UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

STARBUCKS CORPORATION
    Employer
    and
WORKERS UNITED
    Petitioner

Case No.: 03-RC-289801

STARBUCKS CORPORATION’S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR’S ("RD") DECISION AND ORDER OVERRULING OBJECTIONS AND ISSUING CERTIFICATION OF REPRESENTATIVE

Dated this 10th day of May, 2022.

Alan I. Model
LITTLER MENDELSON, P.C.
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102

Attorneys for Employer Starbucks Corporation
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I. INTRODUCTION

Pursuant to Section 102.67 of the Rules and Regulations (“R&R”) of the National Labor Relations Board (“NLRB” or “Board”), Employer Starbucks Corporation (“Starbucks” or “Company”) respectfully requests review of the Region 3 Regional Director’s (“RD”) Decision and Order Overruling Objections and Issuing Certification of Representative (“Objections Order”) in dated April 26, 2022. Starbucks respectfully requests that the Board reverse the RD’s Objections Order, direct her to set aside the results of the mail ballot election conducted in this proceeding, and order that Region 3 conduct a re-run election to allow all eligible partners to exercise their rights under Section 7 of the National Labor Relations Act (the “Act”). In the alternative, Starbucks respectfully requests the Board order the RD to schedule a hearing to allow the Company to present evidence and legal argument as previewed in its Objections and Offer of Proof.

II. PRELIMINARY STATEMENT

This case arises out of a mail-ballot representation election for a Starbucks store in Rochester, New York, and irregularities surrounding the receipt and tally of ballots. On February 1, 2022, Workers United (“Petitioner” or the “Union”) filed a petition seeking to represent all baristas, shift supervisors, and assistant store managers at Starbucks’ store at 1394 Mt. Hope Avenue, Rochester, NY 14620 (the “Mt. Hope Store”). Following a representation hearing on February 22, 2022, the RD issued a Decision and Direction of Election (“D&DE”). In that D&DE, the RD ordered a mail-ballot election, with ballots issued on March 16, 2022, and returnable April 6, 2022. The ballots were then counted via Zoom on April 7, 2022.

During the count, of the 41 eligible partners, 13 voted for Petitioner and 11 voted against. On April 14, 2022, Starbucks filed four Objections to the Conduct of the Election (“Objections”)

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all alleging that Region 3 mishandled ballots and/or engaged in misconduct surrounding the mailing and receipt of ballots.

Approximately two weeks later, the RD for Region 3 issued the Objections Order denying Starbucks’ Objections. She declined to grant Starbucks a hearing to present evidence on its objections or transfer the Objections to another Region to investigate and consider her Region’s alleged misconduct. The Objections Order resulted in the certification of Workers United as the bargaining representative for the Mt. Hope store.

The Board should reverse the Objections Order because the RD summarily dismissed the Objections without entertaining any evidence to support or rebut the Objections. This, even though Starbucks had offered ample evidence of malfeasance in the conduct of the election in its Objections and Offer of Proof. In its Offer of Proof, Starbucks identified witnesses and documents that would have allowed the Company to prove that the integrity of the mail ballot election was compromised, and that a sufficient number of partners were affected such to be determinative in the election. Further, Starbucks explained that Region 3’s recent conduct in a R case out of Buffalo, Case No. 03-RC-285929, cast doubt on the integrity of the election, especially in light of the similarity in circumstances in the two cases.

But, again, rather than taking the prudent, impartial, and appropriate step of transferring the Objections to another Regional office for impartial review, the RD undertook the review the actions of her own office’s personnel, refused to entertain any evidence and, despite recent confirmed misconduct in the conduct of the election in Case No. 03-RC-285929, essentially rubber stamping the Regional staff’s actions in the conduct of the election. This superficial “review” was meaningless and resulted in prejudice to the Section 7 rights of Starbucks partners.
The Region’s actions improperly deprived Starbucks’ partners of their rights under Section 7 of the Act by depriving them of the opportunity to vote on union representation, thus undermining the integrity of the election. Where a Board “irregularity” disenfranchises the number of voters who “could affect the outcome of an election, no certification of the result is appropriate.” *Nat’l Hot Rod Ass’n v. NLRB*, 988 F.3d 506, 508-09 (D.C. Cir. 2021). As discussed further below, the Board should reverse the RD’s Objections Order, and direct the RD to conduct a re-run election to ensure that Starbucks’ partners’ rights are protected or permit Starbucks to present evidence supporting its Objections at a hearing. For the reasons set forth more fully below, the Board should review and reverse the Objections Order. Further, this matter should be sent back to Region 10 for either a re-run election or for investigation, to regain the confidence of the parties and partners in the integrity of the Board’s processes.

III. BACKGROUND FACTS AND PROCEDURAL HISTORY

On February 1, 2022, Union filed a representation petition with the Board under Section 9(c) of the Act. The Union sought a single-facility election at Starbucks’ Mount Hope Store. On February 8, 2022, the RD issued an order consolidating this case with a similar petition filed by the Union regarding the Starbucks store at 2750 Monroe Avenue, Rochester, New York 14618 (Case 03-RC-289802).

On February 22, 2022, the Board held a pre-election hearing in this matter. Following the hearing, the RD issued a D&DE ordering a mail-ballot election for the Mt. Hope Store and the store at 2750 Monroe Avenue. (D&DE at pp. 3-4). The unit in the D&DE included all full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers; and (2) excluding office clerical employees, guards, professional employees and supervisors as defined in the Act. (D&DE at pp. 3-4). The D&DE provided that eligible voters who did not receive a ballot should notify the Region by March 28, 2022. (D&DE at p. 4). Further, voters’ ballots were due on April
6, 2022, and were counted on April 7, with the parties allowed to observe by virtual means. (D&DE at p. 4).

Per the D&DE, Starbucks timely filed and served a voter list for the Mt. Hope Store that included 41 partners. (Voter List). On April 7, per the D&DE, the Region counted the ballots via Zoom. Of 41 eligible voters, 13 voted for Petitioner and 11 voted against Petitioner. Ballots for the remaining 17 partners were not accounted for or counted. (Objections Order at p. 1; Objections at p. 1).

In the days before the vote count, multiple partners expressed concern to Starbucks they had not received their ballots. Some partners stated that they contacted the Region seeking ballots and did not receive return calls. Other partners stated they received their ballots only one or two days before the ballots were due back at the Region. Ultimately, three voters told Starbucks they planned to drive from Rochester to the Buffalo Regional office, a three-hour round-trip, to cast their ballots in the Regional office on the morning of the count because they had not received their ballots with sufficient time to return them by mail. A fourth voter told Starbucks they received their ballot on the date before the count but could not drive to Buffalo to vote.

For temporal context, on April 12, 2022, in the same week this ballot count was conducted, the Regional Director for Region 10 informed the parties that its investigation into Starbucks’ objections in Case No. 3-RC-285929, related to one of Starbucks’ Buffalo stores, had uncovered 7 timely, uncounted, ballots. On April 12, 2022, Region 10 informed the parties that its administrative investigation found that Region 3 engaged in misconduct by failing to count seven valid ballots in its possession, without explaining this failure, noting “[t]he casefile contains no reason as to why the seven ballots that arrived on February 25 were not processed at the March 9 count.” Significantly, Region 10 did not provide the parties with any information regarding the
chain of custody for the seven ballots it found were received by Region 3 on February 25, 2022 and which Region 3 failed to open and count on March 9, 2022. To this date, the parties do not know how or if Region 3 maintained custody and control over these ballots for a period of one month, from the date the ballots were received on February 25, 2022 until they were counted on April 22, 2022.

With these concerning facts being disclosed just as Starbucks prepared its objections in this matter, Starbucks concluded that the Region had failed to timely deliver ballots to partners and/or failed to count all valid ballots as well. Starbucks thereafter filed four objections. First, Starbucks objected because “Region 3 personnel engaged in election misconduct by failing to timely deliver ballots to eligible voters.” (Objections at p.1). In its Offer of Proof, Starbucks identified multiple witnesses who would provide factual testimony supporting this Objection, including eligible voters, poised to testify that they did not timely receive their ballots as ordered in the D&DE. Second, Starbucks objected that the Region engaged in misconduct “by voiding a ballot that was missing the blue interior envelope.” (Objections at p. 2). Third, Starbucks objected that Regional personnel improperly voided a ballot because the voter’s “signature was ‘printed,’” which the Region apparently found did “not constitute a signature.” (Id.). Fourth, Starbucks objected because the ballot count in Case No. 03-RC-285929 cast doubt on the integrity of all ballot counts conducted by Region 3 for Starbucks stores.

