UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

STARBUCKS CORPORATION
Employer

and

WORKERS UNITED
Petitioner

Case No.: 19-RC-290608

STARBUCKS CORPORATION’S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR’S DECISION ON OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE

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I. INTRODUCTION

In accordance with Section 102.67(c) of the Board’s Rules and Regulations, Siren Retail Corp. d/b/a Starbucks ("Starbucks") submits this Request for Review of the Regional Director’s Decision on Objections and Certification of Representative ("Decision"). Review is warranted under Section 102.67(d) because (1) the decision raises substantial questions of law or policy based on a departure from officially reported Board precedent, (2) the decision on substantial factual issues is clearly erroneous on the record and such error prejudicially affects the rights of the Employer, and (3) there are compelling reasons for reconsideration of an important Board rule or policy.

Starbucks’ Request for Review establishes grounds for relief. Board precedent establishes a clear preference for manual elections, and for good reason. Manual ballot elections best preserve and effectuate the Section 7 rights of employees under the National Labor Relations Act in choosing – or not choosing – a labor representative. As it turns out, the mail ballot election at issue here confirms the Board’s reasoning for its preference for manual elections. Only 66% of eligible voters participated in the recent mail ballot election. Far less than a majority of eligible voters selected union representation for their colleagues; such conditions demonstrate clear disenfranchisement and neither preserve nor effectuate employees’ Section 7 rights.

The Board has permitted regional directors to exercise their discretion in ordering a mail ballot or manual election, but such discretion has limits. If the Board is going to permit regional directors to review their own decisions, regional directors must at the very least follow Board rules and precedent. The Board articulated factors under Aspirus Keweenaw, 370 NLRB No. 45 (2020), for regional directors to consider while deciding what type of election to order. Even where the Aspirus factors point toward a mail ballot election, regional directors may still exercise their discretion to order a manual election. Yet here, the Regional Director abused his discretion. He
misinterpreted relevant data, misapplied the Aspirus factors, and ordered a mail ballot election. The result—low voter turnout—should not have been surprising. And when Starbucks objected to the conduct of the election based on low voter turnout, the Regional Director, in reviewing his own previous decision, doubled down on his prior inaccurate analysis, barely addressing Starbucks’ arguments.

Accordingly, the Board should accept review, reverse the decision, and remand with instructions for a manual election to be conducted. At a minimum, the Board should accept review and remand with instructions for the Regional Director to explain his analysis and methodology in overruling Starbucks’ Objections.

II. BACKGROUND

On February 14, 2022, Workers United, affiliated with Service Employees International Union, filed a representation petition seeking to represent approximately 100 employees at a Starbucks facility, the Roastery Reserve in Seattle, Washington. Starbucks and the Union executed a stipulation in lieu of a hearing to govern the election. The one issue not resolved was the manner of election. Starbucks argued a manual election should be held. The Union requested a mail-ballot election. The Regional Director instructed the parties to file written statements addressing the issue by March 15, 2022.

After filing the written statements, the Regional Director issued a Decision and Direction of Election on March 17, 2022. For the reasons explained in its Request for Review filed on March 25, 2022, the Regional Director’s Decision and Direction of Election was erroneous and a manual election should have been held. Starbucks hereby incorporates its (1) Brief in Support of a Manual On-site Election, and its (2) Request for Review and Exhibits.

Nevertheless, the mail ballot election was conducted and the ballots were counted on April 21, 2022. In this election, there were 104 eligible voters. Out of the 104 eligible voters a mere 69
voters returned ballots. Of the ballots returned, 65 were counted, three were challenged, and one was voided. The tally of ballots was 38 votes cast for the union, 27 votes cast against the representative—a margin of eleven votes. A little over 1/3 of the eligible voters decided that Workers United would serve as the exclusive representative for all 104 partners at the location. See Offer of Proof in Support of Objections, attached as Exhibit A.

