Starbucks Corporation ("Employer") is a company headquartered in Seattle, Washington that operates a chain of coffee shops throughout the United States and globally. On February 8, 2022, Workers United Southwest Regional Joint Board ("Petitioner") filed a petition with the National Labor Relations Board ("Board") under Section 9(c) of the National Labor Relations Act ("Act") seeking to represent a unit composed of all full-time and regular part-time baristas, shift supervisors, and assistant store managers employed at Store 23895, also known as the “410 and Vance Jackson Store” store, located at 2639 Northwest Loop 410, Suite 106, San Antonio, Texas, excluding office clerical employees, store managers, professional employees, guards, and supervisors as defined in the Act.  

The only issue presented in this case is whether the petitioned-for single facility unit, limited to employees at Store 23895 is an appropriate unit for collective-bargaining, or whether the unit must also include employees at twelve (12) other stores owned by the Employer that are part of the Employer’s District 2087.  

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1 The Employer’s name appears as stipulated to by the parties.

2 The parties stipulated that there were no assistant store managers employed at Store 23895 as of the time of the hearing. The parties agreed to allow assistant store managers to vote subject to challenge in the event that I directed an election in a multi-facility bargaining unit. Although I am directing an election in a single-store unit, I find that the assistant store managers should vote subject to challenge because no determination has been made as to their eligibility. This agreement to permit assistant store managers to vote subject to challenge presupposes that there are one or more assistant store managers assigned to Store 23895 at the time the election is held.

3 The other twelve stores in District 2087 are Store 2835 – 7400 San Pedro; Store 2881 – 7311 San Pedro; Store 6217 – 7215 Blanco Rd; Store 6306 – 849 East Commerce; Store 9783 – 4739 Medical Drive; Store 14816 – 8746 Wurzbach Rd.; Store 15287 – 200 E. Houston St.; Store 15702 – 12003 NW Military Highway; Store 22813 – 3718
for unit and approximately 277 employees in the unit proposed by the Employer. The parties stipulated that the election should be conducted by mail ballot.

On March 2 and 3, 2022, a hearing officer of the Board held a hearing in this matter by videoconference, at which time, the parties were given an opportunity to present evidence and to state their respective positions on the record. Both parties filed post-hearing briefs.

I have carefully considered the evidence and arguments presented by the parties, along with relevant legal precedent. As explained below, based on the record and relevant Board law, I find that the petitioned-for single-store unit is an appropriate unit. Accordingly, I am directing a mail-ballot election to be conducted among the employees in the petitioned-for unit.

I. ISSUES AND POSITIONS OF THE PARTIES

The only issue before me is 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. at 1 (2022) (citing Haag Drug, 169 NLRB 877, 877 (1968) (petitioned-for single store unit in retail chain is presumptively appropriate). To rebut that presumption, “the Employer must demonstrate integration so substantial as to negate the separate identity of the single store unit.” Id. (quoting California Pacific Medical Center, 357 NLRB 197, 200 (2011). See also Starbucks Buffalo I and Starbucks Buffalo II, supra.

Although the Employer acknowledges the Board’s single-facility presumption, it contends that it has rebutted the presumption by showing centralized operations and labor relations; employee interchange; uniform employee skills, functions and working conditions; and geographic proximity between all of the stores in District 2087. Moreover, the Employer argues

4 The parties stipulated to incorporate the witness testimony and exhibits from the following representation cases between the Employer and the Petitioner as follows: Buffalo I (03-RC-282115, 03-RC-282127, and 03-RC-282139); Buffalo II (Case 03-RC-285929, 03-RC-285986, 03-RC-285989); Mesa I (Case 28-RC-286556); Mesa II (28-RC-289033); Seattle I (Case 19-RC-287954); and Eugene I (19-RC-288594). The parties further stipulated that the Region will not consider witness testimony or exhibits from the records in those cases that is not specifically cited to by the parties in their post-hearing briefs. With respect to the above cases, the Board has denied the Employer’s Requests for Review of the Regional Directors’ Decisions and Directions of Election and found that the Employer failed to rebut the single-store presumption as follows: Starbucks Corp. (Buffalo I), 2021 WL 5848184 (December 7, 2021); Starbucks Corp. (Buffalo II), 2022 WL 685506 (March 7, 2022); Starbucks Corp. (Starbucks Mesa or Mesa I), 371 NLRB No. 71 (February 23, 2022); Starbucks Corp. (Seattle I); 19-RC-287954 (March 22, 2022); and Starbucks Corp. (Eugene I), 19-RC-288594 (April 12, 2022). For similar reasons, the Board has also denied the Employer’s Requests for Review in the following cases: Starbucks, Corp. (Knoxville), 10-RC-288098 (March 23, 2022); Starbucks Corp. (Illinois), 13-RC-288995 (April 19, 2022); Starbucks Corp. (Hopewell), 22-RC-288780 (April 19, 2022); Starbucks, Corp. (Eugene II), 19-RC-289815, et al. (April 27, 2022); and Starbucks Corp. (Hamilton), 22-RC-291263 (April 27, 2022).

5 On March 16, 2022, the Petitioner filed Case 16-RC-292335 seeking to represent a single store unit of baristas, shift supervisors, and assistant store managers employed at Store 15287 in District 2087. I will issue a separate decision regarding that case.
that directing an election in the petitioned-for unit would give controlling weight to the Petitioner’s extent of organization, which is prohibited by Section 9(c)(5) of the Act.

In contrast, the Petitioner argues that the Employer has failed to rebut the presumption that the petitioned-for single store unit is appropriate because the store manager of Store 23895 controls the day-to-day operations of the store and has significant local autonomy to make operational and labor relations decisions regarding, among other things, scheduling, hiring, training, discipline, discharge, granting leave, evaluating employees, and resolving workplace disputes among employees. Moreover, the Petitioner argues that the Employer’s evidence does not establish significant employee interchange; that Store 23895 is unique due in part to its customer base and store layout; and that the Petitioner is entitled to seek to represent Starbucks employees on a store-by-store basis.