On April 26, 2022, the RD for Region 3 issued the Objections Order summarily denying all of Starbucks’ Objections without a hearing and certifying Workers United as the exclusive collective-bargaining representative. (Objections Order at p. 6). Regarding the first Objection, the RD contended that the Region had properly handled requests for duplicate ballots. (Objections Order at p. 3-4). On the second Objection, the RD concluded that the Board agent’s decision to
void the ballot was appropriate, notwithstanding Starbucks’ contention that another Regional Office permitted the count of a ballot submitted without the blue envelope. (Objections Order at p. 5). Third, the RD held that the Board agent properly voided a ballot because the voter “signed” his name by printing it, without further investigating how the voter usually “signs” his name or whether requiring a cursive signature disenfranchises voters with different educational backgrounds, cultural backgrounds, or disabilities. (Objections Order at p. 5). Finally, the RD overruled Starbucks’ contention that the Board engaged in misconduct in this case based on misconduct in the Buffalo matter with limited analysis.

The RD erred when she summarily rejected the Company’s Objections and Offer of Proof filed in support thereof. The misconduct of Regional personnel identified in Starbucks’ Objections disenfranchised at least six voters, denying them of their Section 7 right to vote in the election. The RD should have ordered a rerun election or, at a minimum, scheduled a hearing to allow the Company to present its evidence to establish that the misconduct by Section 3 personnel denied Starbucks’ partners opportunity to exercise their Section 7 rights and have their voices heard in this election. She did neither, nor did she take the prudent step of asking another Region to conduct the investigation, despite the recent verified misconduct of her Region in the Buffalo case.

IV. GROUNDS FOR REVIEW

Section 102.67(d) of the Board’s Rules and Regulations provides that the “Board will grant a request for review only where compelling reasons exist therefor.” 29 C.F.R. 102.67(c). In full, that section permits review where there is: (1) a substantial question of law or policy is raised because of the absence of or departure from officially reported Board precedent; (2) the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party; (3) the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; and (4) there are compelling
reasons for reconsideration of an important Board rule or policy. 29 C.F.R. 102.67(d)(1)-(4).

Starbucks urges the Board to review and reverse the RD’s Objections Order because the RD erred in her decision, and prejudiced Starbucks and its partners, depriving them of Section 7 rights. Starbucks respectfully requests that the Board grant review, reverse the Objections Order, and direct the RD to direct a re-run election. In the alternative, Starbucks requests that the Board order the Region to conduct a hearing into Starbucks’ Objections.

V. ARGUMENT

A. The Objections Order is Clearly Erroneous and Resulted in Prejudicial Error because Starbucks’ Employees Were Denied Their Section 7 Rights

In overruling Starbucks’ Objections, the RD committed error that resulted in the denial of Starbucks’ partners rights under Section 7.

As a preliminary matter, a challenger to an election can overcome the presumption that the ballots accurately reflected the will of the employees by establishing “that it was possible for a Board irregularity to have caused a different voting result.” Nat’l Hot Rod Ass’n at 509; see also Wolverine Dispatch, Inc., 321 NLRB 796, 796-797 (1996). Established Board precedent requires an election to be set aside when the actions of a party or the Board cause a determinative number of employees to lose the opportunity to vote. Waste Management of Northwest Louisiana, Inc., 326 NLRB 1389 (1998). The objecting party must come forward with evidence to support its objection, which Starbucks did here. Campbell Products Dept., 260 NLRB 1247 (1982). And, in rejecting this burden, the RD inappropriately shifted the burden applicable to an Offer of Proof from a possibility to an evidentiary certainty. Doing so, violated voters’ Section 7 rights and Starbucks’ due process rights.
1. Starbucks’ First Objection

Starbucks’ first Objection identifies the misconduct by Region 3 personnel who failed to timely deliver voting kits to some eligible voters as an initial matter, or failed to timely supply replacements kits to others who reported that they did not receive their kits in accordance with the schedule announced by the RD. Objections at pp. 1-2. Had the RD allowed testimony, Starbucks would have established that several partners attempted to call the Region for information, instructions, or duplicate kits well before the deadline, but their calls were neither answered or returned. (Id.) When they got through to the Region, they were told it was too late for them to receive a replacement kit. Several voters did not receive their replacement ballots in time to meet the RD’s deadline to return the replacement ballots. Had the Region investigated, it would have obtained this evidence that the partners made numerous attempts to contact the Region in sufficient time to obtain replacement ballots, and the Region simply failed to answer their phone, despite this being the only method for partners to obtain new ballots.

The Board admits it mailed replacement kits to some voters a day or two before the ballots were due back to be counted, after these voters finally got a hold of the Region. The Objection Order explained that a duplicate kit was mailed to one voter (“Employee One”) on March 31, and the Region’s personnel notified the other voter it was too late to mail a duplicate kit. Id. Because the RD declined to take evidence on the Objections, the Objection Order does not and cannot address when the duplicate kit was mailed and whether Employee One received it. Nor did the Region take evidence of these partners’ numerous (unsuccessful) attempts at contact with the Region to obtain timely replacement ballots, or whether its own failure to administratively manage

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1 A few took the extraordinary step of driving to the Region’s office to cast their vote in person (a three-hour round-trip drive). Their enthusiasm and effort to participate in the election underscored the need for the Region to support their effort. Luckily, Region 3 counted the votes of those who undertook the hours-long drive to vote in person.
the replacement ballot process amounted to misconduct which disenfranchised a determinative number of voters.

The RD’s order on this Objection can be summarized as: “too bad, you’re too late,” but the Region failed to investigate whether the tardy delivery of the original ballots was misconduct on the Region’s part, whether failing to timely respond to voters’ inquiries, and whether failing to timely issue provide replacement ballots was likewise misconduct. If the directions given to voters says to contact the Region by X date to receive a replacement ballot, and the Region is unreachable despite numerous attempts at contact, the Region, alone, has disenfranchised voters and, therefore, is responsible for its misconduct which created the voter’s inability to timely return a ballot.

The Board has overturned election results in similar situations involving mail ballots. For example, in *Davis & Newcomer Elevator Co.*, the Board indicated it would set aside an election where the Union won by a single vote because the Region did not send a duplicate ballot kit to a voter whose return ballot arrived in two pieces. *Davis & Newcomer Elevator Co.*, 315 NLRB 715 (1994). The Board noted that its Case Manual requires the election clerk to send duplicate kits to voters who fail to sign their ballots “if sufficient time remains before the deadline.” (Id.) There, the Board ultimately set aside the election, pending a determination of whether the voter was eligible.

Also, in *Oneida County Community Action Agency*, the Board entertained objections where three of the challenged ballots arrived after the stated deadline for receipt but before the vote count. *Oneida County Community Action Agency*, 317 NLRB 852 (1995). And the employer objected that the Region failed to send duplicate ballots to two voters. The Board held that, if after counting the three challenged ballots, the union won by two votes or fewer, the objection would be sustained and the election would be set aside.
Here, the RD asserts that Starbucks’ Offer of Proof was “vague” and insufficient to identify the type of conduct alleged to be objectionable and the evidence it intended to assert was insufficient, and thus rejected the Offer of Proof out of hand. Objections Order at p. 2, fn. 2. This misses the standard as Starbucks has offered evidence as summarized above, including identified witnesses, who would testify in support of Starbucks if permitted to proceed to hearing. The Offer of Proof summarizes their anticipated testimony. This is sufficient evidence, at a minimum, to compel a hearing into the Objections, especially considering the admitted, arguably similar, misconduct in the related Buffalo case. However, the RD failed to even permit Starbucks to proceed to hearing to test the sufficient of evidence supporting the Objections.

2. Starbucks’ Second Objection

The Company’s second Objection alleges that Region 3 personnel engaged in election misconduct by voiding a ballot missing the blue interior envelope. The Company was prepared to present evidence through Starbucks’ counsel, the affected voter, Union counsel, and Region 3 personnel who voided the valid ballot at the ballot count. In the Objections Order, the RD explained that a voter’s failure to place his or her ballot into the blue envelope destroys the secrecy of the ballot and renders it void. Objections Order, p. 5. The case the RD relied upon for that proposition, Air 2, simply reiterated the summary result of the 1946 decision it cites, providing no updated analysis regarding why any omission of the blue envelope would compromise the secrecy of the vote. Air 2, LLC, 341 NLRB 176 (2004), enfd. mem. 122 Fed. Appx. 987 (11th Cir. 2004). Indeed, Region 3 personnel open both the yellow and the blue envelopes. The ballots, even if mailed only in the yellow envelope, are folded such that a person opening a yellow envelope

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2 Regions take inconsistent positions regarding the validity of these ballots. For example, on a recent ballot count, Region 27 (Case 27-RC-289608) announced that its policy is to count the vote even when there is no blue envelope. Region 1 has also permitted such ballots to be counted in Starbucks matters.
containing a ballot could not immediately view the ballot’s vote and could instead transfer the ballot to the appropriate party to record its selection. The Region erroneously failed to allow Starbucks to present its evidence to support why this administrative error should not have prevented the vote from being counted. Further, to the extent a change in law or policy is necessary to permit such ballots to be counted and prevent voters who make a minor error in complying with confusing, opaque instructions, such a change is warranted.