Following the ballot count, Starbucks filed Objections to Conduct Affecting the Results of the Election. See Starbucks’ Objections. There, Starbucks indicated that the Regional Director erred in ordering a mail ballot election, and that the conduct of a mail ballot election may have affected the outcome of election. Starbucks further filed an Offer of Proof in Support of Objections, explaining the evidence that it would present at a hearing to show that election turnout would have been far higher, much like the high turnout at Starbucks’ New York roastery in a recent manual election, had the Regional Director ordered a manual election. See Exhibit A. The Regional Director overruled Starbucks’ Objections.

III. ARGUMENT

Board precedent is clear: manual elections are favored and should be conducted unless “infeasible.” San Diego Gas and Electric, 325 NLRB 1143, 1150 (1998) (Members Hurtgen and Brame, dissenting) (“In short, the manual election is the Board's ‘crown jewel,’ and we would not abandon it unless there is a showing that such an election is infeasible.”). Manual ballot elections are the Board’s “crown jewel” for a reason. Manual ballot elections best preserve and effectuate the Section 7 rights of employees under the National Labor Relations Act in choosing – or not choosing – a labor representative. Indeed, a core objective of an election is “maximum participation by the electorate.” See id.

As explained in the Brief in Support of a Manual On-Site Election, mail ballot elections are known by the National Labor Relations Board to have a statistically lower turnout than manual
elections by margins ranging between approximately 17 to 30%. General Counsel Memo 08-05 (April 17, 2008) showed turnout rates of 65% for mail ballot elections versus 82% for manual elections. The *Aspirus Keweenaw* decision cited that in the six months prior to the pandemic the participation rate was 55% for mail ballot elections versus 85% in manual elections and in the six-months after the onset of the pandemic the rates were 72% for mail and 92% for manual. 370 NLRB No. 45 (Nov. 9, 2020).

Here, the Regional Director concluded that Starbucks’ Objections were duplicative of the concerns it previously raised to the Board. See Decision, at 5. Yet, Starbucks’ Objections did not “only raise[] the issue of whether a mail ballot election was appropriate.” See *id.* Rather, Starbucks Objections explained that the Regional Director’s abuse of discretion in ordering a mail ballot election adversely impacted voter turnout.

Although the Regional Director cited to *CenTrio Energy South* for the proposition that “the Board does not overturn elections simply because of low turnout,” see Decision, at 3, the Board reached that conclusion in *CenTrio* after a Regional director ordered a mail ballot election “consistent with” *Aspirus*. See *CenTrio*, 371 NLRB No. 94, at 1. Here, however, the Regional Director misapplied *Aspirus*, and continued to do so in overruling Starbucks’ objections. Compare Decision, at 4 (concluding erroneously that “the 14-day trend in number of new confirmed cases in the county where the facility is located was increasing”), with Starbucks’ Request for Review Dated March 25, 2022 (explaining that the Regional Director misinterpreted data and seemingly relied on incorrect facts in analyzing the 14-day trend under *Aspirus*).

In any event, notwithstanding the Regional Director’s application of *Aspirus*, turnout remains an important factor here, as low turnout interferes with Section 7 rights of employees. Even though the Regional Director concluded that the similarity of operations between Starbucks’
Seattle and New York roasteries is not a “correct metric in assessing the trend in new Covid-19 cases,” see Decision, at 4, the COVID-19 pandemic is not the only consideration here. Indeed, “maximum participation by the electorate” is a core objective of an election. *San Diego Gas, supra,* at 1150 (Members Hurtgen and Brame, dissenting).

Accordingly, in ignoring a core objective of elections (and thus ignoring employees’ Section 7 rights), while simultaneously misapplying *Aspirus,* the Regional Director has abused his discretion.

IV. CONCLUSION

For the reasons set forth above, and in the Employer’s prior Objections and Request for Review, which are incorporated herein by referenced, the Employer respectfully requests that the Board grant review, reverse the Regional Director’s decision, and remand the case with instructions to conduct a manual election.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed in accordance with NLRB requirements and served via electronic mail, this 31st day of May, 2022, upon:

**VIA E-FILE**

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Exhibit A
EMPLOYER SIREN RETAIL CORP.'S OFFER OF PROOF IN SUPPORT OF OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

Pursuant to the Rules and Regulations of the National Labor Relations Board (“NLRB”), including Sections 102.69 and 102.66(c), Siren Retail Corp. (“Employer” or “Starbucks”) files this Offer of Proof in Support of Objections to Conduct of the Election.