II. FACTS

A. Overview of the Employer’s Operations

The Employer operates more than 9,000 retail stores nationwide. The Employer’s U.S. operations are divided into 12 regions, which are further divided into markets, areas, and districts. Store 23895, at issue in the instant case, is in District 2087, which is part of Area 61 in Region 6. District 2087 contains thirteen retail stores which are all owned by the Employer. Traci York is the Vice President of Regional Operations, and Magnolia Lopez is the Partner Resources Manager. York and Lopez are responsible for District 2087.

Store 23895 has a café area, expresso bars, a fruit case, cash registers, a restroom, and a space in the back of the store used for storage and refrigeration. Store 23895 also has a drive-through, but not all stores in District 2087 have drive-through operations. The Employer refers to all of its employees as “partners.” There are approximately 19 baristas and 7 shift supervisors employed at Store 23895.

Alana Taiaroa, Store Manager, oversees the day-to-day operations of Store 23895, but she did not testify at the hearing. As set forth in the Employer’s job description, store managers are responsible for “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.” The Employer’s “Partner Guide” further states 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.” Store managers, who generally work 40 hours per week, are allotted certain work hours for “coverage” which encompasses customer-facing work, and work hours for “non-coverage” to perform other tasks. However, there is no evidence regarding the amount of hours that Store Manager Taiaroa’s spends performing coverage versus non-coverage work. Taiaroa reports to Casey Martin, District

6 The parties stipulated that the stores in District 2087 conduct substantially the same business as the stores involved in Cases 03-RC-282115, et al., 03-RC-285929, et al., 28-RC-286556, and 28-RC-289033.
Manager, who has been responsible for all of the stores in District 2087 since in or about mid-March 2021. Martin testified at the hearing. Martin reports to Audi Marciano, Regional Director, who is responsible for Area 61.

Martin’s oversight of District 2087 includes reviewing metrics, inventory, and the work schedules of each store through the Employer’s “Partner Hub.” Martin conducts two conference calls per week with the store managers in District 2087 and also communicates with store managers in the district as needed by telephone, email, and group chat. District Manager Martin testified that she typically visits stores in the district, including Store 23895, at least once every two weeks. Shift Supervisor C.J. Craig testified that from in or about April 2021, when Craig was hired, to January 2022, Martin has visited Store 23895 about two or three times, and that he has interacted with Martin at Store 23895 only once during his employment. Barista Gazelle Garcia, who has been employed at Store 23895 since about May 2021, has never interacted with Martin. Martin also conducts “roundtable” meetings once a month with a few baristas from each store in the district. Barista Courtney (“Mouse”) Huber, who has been employed at Store 23895 since on or about March 29, 2021, has been to one (1) roundtable meeting held by Martin but has not otherwise had interactions with Martin at Store 23895. Although Martin also conducts such roundtable meetings with shift supervisors, the frequency of those meetings is unknown.

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

The Employer’s primary goal is to provide consistent and uniform products and customer service in conducting its operations nationwide. Decisions about the permanent opening and closing of stores, products, store design, renovations, equipment placement, marketing and promotions, store budgets, the preparation of food and beverages, and contracts with vendors and contractors are generally made at the regional or national level. The Employer relies upon detailed operational plans formulated at the national level, including written period planning period guides that are issued nationwide about every four (4) months, which coincide with the Employer’s seasonal promotions. The Employer regularly distributes to stores a “Siren’s Eye,” a written guide that shows employees how fixtures and signage should be displayed in the stores during these promotions. The Employer maintains several computer-based technologies and written guides to assist store managers with inventory, hiring, staffing, and the application of certain human resources policies.

All of the equipment used at the stores is the same nationwide, and maintenance and repair issues are centralized. Store managers or shift supervisors at Store 23895 create facilities tickets on store iPads, and a facility services manager for Area 61 dispatches vendors to make needed repairs. With respect to inventory, the distribution of products and supplies to the stores in District 2087 occurs from the same vendors and warehouses. Food products are automatically shipped to each store, and store managers do not have discretion to make adjustments to the amounts of these products. However, Taiaroa has discretion to order other products and supplies in quantities within a certain range, as suggested by “Par Builder,” a computer-based tool within the Employer’s

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7 Shift Supervisor C.J. Craig, who has worked all three shifts at Store 23895, also testified that after the petitioned-for employees sought union recognition in or about January 2022, Martin started visiting the store more frequently, as often as seven days per week.
inventory management system (IMS). There is no specific evidence regarding how Store Manager Taiaroa manages Store 23895’s inventory on a day-to-day basis. If a store manager runs out of products or supplies, any employee in the store may be tasked with going to a nearby store in the district to pick up the items, and District Manager Martin also transfers supplies between stores during her store visits. The record does not show how often the petitioned-for employees, as opposed to a store manager, picks up products from other stores in the district.

1. Scheduling and Time Off

The regular store hours of Store 23895 are Monday to Sunday, from 5:00 a.m. to 9:30 p.m. but the employees are scheduled to work about three shifts within the hours from 4:30 a.m. to 10:00 p.m. daily. Store hours are established by District Manager Martin, and she must approve a store manager’s recommendation to modify a store’s hours. For example, on or about January 17, 2022, Martin agreed with Store Manager Taiaroa’s recommendation that store hours should be reduced in the summer due to safety concerns. Store managers prepare and post the work schedules for the petitioned-for employees. Although Martin testified that schedules should be posted three weeks in advance, Taiaroa posts the schedule for Store 23895 an average of a week to a week and ½ in advance. Taiaroa also reviews and approves time off requests from the petitioned-for employees and handles payroll. In the event an employee is sick or absent from work, it is Taiaroa’s responsibility to make sure that the store is properly staffed. As such, if an employee is on vacation or calls off from work, Taiaroa has the discretion to independently staff the store with additional employees. Taiaroa also approves “shift swaps” among employees who work at Store 23895. Although Martin must approve overtime work, there is no evidence regarding the frequency of overtime work at Store 23895.