3. **Starbucks’ Third Objection**

The Region’s failure to hold a hearing as to the signature described in Objection 3 was both erroneous and a departure from Board precedent. Generally, “in mail ballot elections, unsigned outer envelopes or envelopes containing printed names rather than signatures are considered void. See, e.g., *Thompson Roofing, Inc.*, 291 NLRB 743, 743 fn. 1 (1988) (printed name on outer envelope voided ballot). The rationale for this rule is that “because mail ballot elections are more vulnerable to the destruction of laboratory conditions because of the absence of direct Board supervision over the employees' voting.” *College Bound Dorchester, Inc.*, 2020 NLRB REG. DIR. DEC. LEXIS 455, *5-6 (citing Thompson Roofing, Inc.*, 291 NLRB 743, 743).

However, *Thompson Roofing* also stands for the proposition that the Region must investigate how an employee normally “signs” his or her name. There, the employee printed, rather than signed, his name on the ballot. The Board affirmed the voiding of the ballot on that basis. It regarded the employer’s evidence regarding his signature as “instructive.” *Thompson Roofing, Inc.*, 291 N.L.R.B. 743, 744 (N.L.R.B. November 16, 1988). This evidence included a form where the employee “printed his name in accordance with the instructions.” On another form, he printed his name where no instructions were provided,” but on a third form, “he signed his name under the ‘Employees Signature’ line.” The Board noted that those “documents demonstrate that Brayton signs, rather than prints his name, when so instructed.”
And in *College Bound Dorchester*, the Board ruled that a hearing was warranted on the issue of whether the employee’s signature on the envelope was illegible or matched previous known examples of the voter’s signature. The Board explained the hearing was warranted because “evidence that the signature on a mail ballot envelope varies significantly from known examples of the employee’s signature may, depending upon the circumstances, raise substantial and material issues regarding the identity of the person who marked the ballot enclosed within.” *College Bound Dorchester, Inc.*, 2021 NLRB LEXIS 251, *4* (NLRB June 25, 2021).

Here, the Region’s refusal to even entertain a hearing to examine the employee’s print “signature” departed from Board precedent, including the *Thompson Roofing* decision cited in the Objections Order. The RD’s failure to follow established Board precedent and its prejudicial impact on Starbucks warrant review, reversal, and a new election in this proceeding. Further, disenfranchising a partner because their written mark of their name does not pass the Region’s scrutiny because it is not in cursive has significant potential implications, unconsidered by the Region. The voter may not have learned cursive in school, having attended a school outside of the United States, or with a less traditional US curriculum. Not every school within the US teaches 2\textsuperscript{nd} grade cursive. Or perhaps the voter has a disability or even just a manual dexterity that prevents the voter from writing a signature with connected letters. The RD’s ruling on this issue failed to account for these potential explanations, disenfranchising the voter without even investigation into the circumstances. To the extent entertaining such evidence would require a change in Board law or policy, it is both necessary and appropriate to prevent potential class, race, or disability related potential disenfranchisement.

4. *Starbucks’ Fourth Objection*

Starbucks’ Fourth Objection asserts that Region 3 personnel’s handling of the ballot count in Case 03-RC-285929 raised suspicion and cast doubt on whether the Region counted all valid
ballots in the instant matter, undermine Starbucks’ confidence in the integrity of the election process. In Case No. 03-RC-285929, as noted above, seven additional ballots were “found” following the vote tally. This resulted in an investigation of Region 3’s actions by Region 10 which ultimately led Region 10 to conclude that Region 3 engaged in misconduct when it failed to count the seven valid ballots in its possession or explain this failure. Critically, Region 10 did not provide the parties with any information regarding the chain of custody for the seven ballots that Region 3 received before the tally but failed to open and count.

Here, only weeks after Region 10 substantiated misconduct in a close election count between the same parties, Region 3 did not see fit to ask another Region to review its remarkably similar alleged election misconduct, hold a hearing to confirm the authenticity of its process, or make any effort to create the appearance of propriety given its recent track record. The Objections Order effectively distances the Region from those recent findings and self-servingly shields itself from a comprehensive investigation into these new objections. This failure to neutrally investigate itself, or, better yet, hold a hearing or transfer the investigation to another Region casts doubt on the Region’s ability and/or willingness to conduct elections with integrity. The parties have no way of knowing if any of ballots missing in this case are, like in Buffalo, hiding somewhere in a case file because the Region decided it was more prudent to move on, rather than to critically examine the Objections. For these reasons, the RD’s conduct in overruling Starbucks’ Objections was prejudicial and infringed on Starbucks’ partners’ rights under the Act.

VI. CONCLUSION

Finally, the Region’s handling of the mail ballot election in this matter and related matters casts doubt on the Region’s capacity to conduct these elections with the integrity required under the Act and that is due to Starbucks partners. The objectionable conduct complained of here occurred against the backdrop of a close-in-time investigation by Region 10 that had uncovered
serious, election determinative, misconduct by Region 3. Rather than take accountability for its errors and invite review of its conduct, Region 3 closed ranks and refused to conduct more than a cursory investigation of its own conduct. The prudent and appropriate step was to, once again, turn over the investigation to Region 10 to investigate. Voters cannot have faith in the integrity of the Board’s processes when a Region who recently engaged in confirmed misconduct is permitted to conduct its own, closed door, investigation into alleged subsequent misconduct. The lack of an explanation for the uncounted ballots in 03-RC-285929 created substantial doubt in the integrity of Region 3 to investigate itself. Had Region 3 acted appropriately in these circumstances, by permitting another Region to investigate further and proceeding to hearing, it would have substantiated evidence of misconduct in this case as well; Misconduct that likewise affected election results and disenfranchised partners. In its Objections and Offer of Proof, Starbucks gave sufficient evidence to compel a re-run, or a hearing, at a minimum. For all the foregoing reasons, Starbucks respectfully requests that the Board grant review and reverse the Objections Order and order a new election as the Region’s errors prejudiced Starbucks and its employees by disenfranchising partners of their rights under the Act. In the alternative, Starbucks requests that this matter be sent to another Region to investigate, and that Starbucks be permitted a hearing on its Objections. These steps are necessary to reinstate confidence of voters in elections handled by Region 3, and Starbucks voters nationwide, that the Board and its Regions will ensure election integrity and the enfranchisement of voters.
Dated: May 10, 2022

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Alan I. Model
Alan I. Model
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102
Telephone: 973.848.4740
amodel@littler.com

Attorneys for Starbucks Corporation
CERTIFICATION OF SERVICE

I certify that on May 10, 2022, I caused a copy of the foregoing Employer’s Request for Review to be e-filed and served electronically upon the following:

Region 3:

Linda M. Leslie, Regional Director
NLRB, Region 3
130 South Elmwood Avenue, Suite 630
Buffalo, NY 14202
Linda.Leslie@nlrb.gov

Workers United:

Ian Hayes, Esq.
Hayes Dolce
Attorneys for Workers United
471 Voorhees Ave.
Buffalo, NY 14216
ihayes@hayesdolce.com

By: /s/ Alan I. Model
Alan I. Model
STARBUCKS CORPORATION

Employer.

and

WORKERS UNITED

Petitioner.

Case No.: 03-RC-289801

APPENDIX TO STARBUCKS CORPORATION’S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR’S DECISION AND DIRECTION OF THE ELECTION

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

STARBUCKS CORPORATION
Employer

and

WORKERS UNITED
Petitioner

REGIONAL DIRECTOR'S ADMINISTRATIVE REVIEW
DECISION AND ORDER ON OBJECTION

Based on a petition filed on November 9, 2021, and pursuant to a Decision and Direction of Elections issued by the Acting Regional Director of Region 3 on January 14, 2022,1 a mail ballot election was conducted in this matter. The mail ballots were sent to eligible voters on January 31. The ballots were commingled and counted on March 9, with the following results:

Approximate number of eligible voters ..............................................39
Void Ballots ..................................................................................2
Votes cast for Petitioner .................................................................8
Votes cast against participating labor organization .....................7
Valid votes counted .....................................................................15
Challenged ballots .....................................................................0
Valid votes counted plus challenged ballots ...............................15

On March 16, the Employer, Starbucks Corporation, timely filed an Objection to the conduct of the election along with a separate offer of proof. A copy of the Objection is attached. The Employer asserts that certain eligible voters had returned their ballots that were unaccounted for at the time of the ballot count. The Petitioner did not file a response to the Employer’s Objection.