The Employer presents the following offer of proof with respect to its Objections. The evidence in support of the Employer’s Objections demonstrates that the rights of the Employer and eligible voters were denied.

**OBJECTION 1:**

On February 14, 2022, Workers United affiliated with Service Employees International Union filed a representation petition seeking to represent approximately 100 employees at a Starbucks facility in Seattle, Washington. Starbucks and the Union executed a stipulation in lieu of a hearing to govern the election. The one issue not resolved was the manner of election. Starbucks argued a manual election should be held. The Union requested a mail-ballot election.
The Regional Director instructed the parties to file written statements addressing the issue by March 15, 2022.

After filing the written statements, the Regional Director issued a Decision and Direction of Election on March 17, 2022.

For all of the reasons explained in its Request for Review, the Regional Director’s Decision and Direction of Election was erroneous and a manual election should have been held. The Employer incorporates its (1) Brief in Support of a Manual On-site Election; (2) Request for Review and Exhibits in this offer of proof.

As explained in the Brief in Support of a Manual On-Site Election, mail ballot elections are known by the National Labor Relations Board to have a statistically lower turnout than manual elections by margins ranging between approximately 17 to 30%. General Counsel Memo 08-05 (April 17, 2008) showed turnout rates of 65% for mail ballot elections versus 82% for manual elections. The Aspirus Keweenaw decision cited that in the six months prior to the pandemic the participation rate was 55% for mail ballot elections versus 85% in manual elections and in the six-months after the onset of the pandemic the rates were 72% for mail and 92% for manual. 370 NLRB No. 45 (Nov. 9, 2020).

In this election, there were 104 eligible voters. Out of the 104 eligible voters, 65 ballots were counted, three ballots were challenged, and one ballot was voided. In all, out of 104 eligible voters, only 69 voters returned ballots—representing a turnout of 66%. Applying the statistical ranges in voter turnout variance in GC Memo 08-05 and Aspirus Keweenaw, statistically speaking, had a manual election been ordered it would have been expected that turnout would have been between 82% and 92%. This would have resulted in between 16 and 27 additional ballots being cast. As further evidence of this fact, simultaneous to the mail ballot election conducted in this
case, a manual election was held at Starbucks’ Roastery Reserve store located in New York, New York on April 1, 2022. In that manual election, 82 of 86 eligible voters cast ballots in the election for a turnout rate of 95%. See Tally of Ballots, 02-RC-290354.

Of all the elections filed related to Starbucks, only two of these elections involve Roastery Reserve Store locations operated by Siren Retail Corporation, one in New York (02-RC-290354) and one in Seattle (the instant petition). The New York Roastery Reserve location and the Seattle Roastery Reserve location at issue in this matter are similar in most respects. At hearing, Starbucks would present witnesses and evidence regarding the similarity of operations between the New York and Seattle Roasteries and an explanation as to how Roastery Reserve operations are different from the traditional core stores that make up the approximately 9,000 locations operated by Starbucks Corporation. Evidence of similarity would include similarity of operations, staffing levels, shifts, scheduling, and hours of operation among other factors. Starbucks would call managers from the Roasteries in both locations to testify regarding the similarities. The evidence regarding similarity would demonstrate that the 95% turnout rate for the manual election in New York is approximately what would have been achieved had a manual election been conducted in Seattle.

The ultimate results in this election were 38 votes cast for the union versus 27 votes cast against the representative—a margin of eleven votes.

Given that, statistically, the expected manual election v. mail election vote differential (16-27) exceeds the margin of result in this case (11), the Regional Director’s erroneous decision may have affected the outcome of the election.

Based on the foregoing Objections, or combination thereof, the Employer submits that the election must be set aside and a new election held. Casehandling Manual Section 11360.3.
Alternatively, the Employer requests a full hearing on its objections, to be conducted on the record, before a Hearing Officer pursuant to Section 102.69(c) and (d) of the NLRB, Rules and Regulations and Statements and Procedure.

Dated: April 28, 2022
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was e-filed in accordance with NLRB requirements and served via electronic mail, this 28th day of April, 2022, upon:

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