District Manager Martin and store managers uses the Employer’s “Partner Planning Tool” which forecasts the staffing level that is necessary to meet the customer demand of each store. Based on these forecasts, Martin discusses staffing with store managers within the district on a regular basis. The scheduling program automatically generates a schedule for each store. As Martin explained, store managers in the district, including Taiaroa, have the discretion to create and/or adjust the schedule based on the forecasted hours, the particular store’s needs, and an employee’s preferences for hours of work. For example, on October 12, 2021, Taiaroa adjusted the start times of several employees to account for a shift swap requested Barista Gazelle Garcia that Taiaroa approved. Employees state their preferences for hours of work in a “Partner Availability Form” and any changes to the form must be approved by the store manager.

Store Managers are required to discuss any increases in staffing levels above the forecasted hours, called “labor investments” with District Manager Martin. For example, on November 10, 2021, Store Manager Taiaroa sent Martin an email explaining why Store 23895 needed labor investments for certain weeks, and Martin approved her requests. Although Martin testified that store managers should keep him informed of such labor investments, Martin has never disciplined a store manager regarding their use of the Partner Hours system. Moreover, store managers have the discretion to automatically create any schedule within the parameters of a store’s past four (4) weeks of earned hours or forecasted hours, without consulting with Martin.
2. Assigning and Directing Work

Regional Director Martin also generally testified about the assignment of work. Store managers or shift supervisors assign employees to specific tasks during their shift. Martin expects Taiaroa to use “Play Builder,” a company-wide application located on store iPads to make these assignments throughout the day. A “Play Caller,” who may be a shift supervisor or store manager, assigns employees to tasks within the store using Play Builder’s suggestions, but the Play Caller decides which employee is assigned to those tasks. At Store 23895, it appears that shift supervisors serve as the Play Caller a significant portion of the time, but there is no specific evidence regarding how often the shift supervisor versus the store manager serves as the Play Caller. The Play Caller can “flex” or change an assignment based upon the store’s particular needs, but there is no evidence regarding how often Store 23895 flexes Play Builder during store hours. Martin has not disciplined Taiaroa or any other store manager within District 2087 regarding their use of Play Builder. Finally, store managers have the discretion to shut down a customer’s ability to place mobile orders but are required to inform District Manager Martin after discontinuing mobile ordering services. As such, store managers presumably re-assign employees tasked to handle mobile orders to other roles within the store when mobile ordering is disabled.

3. Hiring and Training

District Manager Martin generally testified regarding the Employer’s hiring practices. Job postings for each individual store are posted on a centralized website where applicants seeking work can apply. Job applicants must submit applications to each store where they wish to be considered for employment and are generally hired for the particular store to which they have applied. Store managers can view the applicants on “Taleo,” the Employer’s centralized and computerized tracking system for job applicants. If a store manager does not act upon an application in Taleo within a certain period of time, another store manager can invite applicants within a certain radius of the store to apply. Store Managers should interview all applicants for competitive positions but otherwise have the discretion to select which job applicants to interview for an available job.

The Employer provides store managers with interviewing guides for baristas and shift supervisors. Store Managers are expected to ask at least one question from each section of these guides, and store managers take notes of interviews in Taleo. Aside from the occasional hiring fair, store managers independently interview and hire all baristas and shift supervisors for their assigned store. After conducting a job interview, Store Manager Taiaroa can hire the job applicant immediately, subject to a background check. Shift Supervisor C.J. Craig, Barista Mouse Huber, and Barista Gazelle Garcia were all interviewed and hired to work at Store 23895 by Store Manager Taiaroa. In fact, Taiaroa initially interviewed C.J. Craig for a barista position, but offered him a shift supervisor position during the interview, which Craig accepted.

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8 On or about April 2, 2021, and in or about September 2021, the Employer conducted two (2) hiring fairs. Store Manager Taiaroa and other store managers participated in the hiring fair, but there is no evidence that any of these employees were hired to work at Store 23895.
Martin’s role in the hiring of baristas and shift supervisors is limited. Although Martin testified that she has observed store managers conduct job interviews, there is no evidence that she has observed any interviews at Store 23895. Martin and the Employer’s Partner Relations department must approve a store manager’s decision to hire a barista or shift supervisor only if the applicant previously worked for the Employer or to hire an employee above the Employer’s starting wage rate for the position. Martin has never overturned a store manager’s decision to hire a barista or shift supervisor. In fact, on or about July 26, 2021, Taiaroa recommended that Ginger Dierks, a former employee, be hired at a higher wage rate than the Employer’s starting rate, and Martin agreed with Taiaroa’s recommendation.

Once an employee is hired, the store manager is responsible for onboarding and training the employee using the Employer’s nationwide training guidelines, which include “First Sip” orientation and “Barista Basics” training. In District 2087, “barista trainers” train new baristas, but store managers are ultimately responsible for building the training plan and making sure the training is completed. At Store 23895, barista trainers train new baristas, but Store Manager Taiaroa trains shift supervisors. During the initial training period, baristas and shift supervisors may be assigned to a “training store” before the start of their employment at their “home” store. This occurs because a particular store may not have the bandwidth necessary to train too many employees within a store at one time. The Employer selects training stores that are adequately staffed, such as Store 23895. Since in or about March 2021, Store 23895 has trained about 21 employees for approximately five (5) stores within District 2087. There is no evidence that employees hired to work at Store 23895 have received training at a training store.