By Order dated March 23, this case was transferred from Region 3 to Region 10. By Order dated April 5, the rescheduled hearing in this matter was postponed indefinitely so that I could consider an administrative review of the Objection, offer of proof, and relevant evidence.

Pursuant to Section 102.69 of the National Labor Relations Board (NLRB) Rules and Regulations, and the NLRB Representation Proceedings Case Handling Manual (Part Two), Sections 11390 – 11397, I caused an administrative investigation and review of the Employer’s Objection to be conducted.

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1 All dates are for the year 2022 unless otherwise noted.
Having duly considered the Employer’s Objection, offer of proof, and the relevant evidence from the case file, and as further explained below, I am sustaining, in part, the Employer’s Objection to the conduct of the election and direct that all unopened mail ballots received at the Region 3 office prior to the day of the ballot count shall be processed according to the Board’s regular procedures for mail ballot elections.

Objection 1:
Region 3 personnel failed to process one or more timely-cast ballots that were delivered to the Regional office prior to the March 9 ballot count.

In its Objection and offer of proof, the Employer asserts that six named employees timely cast their ballots. More specifically, the Employer details that one employee delivered a ballot to the Regional office by putting it under the office door, and five other employees mailed their ballots on various dates in February, the latest of which was mailed on February 16.

As detailed in the Decision and Direction of Elections, voters were to mail their ballots so that they would be received by the Region 3 office by close of business on February 22, and the ballot count was originally scheduled for February 23. However, on January 31, the Employer filed with the Board a Request for Review of the Acting Regional Director’s Decision and Direction of Election, and the Board did not issue its Order denying that Request until March 7. Consequently, Region 3 did not hold the ballot count until March 9.

The case file shows that seven ballot envelopes were received by the Region 3 Office on February 25. Six of these ballots correspond to individuals appearing on the list of eligible voters, and the seventh ballot corresponds to an individual on the list of individuals voting subject to challenge. A review of the marked voter list used by the Board agent conducting the count reflects no marks next to any of these individuals’ names — that is, the votes do not appear to have been challenged or opened and counted. The casefile contains no reason as to why the seven ballots that arrived on February 25 were not processed at the March 9 count. I note that the casefile does not reflect that any additional ballots were received prior to or after March 9.

Board law on mail ballots arriving after the return date, but before the ballot count, is well settled and has been incorporated into Section 11336.5(c) of the Casehandling Manual (Part Two) Representation Proceedings:

Ballots contained in envelopes received before the count should be counted, even if they are received after the close of business on the return date. Kerrville Bus Co., 257 NLRB 176 (1981); Premier Utility Services, LLC, 363 NLRB No. 159, slip op. at 1 fn. 1 (2016).

The Board will generally permit mail ballots received after the due date, but before the count, to be opened and tallied. Watkins Construction Co., 332 NLRB 828, 828 (2000). However, the Board customarily does not permit mail ballots received after the count to be opened. Classic Valet Parking, Inc., 363 NLRB 249 (2015).
While the Employer appears to criticize the voter participation rate in its Objection, the Board has long held that the “majority” required by Section 9(a) of the Act for purposes of selecting a collective bargaining representative refers to a majority of those employees voting in an election. *R.C.A. Mfg. Co.*, 2 NLRB 159, 173-178 (1936). The fundamental purpose of a Board election is to provide employees with a meaningful opportunity to express their sentiments concerning representation for the purpose of collective bargaining. *Lemco Construction, Inc.*, 283 NLRB 459 (1987). The voter participation rate is not a basis to set aside or order a rerun election in this case.

Here, seven ballot envelopes were received at the Region 3 Office after the return due date but prior to the count. The Board agent conducting the count should have presented these ballots to the parties during the count, but did not do so. Because six of the unopened ballots are from eligible voters and are sufficient in number such that they may affect the results of the election, I will sustain, in part, the Employer’s Objection. I am not directing a rerun election or hearing as requested by the Employer in its Objection, but instead direct Region 3 personnel to process the seven mail ballot envelopes received on February 25 in accordance with the Board’s established count procedures for mail ballot elections. 2 A revised tally of ballots will then be served on the parties.

**CONCLUSION**

The Employer’s Objection is sustained in part. The seven ballot envelopes received by Region 3 on February 25 will be presented to the parties and processed in accordance with the Board’s usual procedures, and a revised tally of ballots will then be served on the parties. The date of the ballot count shall be scheduled after consultation with the parties. If the parties are unable to agree upon the date, time, place and method of the ballot count, it shall be directed in a separate order.

**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.

A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington DC 20570-0001. A party filing a request for review must serve a

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2 I find it unnecessary to address individually each voter named in the Employer’s objection. As already noted, the only uncounted ballot envelopes were received on February 25, and the names of the eligible voters pertaining to those ballots will be made known to the parties during the counting process. Should either party have further objections after the revised tally of ballots has issued, the party may avail itself of the objection process.
Starbucks Corporation  
Case 03-RC-285929

Dated: April 12, 2022

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.

Dated: April 12, 2022

LISA Y. HENDERSON  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 10  
401 W. Peachtree Street, NW  
Suite 472  
Atlanta, GA 30308-3525
STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

Case No.: 03-RC-285929

STARBUCKS CORPORATION'S OBJECTION TO CONDUCT OF THE ELECTION

Pursuant to the Rules and Regulations of the National Labor Relations Board ("NLRB"), including Section 102.69, Starbucks Corporation ("Starbucks" or "Employer") files the following Objection to Conduct of the Election in connection with the mail ballot election in Case No. 03-RC-285929.

In response to Workers United's ("Union") representation petition in Case No. 03-RC-285929, the Employer opposed the holding of a mail ballot election given the well-established problems relating to mail ballot elections. The Employer asserted its position in its Statement of Position, on the record at the representation hearing, and in its post-hearing brief. On January 14, 2022, Region 3 directed a mail ballot election over the Employer's objection. ("January 14 D&DE"). In the January 14, 2022 D&DE, the Region directed the mailing of ballots from Region 3's office on January 30, 2022, with eligible voters to return ballots by close of business on February 22, 2022, with a virtual ballot count set to occur on February 23, 2022.

The Employer timely-filed a Request for Review, which the Board did not rule upon prior to the scheduled count on February 23, 2022. As a result, under Section 102.67(c) of the NLRB's
Rules and Regulations, the ballots were impounded and remained unopened pending such ruling or decision. On March 7, 2022, the Board issued its Order on the Employer’s Request for Review. On March 7, 2022, Region 3 informed the Parties that it was rescheduling the ballot count to March 9, 2022.

At the March 9, 2022 ballot count, Region 3 informed the Parties that ballots of only 15 of the 38 eligible voters on the Voter List were received by the Region. Thus, the Parties were informed that the ballots of 23 employees (known as partners), or 61% of eligible voters, had not arrived at the Region’s office. Region 3 proceeded to open the 15 ballots and the resulting tally was 8 to 7, in favor of Union representation. Accordingly, 8 of 38 partners, 21%, decided the election for all partners.

After the ballot count, multiple partners asked their managers if their votes had been counted. Numerous partners confirmed that, despite their ballots not being counted during the count, they had in fact cast their ballots and knew specifically when and where they did so. Each of these partners voted prior to the March 9, 2022 ballot count, however, their ballots were not counted by Region 3. Nor were their ballots challenged, voided, or even acknowledged. They were simply unaccounted for.

Specifically, one partner said that she hand-delivered her ballot to Region 3’s office on the morning of February 22, 2022, by placing it under Region 3’s office door. She can confirm this through tracking data in her phone. The Region did not count, nor account, for this partner’s ballot, which is determinative in the election.

Region 3’s conduct of the election deprived Starbucks’ partners of their Section 7 rights to vote on the issue of union representation.

Region 3’s objectionable conduct includes the following:
OBJECTION 1

Region 3 personnel engaged in election misconduct by failing to process one or more timely-cast ballots that were delivered to the Regional office prior to the March 9 ballot count.

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Based upon each of the foregoing Objection, the Employer respectfully submits that the election results must be set aside and a re-run election conducted. If the Regional Director does not order a re-run election administratively, the Employer requests a hearing in which to present documentary evidence and witness testimony in support of its Objection.

