic regions in several ways: employees are subject to the Philadelphia Fair Workweek law, they do not have to launder their own aprons, and the Employer retains a social worker who works with the homeless population around the stores. However, these aspects of Philadelphia employees’ work constitute a small fraction of the
employees’ overall skills, functions, and working conditions. Further, as the Board noted in denying review of *Mesa,* “the mere fact that the petitioned-for employees may share a community of interest with excluded employees” does not rebut the single-facility presumption. Moreover, the market-wide unit sought by the Employer does not overlap with the Employer’s own internal “area” or “districts.” Although few differences in job functions and working conditions exist within the Philadelphia market, I give minimal weight to the significance of the Employer’s standardized wages, benefits, and skills that are to be expected in a national retail chain.

C. Employee Interchange

The record demonstrates that all interchange in the instant matter is voluntary. Although the Employer argues in its brief that employees understand that they are expected to work in multiple stores as needed, there is no record evidence that any employee has ever been required to work in a store other than the employee’s home store.

The Board has held that voluntary interchange should be afforded less weight in rebutting the single-facility presumption, *New Britain Transp. Co.*, 330 NLRB 397, 398 (1999) (“[V]oluntary interchange is given less weight in determining if employees from different locations share a common identity.”); *Red Lobster*, 300 NLRB 908 (1990) (noting that “the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, i.e., it is voluntary”).

The Employer’s interchange data reveals that the hours worked by borrowed baristas at the petitioned-for stores amounted to only a small percentage of total hours worked. Such minimal numbers are not sufficient to demonstrate that a single-facility’s homogeneity of employees has been destroyed or to rebut the single-facility presumption.

Accordingly, I find that the level of employee interchange supports the petitioned-for single-facility unit. While the Employer has established that a majority of petitioned-for employees worked at least one shift at another store between April 2019 and January 2022, this is not evidence of regular interchange sufficient to rebut the single-facility presumption, especially because the data provided by the Employer indicates that each petitioned-for store “borrows” only a very small percentage of its labor from other stores. In order for employee interchange to overcome the single-facility presumption, it must be “substantial” and “destructive of homogeneity” in a petitioned-for unit, *Haag Drug Co.*, 169 NLRB 877 (1968), neither of which is the case here. See also *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (13-14 interchanges between two facilities employing a combined 23 employees in an 8-month period not sufficient to rebut single facility presumption).

D. Distance Between Locations

18 As discussed above, the stores in Philadelphia showed an average “borrowed partner” rate of 2.8% over the course of 32 months, meaning that, on average, 2.8% of hours worked by all employees in Philadelphia stores were worked by employees away from their “home stores.”
All of the stores in the Philadelphia market are situated within a 20-mile radius, and District Manager Rose testified that he can walk through his district and visit all eight stores in 90 minutes.

The Board has found single-facility units to be appropriate in cases where the facilities in the employers’ proposed units had geographic proximity similar to that in the Philadelphia market. Thus, in *Lipman’s*, 227 NLRB at 1438 fn.7 (1977), the Board found that two stores located just two miles apart from each other were appropriate single-facility units; in *Red Lobster*, 300 NLRB at 908, 912, the Board found that stores an average distance of seven miles apart and all within a 22-mile radius were appropriate single-facility units. I find that the same conclusion is warranted here. I further find that any close proximity of the petitioned-for stores to other downtown Philadelphia stores is insufficient to offset the other factors considered by the Board’s single-facility test.

**E. Bargaining History**

The lack of bargaining history at any store in the Philadelphia market weighs in favor of the petitioned-for single store unit. In *Lipman’s*, supra at 1438, the Board held that single-store units were appropriate in a retail chain, emphasizing among other things “the fact that there is no bargaining history for any of these employees, and the fact that no labor organization seeks to represent the employees on a broader basis.”

**IV. CONCLUSION**

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based on the entire record in this proceeding, I find:

1. The rulings made by the Hearing Officer at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. There is no collective-bargaining agreement covering any of the employees in the unit, and there is no contract bar or other bar to an election in this matter.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

In Case 04-RC-289708:

All full-time and regular part-time baristas and shift supervisors performing work at the Employer’s store #07636 located at 1945 Callowhill St., Philadelphia, PA 19130, excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

In Case 04-RC-289746:

All full-time and regular part-time baristas and shift supervisors performing work at the Employer’s store #9536 located at 600 S. 9th St, Philadelphia, PA 19147, excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

In Case 04-RC-290056:

All full-time and regular part-time baristas and shift supervisors performing work at the Employer’s store #08846 located at 1900 Market St., Philadelphia, PA 19103, excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

In Case 04-RC-290064:

All full-time and regular part-time baristas and shift supervisors performing work at the Employer’s store #775 located at 3401 Walnut St., Philadelphia, PA 19104, excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

In Case 04-RC-291798:

All full-time and regular part-time baristas and shift supervisors performing work at the Employer’s store #25384 located at 3400 Civic Center Blvd., Philadelphia, PA 19104, excluding all store managers, office clericals, guards, professional employees, and supervisors as defined in the Act.

No determination has been made concerning the eligibility of Assistant Store Managers, and therefore any employees in this classification will be permitted to vote subject to challenge, with a decision on the eligibility of these individuals to be resolved in a post-election proceeding, if necessary.

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

A. Election Details

All five elections will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00 P.M. on Monday, May 2, 2022. Voters must return their mail ballots so that they will be received by close of business on Monday, May 23, 2022. The mail ballots will be counted on Wednesday, May 25, 2022 at a time and location to be determined, either in person or otherwise, after consultation with the parties.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region Four office no later than 5:00 pm on Monday, May 9, 2022 in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending April 17, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

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

Also eligible to vote using the Board’s challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

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

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Both parties agree that a mail ballot election is appropriate in this matter.
C. Voter List

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

To be timely filed and served, the list must be received by the regional director and the parties by Thursday, April 21, 2022. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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

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

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

D. Posting of Notices of Election

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

RIGHT TO REQUEST REVIEW

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

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

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

Dated: April 19, 2022

Thomas Goonan
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