4. Promotions

District Manager Martin testified that part of a store manager’s responsibility is to promote baristas who apply and are qualified to become shift supervisors. The Employer maintains a policy that for such promotions, store managers should interview a barista in conjunction with another store manager within District 2087 in order to eliminate bias. However, the store manager where the promotion occurs typically decides whether a barista should be promoted to shift supervisor. There is no evidence regarding whether such promotions have occurred at Store 23895.

5. Permanent Transfers

Employees interested in a transfer to another store must submit a transfer request form to the store manager, and the request must be approved by District Manager Martin. There is no evidence that District Manager Martin has ever failed to approve a transfer recommended by a store manager in District 2087. Moreover, there is no evidence regarding such transfers involving Store 23895.

6. Discipline

As set forth on the Employer’s “Corrective Action Form,” the Employer’s disciplinary procedure includes documented coaching, written warning, and final written warning. The form itself has a signature line for the store manager and the employee only and does not require the
signature of the District Manager. District Manager Martin testified that Store Manager Taiaroa, like all other store managers in the district, has the authority to independently issue documented coaching and written warnings to the petitioned-for employees without consulting with Martin. Shift Supervisor C.J. Craig testified that sometime during the period from April 2021 to date, Taiaroa issued a written discipline to him after Craig failed to correct a barista who used an expletive at work. In or about April 2021, Taiaroa issued discipline to an employee regarding time and attendance violations and placed another employee on a performance improvement plan. Although District Manager Martin followed up with Taiaroa regarding the status of these disciplinary matters by email, there is no evidence that Taiaroa was required to consult with Martin prior to issuing the time and attendance discipline or implementing the performance plan.

Taiaroa must consult with Martin regarding the imposition of a final written warning or a discharge, but there is no evidence that Martin has ever rejected a store manager’s recommendation to issue a final written warning or discharge an employee. As such, in or about June 2021, Martin approved Taiaroa’s decision to discharge an employee. Martin testified that since in or about March 2021, he has issued about one (1) discipline and four (4) discharges of baristas or shift supervisors for the entire district, but it is rare for him to do so. Martin is responsible for conducting investigations of employee misconduct. With respect to Store 23895, on an unspecified date, Martin discharged Store 23895 Shift Supervisor Ma Katrina Hernandez, as result of an investigation conducted by the Employer’s fraud department. Taiaroa was not involved in the fraud investigation or discharge of Hernandez.

Store managers are expected to use the Employer’s “Partner Relations Virtual Coach,” a computer program that provides various outcomes regarding disciplinary action based on the information input by the store manager regarding the situation. As suggested by Virtual Coach, the store manager may be required to consult with the district manager before issuing more serious types of discipline, but it is ultimately the store manager’s job to issue the discipline to the employee. Although Martin testified that all store managers in District 2087 use Virtual Coach, there is no specific evidence about how Taiaroa uses Virtual Coach. District Manager Martin has never disciplined a store manager in District 2087 regarding Virtual Coach.

7. Evaluations

Store managers, including Taiaroa, conduct Performance Development Conversations (PDCs) with employees as a development tool, in part, to facilitate promotions of baristas to shift supervisors. At Store 23895, a PDC involves, in part, an employee’s self-assessment of their strengths and weaknesses. There is no evidence that PDCs affect employees’ wages. The Employer sets wages for employees within the district, and store managers do not have any input into wages or wage increases.

8. Labor Relations

Store Manager Taiaroa is the first point of contact for questions or concerns raised by the petitioned-for employees regarding their terms and conditions of employment or workplace disputes among employees. For example, sometime during the period from in or about May 2021
to date, Barista Gazelle Garcia spoke to Taiaroa regarding inappropriate conduct by another employee, and Taiaroa handled the issue by addressing the issue with the employee who allegedly engaged in inappropriate conduct. Likewise, Shift Supervisor C.J. Craig generally testified that he has observed Taiaroa handle workplace disputes among employees.

As Baristas Mouse Huber and Gazelle Garcia testified, Store 23895 employees are required to address workplace issues or disputes with Store Manager Taiaroa before contacting District Manager Martin. There is no evidence that Martin has handled any workplace issues or disputes between the petitioned-for employees. Although Taiaroa could potentially escalate such issues to district or national level managers if she cannot resolve them herself, there is no evidence that she has done so. As stated above, Partner Relations Manager Magnolia Lopez is responsible for the human resources function for District 2087. In addition, the employees may contact the Employer’s Partner Relations Center (“PRSC”) or the Employer’s ethics department with any questions and concerns. However, there is no evidence that Store 23895 employees have contacted Lopez or these centralized departments.

C. Employee Skills, Functions, and Working Conditions

Although a store’s customer base or layout may vary, baristas nationwide are responsible for the same tasks, including preparing beverages, cash register transactions, and store cleanliness. Shift supervisors perform the same duties as baristas. According to the Employer’s “Partner Guide,” shift supervisors are also responsible for “helping guide the work of others and assisting with ordering and accounting.” A store manager or shift supervisor may serve as a “key holder” during each shift, who is responsible for controlling cash in the store. As stated above, shift supervisors also use Play Builder to assign work. Shift supervisors are the highest ranking employees in the store when the store manager is not available.

The petitioned-for employees are trained to perform all of the tasks within any store in the United States. All training is standardized nationwide, including “First Sip,” which is the initial training for a new employee conducted by the store manager. Moreover, the Employer has written roles and routines that employees must follow to prepare and serve food and beverages. Employees are subject to the same uniform policies nationwide.

Baristas and shift supervisors are considered part-time employees who generally work less than 40 hours per week. The petitioned-for baristas and shift supervisors receive the same pay as their counterparts at the other stores in District 2087, unless an employee is hired to work at a store at a higher wage rate. Employees who work more than 20 hours per week are eligible to receive

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9 On one occasion, during the period from in or about April 2021 to date, Shift Supervisor C.J. Craig contacted District Manager Martin directly requesting that she mediate a dispute between Craig and Store Manager Taiaroa, and Martin did so.