Respectfully submitted,

/s/ Alan I. Model
Alan I. Model
LITTLER MENDELSON, P.C.
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102
amodel@littler.com

Attorneys for the Employer
Attorneys for Starbucks Corporation
CERTIFICATE OF SERVICE

I certify that Starbucks Corporation’s Objection to Conduct of the Election in Case No. 3-RC-285929 was electronically filed on March 16, 2022, through the Board’s website and also served via email on the following:

Ian Hayes, Esq.
Hayes Dolce
Attorneys for Workers United
371 Voorhees Avenue
Buffalo, NY 14216
ihayes@hayesdolce.com

Linda M. Leslie, Regional Director
National Labor Relations Board Region
3130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202
Linda.leslie@nlrb.gov

Thomas A. Miller, Field Examiner
National Labor Relations Board Region 3
130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202
Thomas.Miller@nlrb.gov

/s/ Alan Model
Alan I. Model
Littler Mendelson, P.C.
Attorneys for Starbucks Corporation
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

Case 03-RC-289801

DECISION AND ORDER OVERRULING OBJECTIONS
AND ISSUING CERTIFICATION OF REPRESENTATIVE

Based on a petition filed on February 1, 2022, and pursuant to a Decision and Direction of Election, an election was conducted by mail to determine whether a unit of employees of Starbucks Corporation (the Employer) wish to be represented for purposes of collective bargaining by Workers United. That voting unit consists of:

Including: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 1394 Mount Hope Avenue, Rochester, New York 14620. Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 41 of eligible voters, 13 votes were cast for and 11 votes were cast against the Petitioner, with no challenged ballots. There were also three ballots ruled void by the Board agent conducting the count. No objections were voiced at the count concerning the ballots declared void.

On April 14, the Employer timely filed four objections to the conduct of the election, accompanied by an offer of proof. A copy of the Employer’s objections is attached to this Order. Based on an administrative investigation of the Employer’s objections and its accompanying offer of proof, I have concluded that there are no substantial and material issues of fact which would necessitate a hearing. See Care Enterprises, Inc., 306 NLRB 491, 491 fn. 2 (1992). I also have concluded that the Employer’s objections are without merit and should be overruled.

1 All dates hereinafter are in 2022 unless otherwise indicated.
THE EMPLOYER’S OBJECTIONS

The Employer’s objections\(^2\) are as follows:

Objection 1: Region 3 personnel engaged in election misconduct by failing to timely deliver ballots to eligible voters.

Objection 2: Region 3 personnel engaged in election misconduct by voiding a ballot that was missing the blue interior envelope.

Objection 3: Region 3 personnel engaged in election misconduct by voiding a ballot on the basis that the signature was “printed,” claiming that the signed name did not constitute a signature.

Objection 4: Region 3 personnel’s actions in their handling of the ballot count in Case 03-RC-285929 casts doubt on whether all valid ballots were counted in the instant matter, and undermines election integrity and confidence.

THE APPLICABLE BURDEN

The applicable legal principles governing election objections are as follows, from the Board’s decision in Safeway, Inc., 338 NLRB 525, 526 (2002):


In cases governing alleged misconduct by Board employees, the proper standard is “whether the manner in which the election was conducted raises a reasonable doubt as to the

Objection 1: Region 3 personnel engaged in election misconduct by failing to timely deliver ballots to eligible voters.

In its offer of proof, the Employer asserted that it plans to provide evidence that certain voters did not timely receive their ballots in order to vote in the election. The Notice of Election issued by the Region in this matter stated as follows, in pertinent part:

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Monday, March 28, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 03 Office at (716)551-4931 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

The ballot counts will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) starting at 1:30 p.m. on April 7, 2022. In order to be valid and counted, the returned ballots must be received in the Region 03 Office prior to the counting of the ballots.

The Employer’s offer of proof identified four voters whom the Employer claims did not timely receive their ballots. A review of the Voter list utilized during the April 7 vote count revealed that of the four voters identified by the Employer, two cast unchallenged ballots in this election. As such, any allegations that those voters did not timely receive ballots is without merit.

The same list indicated that the two other voters identified by the Employer as having allegedly been disenfranchised did not cast ballots in this election. For the first of these individuals, identified here as “Employee One,” the Region received a request from the Employer to have a duplicate kit sent to that voter on March 31, one week prior to the scheduled vote count. The Region mailed a duplicate kit to Employee One on March 31.

The last individual identified by the Employer as having been disenfranchised will hereafter referred to as “Employee Two.” On April 5, two days prior to the vote count, the Regional Office received a telephone call from Employee Two. The voter informed the Board agent that they had not received a ballot kit and wished to vote. Given the limited time before the vote count, the Board agent informed Employee Two that there was insufficient time to mail a duplicate kit because it was practically impossible that the voter would receive and return the kit before the April 7 count date.

Failure to furnish a voter with a duplicate ballot kit can warrant setting aside an election where “sufficient time” exists to send the voter a duplicate ballot kit and where the failure affected a potentially determinative number of voters. XPO Logistics Freight, Inc., 370 NLRB No. 99, slip op. at 2 (2021). In the instant case, though the deadline for voters to contact the Region for a duplicate ballot was March 28, the Region acted with alacrity on March 31, mailing a duplicate ballot kit to Employee One on the same day the Employer requested that this kit be

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3 See also Section 11336.4(b) of the Board’s Casehandling Manual (Part Two), Representation Proceedings (CHM).
sent. The voter’s alleged non-receipt of a ballot kit, standing alone, is insufficient reason to set aside an election. See *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850, 855 (5th Cir. 1978), cert. denied 439 U.S. 893 (1978), enf’g 227 NLRB 1347 (1977) (“It cannot be said that an election by mail is per se invalid whenever a potentially decisive number of votes…is lost through the vagaries of mail delivery.”). Thus, the Region’s conduct in this respect was not objectionable.

As for Employee Two, it is clear that there was not sufficient time to furnish that voter with a duplicate ballot kit before the vote count. Employee Two’s request for a duplicate ballot kit was made on April 7, a mere two days before the scheduled vote count. In *XPO Logistics*, supra, the Board held that a voter was not potentially disenfranchised where four days before the scheduled vote count the Regional Office did not send a duplicate ballot kit, as there was insufficient time to send it. The same conclusion is warranted here. Under these circumstances, the Regional Office’s handling of this voter’s request for a duplicate ballot was proper.

In sum, I conclude that the offer of proof submitted in connection with Employer’s Objection 1 is insufficient to establish that Region 3 personnel engaged in objectionable conduct. As such, I am overruling this objection.

**Objection 2:** Region 3 personnel engaged in election misconduct by voiding a ballot that was missing the blue interior envelope.

During the ballot count on April 7, the Board agent conducting the count voided the ballot because that voter did not use the interior, blue envelope when returning their ballot kit to the Regional Office. In other words, the voter’s ballot was placed directly inside the outer yellow envelope. During the vote count, neither party objected to the Board agent’s ruling that this voter’s ballot was void. The Employer’s objection asserts that the Board agent’s voiding of this ballot was improper insofar as another Regional Office did not void a ballot in another case.

The ballot kit sent to each voter in this election contained, inter alia, Form NLRB -4175, instructions to Eligible Employees Voting By United States Mail. This form instructs the voter to put their ballot in the blue envelope and seal it and to then put the blue envelope containing the ballot in the yellow envelope.

These instructions clearly indicate that voters must utilize the blue envelope in completing their mail ballot kits. As the Board has acknowledged, “mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections, due to the absence of direct Board supervision over the employees’ voting.” *Mission Industries*, 283 NLRB 1027, 1027 (1987). Indeed, “[f]or this reason, mail ballots are accompanied by election kits that clearly specify the precise procedure for casting and returning the ballot.” *Fessler & Bowman*, 341 NLRB 932, 933 (2004). In *Professional Transportation, Inc.*, 370 NLRB No. 132, slip op. at 3 (2021), the Board noted that the purpose of the interior blue and exterior yellow envelopes is “[t]o enable parties to challenge specific voters’ ballots while also preserving ballot secrecy…”

The Board dealt with an analogous situation in *Northwest Packing Co.*, 65 NLRB 890, 891 (1946). In that case, as here, a voter failed to use the interior ballot envelope in a mail ballot election. There, as here, the Board agreed that the ballots in question were properly voided,
noting that “the secrecy of the ballot is essential in a Board-conducted election… and it may not be jeopardized.” Id. In Air 2, LLC, 341 NLRB 176 (2004), enf’d. mem. 122 Fed. Appx. 987 (11th Cir. 2004), a more recent case, an Administrative Law Judge also upheld a ruling that a voter’s ballot was void based on the voter’s failure to utilize the interior blue envelope.

Based on the above, I conclude that the Board agent’s actions in voiding the ballot of the voter who failed to utilize the interior blue envelope was appropriate and therefore not objectionable.4 I therefore overrule this objection.

**Objection 3:** Region 3 personnel engaged in election misconduct by voiding a ballot on the basis that the signature was “printed,” claiming that the signed name did not constitute a signature.

During the April 7 ballot count, the Board agent conducting the count voided the ballot of voter Daniel Wilson on the basis that Wilson had printed, rather than signed, the outer yellow envelope. Neither party challenged the Board agent’s ruling during the vote count. In its objection, the Employer contended that the decision to void this ballot inappropriately disenfranchised Wilson.

An administrative review of Wilson’s ballot envelope demonstrates that Wilson indeed printed, rather than signed, in the section of the yellow envelope requiring a signature. At the top of the same section, pre-printed on the envelope, are the following instructions: “Seal Envelope. Sign Your Name Across the Flap. DO NOT PRINT.” Additionally, the instructions included with the ballot kit sent to each voter stated unequivocally, “to be counted, the yellow return envelope must be signed.” Section 11336.5(c) of the CHM provides further provides that “[b]allots that are returned in envelopes with no signatures or with names printed rather than signed should be voided.” Moreover, the Board has repeatedly determined that printing rather than signing one’s name on a mail ballot envelope renders the ballot in question void. See, e.g., Thompson Roofing, 291 NLRB 743 (1988); and Northwestern Packaging Co., supra.

Based on the above, I conclude that the Board agent properly voided Wilson’s ballot on the basis that the voter failed to sign the envelope as instructed. As such, I am overruling Objection 3.

**Objection 4:** Region 3 personnel’s actions in their handling of the ballot count in Case 03-RC-285929 casts doubt on whether all valid ballots were counted in the instant matter and undermines election integrity and confidence.

The Employer asserts that Region 3’s actions in another case involving the same parties impacts the conduct of the election in this matter. The Employer offered no proof or evidence to

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4 The Employer’s assertion that another Regional Office allegedly permitted the count of a ballot submitted without the interior blue envelope is irrelevant. In this case, the Board agent properly voided the ballot based on longstanding Board precedent and case handling protocol.
demonstrate how alleged conduct in case 03-RC-285929 impacted or affected the conduct of the election in the instant case. Particularly, the Employer has not demonstrated how the Region’s decision in case 03-RC-285929 not to count ballots that arrived after impoundment of timely-arrived ballots has any bearing on the instant matter, particularly given that that the ballots in this case were not impounded. For these reasons, I am overruling Objection 4.

CONCLUSION AND ORDER

I have concluded that the objections do not raise substantial and material issues of fact. Accordingly, I hereby overrule the Employer’s objections in their entirety.

CERTIFICATION OF REPRESENTATIVE

Having determined that there were no valid objections to the election in this matter, and as authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

Workers United

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 1394 Mount Hope Avenue, Rochester, NY 14620, excluding office clerical employees, guards, professional employees and supervisors as defined in the Act.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.69(c)(2) of the Board’s Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision, which may be combined with a request for review of the regional director’s decision to direct an election as provided in Sections 102.67(e) and 102.69(c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board’s Rules and may be filed at any time following this decision until 10 business days after a final disposition of the proceeding by the regional director. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

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

Dated: April 26, 2022

/s/LINDA M. LESLIE

LINDA M. LESLIE
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465
Starbucks Corporation (“Starbucks” or “Employer”) is a company headquartered in
Seattle, Washington that operates a chain of coffee shops with locations throughout the United
States and the world. On February 1, 2022, Workers United (“Petitioner” or “Union”) filed two
representation petitions with the National Labor Relations Board (“Board”) under Section 9(c) of
the National Labor Relations Act (“Act”). By these petitions, the Union seeks single-facility
elections in wall-to-wall units at the Employer’s store located at 1394 Mount Hope Avenue,
Rochester, New York 14620 (Case 03-RC-289801) and the Employer’s store located at 2750
Monroe Avenue, Rochester, New York 14618 (Case 03-RC-289802). On February 8, I issued
an order consolidating these cases.

Petitioner asserts that the petitioned-for units are presumptively appropriate. The
Employer failed to timely file and serve its Statements of Position raising an issue to the conduct
of elections in the petitioned-for units. Section 102.66(d) of the Board’s Rules and Regulations
precludes a party from raising any issue, presenting any evidence relating to any issue, cross-

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

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

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

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

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

The Board has long held that it has a statutory obligation to determine the appropriate bargaining unit in each case and that “absent a stipulated agreement, presumption, or rule, the Board must be able to find—based on some record evidence—that the proposed unit is an appropriate one for bargaining before directing an election in that unit.” *Allen Healthcare Servs.*, 332 NLRB 1308, 1309 (2000); *Williams-Sonoma Direct*, 365 NLRB No. 13. Pursuant to this precedent, I make the following determinations.

A single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity.
Dixie Belle Mills, Inc., 139 NLRB 629, 631 (1962). The party contesting a single-facility unit bears a “heavy burden of overcoming the presumption.” Sutter West Bay Hosps., 357 NLRB 197, 200 (2011). This presumption applies in the retail setting. Sav-On Drugs, 138 NLRB 1032 (1962); accord Frisch’s Big Boy Ill-Mar, Inc., 147 NLRB 551 (1964). As the Board stated in Haag Drug, “Our experience has led us to conclude that a single store in a retail chain, like single locations in multilocation enterprises in other industries, is presumptively an appropriate unit for bargaining.” 169 NLRB 877, 877 (1968) (emphasis in original). Here, the Employer has been precluded from presenting evidence or argument with respect to the appropriateness of the units and, accordingly, cannot overcome this presumption. I therefore find that the Employer has not sustained its burden of demonstrating that the petitioned-for, single-facility units are inappropriate.

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

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

**Conclusion**

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

It is hereby ordered that Starbucks’ store located at 1394 Mount Hope Avenue, Rochester, New York 14620 (Case 03-RC-289801) proceed to an election in the following unit:

Including: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 1394 Mount Hope Avenue, Rochester, New York 14620.

Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.
It is hereby further ordered that Starbucks’ store located at 2750 Monroe Avenue, Rochester, New York 14618 (Case 03-RC-289802) proceed to an election in the following unit:

Including: All full-time and regular part-time Baristas, Shift Supervisors, and Assistant Store Managers employed by the Employer at its store located at 2750 Monroe Avenue, Rochester, New York 14618.

Excluding: Office clerical employees, guards, professional employees and supervisors as defined in the Act.

Method of Elections

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

DIRECTION OF ELECTIONS

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

A. Elections Details

The elections will be conducted by mail ballot. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining units. At 5:00 p.m. on March 16, 2022, ballots will be mailed to voters by National Labor Relations Board, Region 3 Office. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 3 office by close of business on April 6, 2022.

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

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot counts will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) starting at 1:30 p.m. on April 7, 2022. Each party will be allowed to have an observer attend the virtual ballot count.
B. Voting Eligibility

Eligible to vote are those in the units who were employed during the payroll period ending **March 6, 2022**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

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

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

C. Voter Lists

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

The Petitioner waived the full ten days to receive the list. To be timely filed and served, the list must be **received** by the Regional Director and the parties by **March 9, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the lists must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because each list will be used during the elections, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for each list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.
When feasible, each list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The lists may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

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

RIGHT TO REQUEST REVIEW

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

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

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

Dated: March 7, 2022.

/s/LINDA M. LESLIE

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

Employer

and

WORKERS UNITED

Petitioner

Case No.: 03-RC-289801

STARBUCKS CORPORATION’S OBJECTIONS TO CONDUCT OF THE ELECTION

Pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB”), including Section 102.69, Starbucks Corporation (“Starbucks” or “Employer”) files the following Objections to Conduct of the Election in connection with the mail ballot election in Case No. 03-RC-289801.

In a March 7, 2022 Decision and & Direction of Election (D&DE), the Region directed the mailing of ballots from Region 3’s office on March 16, 2022, with eligible voters to return ballots by close of business on April 6, 2022, and a virtual ballot count set to occur on April 7, 2022. The Employer timely-filed a Request for Review, which the Board ruled upon prior to the scheduled count on April 7, 2022. Accordingly, the count proceed as set forth in the D&DE.

In the days prior to the vote count, multiple partners expressed concern to Starbucks that they had not received their ballots. Certain partners stated that they contacted the Region seeking ballots and did not receive return calls. Other partners stated they received their ballots only 1-2 days before they were due back at the Region. Ultimately, three voters told Starbucks that they planned to drive from Rochester to the Buffalo Regional office, three-hours round-trip, to cast their
ballots in the Regional office on the morning of the count, because they had not received their ballots with sufficient time to return them by mail. These voters did make this drive, and their votes were counted. A fourth voter told Starbucks that they received their ballot on the date prior to the count but were unable to drive to Buffalo to vote. Starbucks believes numerous other eligible voters failed to timely receive their ballots because of Region 3’s misconduct.