10 The parties stipulated that the baristas and shift supervisors who work at Store 23895 have similar skills and functions as the employees in the petitioned-for units in Cases 03-RC-282115, et al., 03-RC-285929, et al., 28-RC-286556, and 28-RC-289033.

11 There is no contention that shift supervisors are supervisors within the meaning of Section 2(11) of the Act.
the same benefits nationwide set forth in the Employer’s “Benefits Guide,” including health insurance and the right to participate in a 401(k) plan.

D. Interchange and Contact

As stated above, Taiaroa approves “shift swaps” among the petitioned-for employees. Employees can request shift swaps through the Partner Hours system or through “Shift Marketplace”, an application that per Martin was launched by the Employer in or about late January 2022. Employees assigned to work at one store may temporarily work at another store within District 2087, which the Employer calls the practice of “borrowing” employees. Store managers in District 2087 communicate with each other directly in order to borrow employees.

Martin testified that store managers typically offer shifts to employees at other stores on a voluntary basis, and there is no evidence that Taiaroa has ever disciplined a Store 23895 employee for refusing to work at another store. In this regard, Barista Mouse Huber testified that in or about May 2021, Taiaroa asked for Huber’s permission before scheduling Huber to work at another store. Shift Supervisor C.J. Craig testified that during the period from in or about April 2021 to date, Taiaroa changed the schedule by assigning Craig to work a shift at another store without talking to him prior to the change. However, there is no evidence that Craig complained about the assignment or that Craig would have been disciplined had he refused the assignment.

Barista Gazelle Garcia testified that the petitioned-for employees are required to speak to Store Manager Taiaroa prior to swapping a shift with an employee from another store. The petitioned-for employees do not have access to the work schedules of employees at other stores in the district. As such, if an employee from Store 23895 desires to work an extra shift at another store, the employee has to call the other store to have their name and phone number handwritten next to that store’s schedule. There is no evidence that any of the petitioned-for employees have requested to work an extra shift at another store or that they have requested a shift swap with an employee at another store.

As District Manager Martin explained, Store 23895 is adequately staffed and does not borrow employees to work at Store 23895 very often. Rather, other stores in the district sometimes “borrow” Store 23895 employees. Since about April 2021, on two unspecified dates, Shift Supervisor C.J. Craig worked two shifts at Store 20756 store, a store which is not currently in District 2087. In addition, Craig has observed only two (2) employees from other stores in District 2087 who have worked two (2) shifts at Store 23895 during his employment. Likewise, since she was hired on March 29, 2021, Barista Mouse Huber has worked only one (1) shift at another store in or about May 2021 and has not observed employees from other stores who have worked at Store 23895. Barista Gazelle Garcia, who has worked at Store 23895 since about May 2021, has never worked at another store in District 2087. Garcia testified that Ginger Diercks and Angel Caro, Store 23895 employees, have worked at other stores, but there is no evidence regarding the frequency of such work or the particular stores where Diercks and Caro worked these shifts. Garcia also testified that during her employment, she observed two employees from other unidentified stores who worked at Store 23895 for a “few days within one week.” There is no
The Employer provided data regarding interchange involving baristas and shift supervisors in District 2087, including Excel spreadsheets and multiple charts and graphs prepared by Dr. Abby Turner, a statistical expert. Unlike in other cases involving the Employer, Dr. Turner did not testify at the hearing. Dr. Turner’s analysis for District 2087 covers the 2 year and 9 month period from April 29, 2019 to January 23, 2022, and excludes store managers from the analysis. During the period in question, about 24 percent of employees in District 2087 worked at two or more stores in the district, but about 76 percent of employees in District 2087 worked in only one store. With respect to Store 23895, about 53 percent of Store 23895 employees worked at two more stores in District 2087, but about 47 percent of Store 23895 worked only at Store 23895. The Employer’s graphic depictions also show that during the period of time in question, Store 23895 had over 10 percent of store days staffed with a borrowed employee from another store, and about 25 percent of employees working at Store 23895 were from other stores. Over the period, the borrowing activity of the stores in District 2087 was an average of 1 percent of shifts each day, but as the Petitioner contends, this figure is 0.3 percent when factoring in the period prior to the COVID-19 pandemic and excluding permanent transfers within the district.

Dr. Turner’s analysis, as the Petitioner argues, includes stores that were not part of District 2087 prior to about January 3, 2022.¹² As the Petitioner also contends, Dr. Turner’s analysis does not show whether an employee worked at another store more than one time during the period covered by the data presented and does not distinguish between voluntary and involuntary interchange. More specifically, as the Petitioner contends, Dr. Turner’s analysis does not show the percentages of hours or shifts worked by Store 23895 employees at other stores or the percentage of hours and shifts worked by employees who work at other stores in District 2087 have worked at Store 23895. Moreover, in this case, unlike in other cases, the Employer did not create a “borrowed partner analysis” which reflected those percentages. However, as the Petitioner contends, the raw interchange data presented by the Employer shows that during fiscal year 2022, thus far, employees at other stores in District 2087 have worked at Store 23895 only two shifts out of 1,837 shifts worked at Store 23895, or 0.1 percent of shifts. In addition, Store 23895 employees have worked only 24 shifts at other stores in District 2087 out of 1,859 shifts worked at Store 23895, or 1.29 percent of shifts.

With respect to other contact among employees who work in District 2087, as noted above, the petitioned-for employees, as opposed to store managers, may from time-to-time pick up products or supplies from other stores in District 2087, as needed, but there is no evidence regarding how often this occurs with respect to Store 23895.