At the April 7, 2022 ballot count, the Region counted 24 ballots out of 41 eligible voters and deemed two ballots void. 15 ballots are unaccounted for. Of the 24 votes that were counted, 13 were for Workers United representation and 11 were against Workers United representation.

During the count, Region 3 voided a partner’s ballot because it was missing the interior blue envelope. There was no indication that there were any other issues with the ballot (timeliness, signature, stray marks, etc.) that would have caused the ballot to be voided, but for this claimed deficiency. Neither party saw nor could have seen the voter’s ballot so as to deprive the voter of their right to a secret ballot vote. Region 3’s decision to void this ballot was inconsistent with how other Regions handle missing interior envelopes. For instance, on April 11, 2022, Region 1 counted a ballot cast by a voter who returned it without using the interior blue envelope in Case 01-RC-287639 (Coolidge Corner), another petition filed by Workers United to represent partners at a Starbucks store.

Region 3 also voided a voter’s ballot because the Region determined that their signature was “printed” on the flap, rather than “signed.” Again, there was no indication that there was any other issue with the ballot (timeliness, stray marks, etc.), that would have caused the voter’s ballot to be voided but for this claimed deficiency. Region 3’s decision to void this ballot disenfranchised the voter, ignored that some individuals “sign” their names in print, and that there are various reasons why a voter may not know how to or be able to use cursive, including cultural reasons and
due to disability. Further, nothing in the NLRB’s instructions indicates that a signature must be written fully in cursive handwriting with all letters connected in order to be counted. Here, the voter’s signature adequately recorded their intent to vote, and their vote should have been counted.

Since August 2021, Starbucks has been involved in numerous representation cases including other cases handled by Region 3. In Case 03-RC-285929, on March 16, 2022, Starbucks filed a post-election objection to Region 3’s conducting of the election because numerous eligible voters claimed that they had timely cast their ballots, but their ballots were neither counted nor accounted for during the ballot count. Investigation of the Employer’s objection was transferred to Region 10. On April 12, 2022, Region 10 informed the parties that its administrative investigation found that Region 3 engaged in misconduct by failing to count seven valid ballots in its possession – without giving a reason for this failure – in an election where Workers United prevailed by an 8 to 7 tally. Region 3’s misconduct in Case 03-RC-285929 casts doubt on whether all valid ballots were counted in that case, and further casts doubt on whether other valid ballots were received and not counted/or accounted for by Region 3 in the instant matter. Moreover, Region 3’s misconduct – including the absence of any explanation as to why the seven valid ballots were not counted – undermines confidence in Region 3’s election integrity.

Herein, Region 3’s conduct of the election deprived Starbucks’ partners of their Section 7 rights to vote on the issue of union representation.

Region 3’s objectionable conduct includes the following:

**OBJECTION 1**

Region 3 personnel engaged in election misconduct by failing to timely deliver ballots to eligible voters.
OBJECTION 2

Region 3 personnel engaged in election misconduct by voiding a ballot that was missing the blue interior envelope.

OBJECTION 3

Region 3 personnel engaged in election misconduct by voiding a ballot on the basis that the signature was “printed,” claiming that the signed name did not constitute a signature.

OBJECTION 4

Region 3 personnel’s actions in their handling of the ballot count in Case 03-RC-285929 casts doubt on whether all valid ballots were counted in the instant matter, and undermines election integrity and confidence.

***

Based upon the foregoing Objections, the Employer respectfully requests that these objections are transferred to another Regional office for investigation. Such investigation will warrant that the election results must be set aside and a re-run election conducted. If the Regional Director does not administratively order a re-run election, the Employer requests a hearing in which to present documentary evidence and witness testimony in support of its Objections.

Respectfully submitted,

/s/ Alan I. Model
Alan I. Model
LITTLER MENDELSON, P.C.
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102
amodel@littler.com

Attorneys for the Employer
Attorneys for Starbucks Corporation
CERTIFICATE OF SERVICE

I certify that Starbucks Corporation’s Objections to Conduct of the Election in Case No. 03-RC-289801 was electronically filed on April 14, 2022, through the Board’s website and also served via email on the following:

Ian Hayes, Esq.
Hayes Dolce
Attorneys for Workers United
371 Voorhees Avenue
Buffalo, NY 14216
ihayes@hayesdolce.com

Linda M. Leslie, Regional Director
National Labor Relations Board Region 3
130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202
Linda.Leslie@nlrb.gov

Thomas A. Miller, Field Examiner
National Labor Relations Board Region 3
130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202
Thomas.Miller@nlrb.gov

/s/ Alan Model
Alan I. Model
Littler Mendelson, P.C.
Attorneys for Starbucks Corporation
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

STARBUCKS CORPORATION

Employer

and

WORKERS UNITED

Petitioner

Case No.: 03-RC-289801

STARBUCKS CORPORATION’S OFFER OF PROOF IN SUPPORT OF
OBJECTIONS TO CONDUCT OF THE ELECTION

Pursuant to the Rules and Regulations of the National Labor Relations Board ("NLRB"), including Section 102.69 and 102.66(c), Starbucks Corporation ("Starbucks" or "Employer") files this Offer of Proof in Support of Objections to Conduct of the Election in connection with the mail ballot election in Case No. 03-RC-289801.

The Employer presents the following offers of proof with respect to its Objections. The Employer identifies the witnesses it would call to testify about the issues raised in its Objections and summarizes their testimony herein. The evidence establishes that Starbucks’ partners were denied their Section 7 rights to have their ballots counted due to Region 3’s misconduct.

Region 3’s objectionable conduct includes the following:

OBJECTION 1

Region 3 personnel engaged in election misconduct by failing to timely deliver ballots to eligible voters.
Witnesses: The Employer will present evidence through District Manager Shelby Young, and eligible voters, , , , and that these partners did not timely receive their ballots in order to vote in the election.

The Employer also intends to present documentary and testimonial evidence as to Region 3’s conducting of the ballot count on April 7, 2022 that will confirm the Region failed to count all valid ballots and undermined election integrity.

**OBJECTION 2**

Region 3 personnel engaged in election misconduct by voiding a ballot that was missing the blue interior envelope.

Witnesses: The Employer will present evidence through Starbucks counsel, voter , , , Union counsel, and Region 3 personnel that Region 3 voided a valid ballot at the ballot count.

The Employer also intends to present documentary and testimonial evidence as to Region 3’s conducting of the ballot count on April 7, 2022 that will confirm the Region failed to count all valid ballots and undermined election integrity.

**OBJECTION 3**

Region 3 personnel engaged in election misconduct by voiding a ballot on the basis that the signature was “printed,” claiming that the signed name did not constitute a signature.

Witnesses: The Employer will present evidence through Starbucks counsel, voter , , , Union counsel, and Region 3 personnel that Region 3 voided a valid ballot at the ballot count.
The Employer also intends to present documentary and testimonial evidence as to Region 3’s conducting of the ballot count on April 7, 2022 that will confirm the Region failed to count all valid ballots and undermined election integrity.

**OBJECTION 4**

Region 3 personnel’s actions in their handling of the ballot count in Case 03-RC-285929 casts doubt on whether all valid ballots were counted in the instant matter, and undermines election integrity and confidence.

The Employer also intends to present documentary and testimonial evidence as to Region 3’s conducting of the ballot count on April 7, 2022 that will confirm the Region failed to count all valid ballots and undermined election integrity.

* * *

Based upon the foregoing Objections, the Employer respectfully requests that these objections are transferred to another Regional office for investigation. Such investigation will warrant that the election results must be set aside and a re-run election conducted. If the Regional Director does not administratively order a re-run election, the Employer requests a hearing in which to present documentary evidence and witness testimony in support of its Objections.

Respectfully submitted,

/s/ Alan I. Model
Alan I. Model
LITTLER MENDELSON, P.C.
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102
Telephone: 973.848.4740
Facsimile: 973.755.0439
amodel@littler.com

Attorneys for the Employer
*Attorneys for Starbucks Corporation*
CERTIFICATE OF SERVICE

I certify that Starbucks Corporation’s Offer of Proof in Support of Its Objections to Conduct of the Election in Case No. 3-RC-285929 was electronically filed on April 14, 2022, through the Board’s website.

/s/ Alan Model
Alan I. Model
Littler Mendelson, P.C.
Attorneys for Starbucks Corporation
You have EFiled your document(s) successfully. You will receive an EMail acknowledgement noting the official date and time we received your submission. Please save the EMail for future reference. You may wish to print this page for your records.

**Note:** This confirms only that the document was filed. It does not constitute acceptance by the NLRB.

**Please be sure to make a note of this confirmation number.**

- **Confirmation Number:** 1061160193
- **Date Submitted:** Thursday, April 14, 2022 4:06 PM Eastern Standard Time
- **Submitted E-File To Office:** Region 03, Buffalo, New York

**Case Number:** 03-RC-289801  
**Case Name:** Starbucks Corporation  
**Filing Party:** Employer

**Contact Information:**  
**Alan Model**  
One Newark Center, 8th Floor, Newark, NJ 07102  
Ph: (973) 848-4700  
E-mail: amodel@littler.com  
Additional E-mails: ccolumbo@littler.com

**Attached Documents:**  
- Objections to an Election: Starbucks Objections 03-RC-289801 4863-2614-0443 v.3.pdf  
- Objections to an Election: Starbucks Objections Offer Proof 03-RC-289801 4874-0708-3803 v.4.pdf

Start Another E-Filing
Pursuant to the Rules and Regulations of the National Labor Relations Board ("NLRB"), including Section 102.69, Starbucks Corporation ("Starbucks" or "Employer") files the following Objections to Conduct of the Election in connection with the mail ballot election in Case No. 3-RC-285929.

In response to Workers United’s ("Union") representation petition in Case No. 3-RC-285929, the Employer opposed the holding of a mail ballot election given the well-established problems relating to mail ballot elections. The Employer asserted its position in its Statement of Position, on the record at the representation hearing, and in its post-hearing brief. On January 14, 2022, Region 3 directed a mail ballot election over the Employer’s objection. ("January 14 D&DE"). In the January 14, 2022 D&DE, the Region directed the mailing of ballots from Region 3’s office on January 30, 2022, with eligible voters to return ballots by close of business on February 22, 2022, and a virtual ballot count set to occur on February 23, 2022.

The Employer timely-filed a Request for Review, which the Board did not rule upon prior to the scheduled count on February 23, 2022. As a result, under Section 102.67(c) of the NLRB’s
Rules and Regulations, the ballots were impounded and remained unopened pending such ruling or decision. On March 7, 2022, the Board issued its Order denying the Employer’s Request for Review. On March 7, 2022, Region 3 informed the Parties that it was rescheduling the ballot count to March 9, 2022.

At the March 9, 2022 ballot count, Region 3 informed the Parties that ballots of only 15 of the 38 eligible voters on the Voter List were received by the Region. Thus, the Parties were informed that the ballots of 23 employees (known as partners), or 61% of eligible voters, had not arrived at the Region’s office. Region 3 proceeded to open the 15 ballots and the resulting tally was 8 to 7, in favor of Union representation. Accordingly, 8 of 38 partners, 21%, decided the election for all partners.

Partners were surprised by the low number of votes that were counted. After the ballot count, multiple partners asked their managers if their votes had been counted. Numerous partners confirmed that, despite their ballots not being counted during the count, they had in fact cast their ballots and knew specifically when and where they did so. Each of these partners voted and mailed or delivered their ballots prior to the March 9, 2022 ballot count, however, their ballots were inexplicably not counted by Region 3. Nor were their ballots challenged, voided, or even acknowledged. They were simply unaccounted for.

Specifically, one partner said that she hand-delivered her ballot to Region 3’s office on the morning of February 22, 2022, by placing it under Region 3’s office door. She can confirm this through tracking data in her phone. The Region did not count, nor account, for this partner’s ballot, which was determinative in the election based on the counted ballots on that date.

After the election, on March 16, 2022, Starbucks filed an objection that Region 3 personnel engaged in election misconduct by failing to process one or more timely-cast ballots that were
delivered to the Regional office prior to the March 9 ballot count, based on the facts above.

To prevent Region 3 from investigating its own alleged misconduct, investigation of the Employer’s objection was transferred to NLRB Region 10. The Regional Director of Region 10, Lisa Henderson, conducted an administrative investigation into the Employer’s objection regarding Region 3’s misconduct. On April 12, 2022, Region 10 informed the parties that its administrative investigation found that Region 3 engaged in misconduct by failing to count seven valid ballots in its possession, without giving a reason for this failure, noting “[t]he casefile contains no reason as to why the seven ballots that arrived on February 25 were not processed at the March 9 count.” Significantly, Region 10 did not provide the parties with any information regarding the chain of custody for the seven ballots that it found were received by Region 3 on February 25, 2022 and which Region 3 failed to open and count on March 9, 2022. To this date, the parties do not know how or if Region 3 maintained custody and control over these ballots for a period of one month, from the date the ballots were received on February 25, 2022 until they were counted on April 22, 2022.

On April 22, 2022, Region 3 conducted a second ballot count, during which five of the “found” ballots were ultimately counted, with one ballot being challenged by the Employer, and one ballot where the parties agreed that the voter was ineligible. The resulting count was 10-10, with the one challenged ballot being determinative.

Despite Region 10 finding seven additional valid ballots in Region 3’s casefile after the initial count, the ballots of additional partners who timely cast their ballots remain unaccounted for. At least four additional partners who timely voted, either by dropping their ballots off at Region 3’s office or by mailing their ballots well in advance of the count, did not have their ballots
counted. Simply stated, the timely-cast ballots of four more partners have been “lost” and not accounted for by Region 3. Given the current count, these votes are determinative in the election.

It is alarming that, but for the Employer filing its objection on March 16, the parties would have never learned of the seven “found” ballots. Region 3’s misconduct – including the absence of any explanation as to why the seven “found” ballots were not counted during the tally of ballots or that the Region had the seven ballots in its possession – undermines the integrity of the election process and destroyed laboratory conditions. The fact that the Employer has evidence that four additional partners timely cast ballots and such ballots remain unaccounted for by Region 3 calls into question Region 3’s conduct and underscores the lack of integrity in Region 3’s processing of representation petitions.

It is requested that Region 10 or another Regional office investigate the instant Objections. It is improper for Region 3 to conduct an investigation into its own alleged misconduct and essentially rubberstamp its actions, which is what Region 3 recently did in overruling the Employer’s objections in Case 3-RC-289801. The Employer’s objections in Case 3-RC-289801 also centered on Region 3’s misconduct in processing another mail ballot election.

Through its misconduct, Region 3 deprived Starbucks’ partners of their Section 7 rights to vote on the issue of union representation.

Region 3’s objectionable conduct includes the following:
**OBJECTION 1**

Region 3 personnel’s actions in their handling of the ballot count casts doubt on whether all valid ballots were counted, and undermines the integrity of the election and the parties’ confidence in the election results.

**OBJECTION 2**

Region 3 personnel engaged in election misconduct by failing to include one or more timely-cast ballots in the March 9, 2022 virtual ballot count.

**OBJECTION 3**

Region 3 personnel engaged in election misconduct by representing to the parties that all ballots received by the Region were present during the March 9, 2022 virtual ballot count.

**OBJECTION 4**

Region 3 personnel engaged in election misconduct by failing to notify the Petitioner and the Employer of the fact that it had received timely-cast ballots that it did not include in the March 9, 2022 virtual ballot count.

**OBJECTION 5**

Region 3 personnel engaged in election misconduct by failing to maintain the chain of custody over a dispositive number of timely-cast ballots, thereby tainting the election process and undermining the election results.

* * *
Based upon each of the foregoing Objections, the Employer respectfully submits that the election results must be set aside and a re-run election conducted. If the Regional Director does not order a re-run election administratively, the Employer requests a hearing in which to present documentary evidence and witness testimony in support of its Objections.

Respectfully submitted,

/s/ Alan I. Model
Alan I. Model
LITTLER MENDELSON, P.C.
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102
amodel@littler.com

Attorneys for the Employer
*Attorneys for Starbucks Corporation*
CERTIFICATE OF SERVICE

I certify that Starbucks Corporation’s Objections to Conduct of the Election in Case No. 3-RC-285929 was electronically filed on April 28, 2022, through the Board’s website and also served via email on the following:

Ian Hayes, Esq.
Hayes Dolce
Attorneys for Workers United
471 Voorhees Avenue
Buffalo, NY 14216
ihayes@hayesdolce.com

Linda M. Leslie, Regional Director
National Labor Relations Board Region
3130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202
Linda.leslie@nlrb.gov

Thomas A. Miller, Field Examiner
National Labor Relations Board Region 3
130 S. Elmwood Avenue, Suite 630
Buffalo, NY 14202
Thomas.Miller@nlrb.gov

/s/ Alan Model
Alan I. Model
Littler Mendelson, P.C.
Attorneys for Starbucks Corporation