¹² Martin testified that on or about January 3, 2022, the Employer re-aligned Area 61, including District 2087. As a result, the Employer added seven (7) stores to the district and removed six (6) stores from the district. A list of stores for the month of January for each year from 2019 to 2022, shows that the Employer added Stores 2835, 2881, 6306, 15287, 15702, 23900, and 29619 to the district.
E. Distance Between Locations

District Manager Martin testified that all of the stores in District 2087 are located approximately within a 15 mile radius of each other. In District 2087, 11 stores are near a medical center, including Store 23895, and two (2) stores near the downtown area that are farther away from the stores near the medical center.

Based on store addresses, Store 22813 is approximately 1.2 miles from Store 23895, and is the closest store to Store 23895, and the distance from Store 23895 to the other stores in District 2087 ranges from about 1.2 miles to 10.4 miles.\(^{13}\)

F. Bargaining History

There is no history of collective bargaining at Store 23895 or any other store in District 2087.

III. ANALYSIS

A. Board Law Regarding the Appropriateness of the Unit

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. See *Haag Drug*, 169 NLRB 877, 877 (1968) (petitioned-for single store unit in retail chain is presumptively appropriate). The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. *California Pacific Medical Center*, 357 NLRB 197, 200 (2011). The Employer “must demonstrate integration so substantial as to negate the separate identity” of the single store unit. *Id*. To determine whether the single-facility presumption has been rebutted, the Board examines the following factors: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J & L Plate, Inc.*, 310 NLRB 429 (1993). The same factors are applied to retail chain stores. See *Red Lobster*, 300 NLRB 908, 912 (1990); *Foodland Of Ravenswood*, 323 NLRB 665, 666 (1997).

The Employer contends, as it has argued in other cases, that a single-store unit is not appropriate, and it contends that the appropriate unit should include all of the stores in District 2087 because the employees at all of the stores share a community of interest. However, as the Board explained, the relevant inquiry “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.

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\(^{13}\) District Manager Martin testified that prior to January 3, 2022, District 2087 included three stores in Uvalde, Eagle Pass, and Del Rio which were about 85 miles, 143 miles, and 158 miles, respectively, from San Antonio.
at 1. As detailed below, based on the parties’ arguments and the record as a whole, I find that the petitioned-for unit of employees employed at Store 23895 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.

**B. Application of Board Law to this Case**

1. **Extent of Central Control over Daily Operations and Labor Relations**

   The Board has made clear that “the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption.” See *California Pacific Medical Center*, supra, at 197. Thus, “centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.” *Hilander Foods*, 348 NLRB 1200, 1203 (2006). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees’ day-to-day working lives. In retail operations, about 60 years ago, the Board abandoned its general policy that an employer’s administrative grouping of stores or the involved geographic area would control unit determinations at the expense of other factors such as local managerial autonomy. *Save-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962). Rather, the Board decided to apply the same policies to retail chain operations that are applied to all multi-facility enterprises in general. *Id.*; See also *Frisch’s Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964), enfd. denied, 356 F. 2d 895 (7th Cir. 1966).

   Store Manager Alana Taiaroa did not testify, and the record contains limited evidence regarding Taiaroa’s running of the day-to-day operations of Store 23895. For the most part, District Manager Martin provided generalized testimony about how store managers manage stores in District 2087. As the Board stated in *Starbucks Mesa*, to rebut the single-store presumption, the Employer must provide more than conclusory evidence, particularly where there is specific evidence that store managers exercise discretion in applying the Employer’s automated tools and nationwide policies. *Starbucks Mesa*, supra, slip op at 2. Per District Manager Martin’s testimony and the testimony of Store 23895 Employees Craig, Huber, and Garcia, Store Manager Taiaroa exercises discretion with respect to staffing Store 23895, including which employees will be assigned to a shift, approving or deny requests for schedule changes, time off requests, and shift swaps among employees, and adjusting employee schedules generated by the Partner Hours system. The evidence shows that District Manager Martin has approved Taiaroa’s recommendations regarding labor investments. Moreover, Taiaroa has the discretion to change the assignments suggested by Play Builder, as needed to meet the needs of her store. Moreover, District Manager Martin has never disciplined a store manager regarding their use of the Partner Hours system or Play Builder.

   Although the Employer has held job fairs in District 2087, Store Manager Taiaroa is typically responsible for interviewing and hiring all baristas and shift supervisors who work at
Store 23895. Moreover, it is undisputed that Store Manager Taiaroa has the authority to issue documented coaching and written warnings to employees, as evidenced by the examples in the record. The store manager is the only individual who signs a written warning issued to an employee. Moreover, there is no evidence regarding how Store Manager Taiaroa uses Virtual Coach, and store managers in District 2087 have never been disciplined for failing to use Virtual Coach. Although District Manager Martin must approve the hiring of employees above the Employer’s starting wage rate or former employees, final written warnings, discharges, and permanent transfers, there is no evidence that she has ever objected to a store manager’s decision to hire, transfer, discipline or discharge an employee at Store 23895 or any other employee in District 2087. Moreover, Store Manager Taiaroa conducts PDCs with employees and is responsible for promoting baristas to shift supervisors. Although shift supervisors, at times, are the highest ranking employees in the store, contrary to the Employer’s argument, this does not diminish Store Manager Taiaroa’s exclusive authority regarding such matters as scheduling, hiring, and disciplining employees.

Although the Employer maintains a centralized human resources department and other centralized resources for employee inquiries or complaints, there is no evidence that these resources are regularly used by Store 23895 employees. Similarly, there is no evidence that Store 23895 employees have any regular contact with District Manager Martin.

2. The Degree of Employee Interchange and Contact

Employee contact is considered interchange where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. However, a significant portion of the work force must be involved and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. New Britain Transportation Co., 330 NLRB 397, 398 (1999). For example, the Board found that interchange was established and significant where during a 1-year period there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87 and the temporary employees were directly supervised by the terminal manager from the terminal where the work was being performed. Dayton Transport Corp. 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. Cargill, Inc., 336 NLRB 1114 (2001); Courier Dispatch Group, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. New Britain Transportation Co., supra.

Here, the record shows that temporary transfers are typically voluntary, which carries less weight. See Starbucks Mesa, supra, at n. 5. Moreover, the Employer’s evidence shows “infrequent, limited, and one-way interchange” that does not support finding a community of interest between the petitioned-for Store 23895 employees and the employees at other stores in
District 2087. *Starbucks Mesa*, supra, at 1. As noted above, Dr. Turner, who prepared the Employer’s graphs and charts with respect to interchange, did not testify. As the Petitioner contends, the evidence with respect to interchange within District 2087 does not entirely represent the community of interest within the district over the period in question because Dr. Turner’s analysis includes seven (7) stores that were not part of District 2087 until January 2022 and conversely, excludes six (6) stores that were part of the district over the period. Moreover, although Dr. Turner’s analysis shows that over the period from April 29, 2019 to January 23, 2022, 53 percent of the petitioned-for employees worked at two or more stores, this includes any employee who worked as few as one shift at another store during that period. Dr. Turner’s analysis shows that across District 2087 an average of only 1 percent of shifts are borrowed from another store each store-day. With respect to Store 23895 over the period, over 10 percent of store days were staffed with a borrowed employee from another store, and about 25 percent of the employees working at Store 23895 were from other stores. However, the expert’s analysis does not show how often Store 23895 employees worked at other stores in District 2087 or how often “borrowed” employees worked at Store 23895. See *Starbucks Mesa*, supra, slip op. at 1. (finding that similar data showing that 54.9 percent of the petitioned-for employees worked at other stores that did not reflect the frequency of such interchange was insufficient to rebut the single-store presumption).

In sum, as stated by the Board, the Employer’s arguments in this case regarding interchange have the same shortcomings as stated by the Board in *Starbucks Mesa* and other cases. Moreover, the Employer’s records cited by the Petitioner, covering the period in question, further demonstrate that the overall evidence of interchange is insignificant. For example, in fiscal year 2022, thus far, only 0.1 percent of shifts at Store 23895 have been worked by employees from other stores, and Store 23895 employees have worked only 1.29 percent of shifts at other stores. Testimonial evidence from District Manager Martin and Store 23895 employees further supports that interchange is infrequent. As such, District Manager Martin testified that Store 23895 is adequately staffed and does not need to borrow employees very often. Likewise, store employees Craig, Huber, and Garcia testimony shows infrequent interchange involving Store 23895. At most, witness testimony shows that since in or about April 2021, employees from other stores have worked a range of about four (4) to eight (8) shifts at Store 23895, and Store 23895 employees have worked at other stores at most approximately five (5) shifts. See *Cargill, Inc.*, supra, at 1114 (13 to 14 instances of interchange between two facilities among 23 employees over an 9-month period insufficient to overcome single-facility presumption). As was the case in *Starbucks Mesa*, there also is insufficient evidence that the petitioned-for employees have frequent contact with employees who work at other stores in District 2087. Rather, there is no record evidence of such contact beyond the infrequent instances of employee interchange.

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14 Shift Supervisor Craig testified that he observed two employees working at Store 23895 from other stores during his employment, and Barista Garcia’s testified that she observed two employees from other stores work at Store 23895 for a few days within one week. Even assuming that the two employees from other stores worked four (4) days at Store 23895, this would amount to only eight (8) shifts. In addition, since neither Craig nor Garcia identified the names of the employees in question, it is not clear if the two (2) employees who worked at Store 23895 from other stores that Shift Supervisor Craig observed are the same employees observed by Garcia.
The evidence taken as a whole shows that Store 23895 “can operate with relative independence.” See *Starbucks Mesa*, supra. Accordingly, the Employer has failed to establish that temporary interchange is regular or frequent, and the evidence of interchange, transfers, and contact taken as a whole is insufficient to rebut the single-store presumption. 15

3. Similarity of Skills, Functions, and Working Conditions

The similarity or dissimilarity of work, qualifications, working conditions, wages and benefits between the petitioned-for Store 23895 employees and employees who work at other stores in District 2087 has some bearing on determining the appropriateness of the single-facility unit. With the exception of working at different stores, employees at the stores in dispute have the same or similar skills, functions, and working conditions. All employees receive the same training and perform their work based upon standardized routines created by the Employer. All of the employees in District 2087 generally receive the same starting wages and benefits.

Contrary to the Petitioner’s arguments that working conditions are different among stores due to staffing levels, the store’s customer base or store layout, the evidence shows that these are minor differences that do not affect the overall functions and working conditions of the petitioned-for employees. See *Starbucks Mesa*, supra, 371, slip op. at 2 (Board disagreed with the Regional Director’s finding that differences in store layouts, including the existence of a drive-through, are meaningful differences). However, the uniformity in skills, functions, and working conditions in this case has some significance but “…no greater control or uniformity has been shown here than is characteristic of retail chain store operations generally.” *Haag Drug*, supra, at 879. Moreover, this factor is less important than the store manager’s local autonomy and lack of substantial interchange. *Id.*; See also *Renzetti’s Market, Inc.*, 238 NLRB 174, 175 (1978). Accordingly, I find that the uniform skills, functions, and working conditions are outweighed by other factors, including the store manager’s local autonomy and the lack of significant interchange. *Starbucks Mesa*, supra, at 2.

4. Distance between Locations

As stated above, the facilities in dispute in this matter range from about 1.2 miles to 10.4 miles from Store 23895. Two (2) of the stores in District 2087 are closer to the downtown area, while 11 stores are near a medical center. The Board has found single-facility units with similar distances to other facilities to be appropriate for collective-bargaining. See *Cargill*, supra, 336 NLRB at 1114 (facilities two miles apart); *Renzetti’s Supermarket*, supra, 238 NLRB at 174 (facilities four miles apart). In view of my conclusions regarding the other factors, I conclude that the distance between locations does not outweigh evidence showing significant local autonomy and infrequent interchange.

15 The cases cited by the Employer do not warrant a different conclusion. As the Board explained, nearly all of the cases relied upon by the Employer “are distinguishable insofar as they involve a higher degree of interchange than what is present here.” *Starbucks Mesa*, supra, slip op. at 2, n. 6. *V.I.M. Jeans*, 271 NLRB 1408 (1984), cited by the Employer for the proposition that lack of interchange does not automatically fail to rebut the single-store presumption, is also distinguishable. In that case, aside from lack of substantial interchange, the store manager in question lacked the amount of local autonomy present in the instant case, including the authority to hire or discipline employees.
5. Bargaining History

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate.  *Trane*, 339 NLRB at 868, n. 4; See also *Red Lobster*, 300 NLRB at 12.  Thus, the fact that there is no bargaining history in this matter does not support nor does it negate the appropriateness of the unit sought by the Petitioner.

Finally, the Employer argues that finding the petitioned-for single-store unit to be appropriate contravenes Section 9(c)(5) of the Act because it gives controlling consideration to the Petitioner’s extent of organization.  As stated above, the Board has relied upon a single-store presumption for nearly 60 years and consideration of the Petitioner’s extent of organization, among other factors, is appropriate, and I have not given the extent of organization controlling consideration in determining that a single-store unit is appropriate.  The cases cited by Respondent to support its contentions regarding the extent of organization factor are distinguishable.  In *Malco Theatres, Inc.*, 222 NLRB 81, 82 (1976), the Board determined that collective-bargaining agreements covering the petitioned-for five (5) stores that were virtually identical to those covering the employer’s remaining three (3) stores, coupled with centralized supervision, rendered the petitioned-for unit inappropriate.  In *Kansas City Coors*, 271 NLRB 1388, 1389-90 (1984), the Board found that the petitioned-for two-facility unit excluding a third facility was inappropriate, in part, because the employer was in the process of consolidating its operations into a single facility.

IV. CONCLUSION

In determining that the single-store unit sought by Petitioner is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-facility unit is appropriate.  In particular, I rely on the degree of local autonomy in operations and labor relations and lack of significant interchange in reaching my conclusion that the single-facility unit sought by Petitioner is appropriate.

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.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

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

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16 Section 9(c)(5) of the Act states that “[i]n determining whether a unit is appropriate… the extent to which the employees have organized shall not be controlling.”
2. The parties stipulated, and I find that 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.\textsuperscript{17}

3. The parties stipulated, and I find that 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 sought in the petition herein, 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 a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act (the Unit):

\textbf{INCLUDED}: All full-time and regular part-time baristas and shift supervisors employed by the Employer at its 2639 NW Loop 410, Suite 106, San Antonio, Texas 78230 facility.

\textbf{EXCLUDED}: Office clerical employees, store managers, professional employees, guards, and supervisors as defined in the Act.

\textbf{OTHERS PERMITTED TO VOTE}: At this time, no decision has been made regarding whether employees classified as Assistant Store Managers who are employed at the Employers Store 23895 are included in, or excluded from, the bargaining unit. 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.\textsuperscript{18}

\textsuperscript{17} The parties stipulated, and I find that the Employer, Starbucks Corporation, a Washington corporation with headquarters located in Seattle, Washington, and facilities located throughout the United States, is engaged in the retail operation of restaurants. The 13 facilities involved in the instant case comprise the Employer’s District #2087 and are located at the following addresses in San Antonio, Texas: Store 2835 – 7400 San Pedro; Store 2881 – 7311 San Pedro; Store 6217 – 7215 Blanco Rd.; Store 6306 – 849 East Commerce; Store 9783 – 4739 Medical Drive; Store 14816 – 8746 Wurzback Rd.; Store 15287 – 200 E. Houston St.; Store 15702 – 12003 NW Military Highway; Store 22813 – 3718 Horizon Hill; Store 23895 – 2639 NW Loop 410, Suite 106; Store 23900 – 12055 Vance Jackson; Store 26990 – 4323 Medical Drive; and Store 29619 – 12711 Blanco Road. The parties further stipulated that in the past 12 months, a representative period, the Employer derived gross revenues in excess of $500,000 and purchased and received at each of its Texas facilities listed above goods valued in excess of $5,000, which goods were shipped to the Employer’s Texas facilities listed above directly from points located outside the State of Texas.

\textsuperscript{18} As noted above, at the time of the hearing no Assistant Store Managers worked at Store 23895.
V. DIRECTION OF ELECTION

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

A. Election Details

The parties have stipulated to a mail ballot election.

On Monday, May 16, 2022, at 4:45 p.m. (CST), the ballots will be mailed to voters by a designated official from the National Labor Relations Board, Region 16.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, May 26, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 16 Office at (817) 978-2921 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 16 Office by 4:45 p.m. (CST) on Tuesday, June 7, 2022. All ballots will be commingled and counted by Regional 16 of the National Labor Relations Board on Tuesday, June 14, 2022 at 2:00 p.m. (CST) with participants being present by videoconference provided the count can be safely conducted on that date and at the Regional Director’s discretion. No party may make a video or audio recording or save any image of the ballot count. In order to be valid and counted, the returned ballots must be in an envelope signed by the voter and must be received in the Region 16 Office prior to the counting of the ballots.

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.

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 Tuesday, May 3, 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. 19

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.

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19 The Petitioner did not waive the 10 days that it is entitled to receive the voter list prior to the election.
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
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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 in Fort Worth, Texas on this 29th day of April 2022.

[Signature]

Timothy L. Watson, Regional Director
National Labor Relations Board, Region
Fritz G. Lanham Federal Building
819 Taylor Street, Room 8A24
Fort Worth, Texas 76102-6107