Starbucks Corporation (“the 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 14, 2022, and February 15, 2022, Mid-Atlantic Regional Joint Board, Workers United a/w Service Employees International Union (“the Petitioner”) filed two representative petitions with the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act (“Act”) in Case 05-RC-290507 and Case 05-RC-290586, respectively. The Petitioner seeks a single-facility election at two stores in Richmond, Virginia that includes all full-time and regular part-time baristas, shift supervisors, and assistant store managers, and excluding store managers, office clericals, guards and supervisors as defined by the Act.\(^1\) The two stores in question are Store #23129 located at 1017 N. Arthur Ashe Boulevard, Richmond, Virginia (“Store #23129” or “Arthur Ashe store”) and Store #7264 located at 3555 West Cary Street, Richmond, Virginia (“Store #7264” or “Carytown store”). There are approximately 28 employees in the petitioned-for unit at the Arthur Ashe store, and 20 employees in the petitioned-for unit at the Carytown store.

\(^1\) The parties stipulated that assistant store managers comprise less than 20% of either the petitioned-for units of single facilities or the Employer’s proposed multi-facility unit. The parties stipulated that any employee in the classification of assistant store manager will be allowed to vote subject to challenge. The parties further stipulated that any appropriate bargaining unit should exclude professional employees. Board Ex. 2. As of the time of the hearing, there were no assistant store managers working at either petitioned-for unit store. Board Exs. 3 and 4.
The Employer contends that the petitioned-for units limited to a single facility at either location is inappropriate. Rather, the Employer maintains that an appropriate unit must include all 14 stores in District 778 located in and around the Richmond area (“14 Employer-sought facilities”), including the two petitioned-for unit facilities. There are approximately 438 employees in the 14 facilities that the Employer contends as the appropriate unit.

On March 8, 2022, a hearing officer for the Board conducted a hearing by videoconference, during which the parties were invited to present their positions and supporting evidence. Thereafter, the parties submitted post-hearing briefs. I have duly considered all testimony, evidence, and arguments.

Based on the entire record and consistent with Board law, I find that the Employer has not sustained its burden of demonstrating that the two petitioned-for single units are inappropriate must include all 14 Employer-sought facilities it seeks. I find that the petitioned-for single unit at Store #23129 (Arthur Ashe) and Store #7264 (Carytown) is each an appropriate unit for collective bargaining purposes, and I am directing an election for each single unit. The parties stipulated that any election that takes place will be conducted by mail ballot. Therefore, I find that a prompt mail ballot election is appropriate.

I. ISSUES, POSITION OF THE PARTIES, AND PRIOR HISTORY

The only issue before me is whether the petitioned-for single store units limited to Store #23129 (Arthur Ashe store) and Store #7264 (Carytown store) are appropriate units for bargaining, or whether the appropriate unit must include all 14 facilities in District 778. The Employer asserts that the only appropriate unit is a multi-facility unit that includes the 14 facilities (including the petitioned-for unit stores) located in District 778 in and around the Richmond area. The Employer emphasizes that it is a technologically driven business with modern business platforms that is centrally controlled to create a consistent customer experience. The Employer asserts that its detailed and centralized operational protocols, which it contends demonstrate functional integration, eliminate distinctions between stores, and facilitate regular and frequent interchange of employees. The Employer further argues that the Petitioner’s request to hold an election in single store bargaining units fractures labor stability and violates Section 9(c)(5) of the Act.

2 The parties stipulate that the 14 stores in District 778 are: Store #10987, 400 North Robinson Road, Richmond, VA 23220; Store #14534, 5320 Oaklawn Boulevard, Hopewell, VA 23860; Store #65230, 2309 West Broad, Richmond, VA 23220; Store #62887, 4511 South Laburnum Avenue, Richmond, VA 23231; Store #64871, 1115 West Main Street, Richmond, VA 23220; Store #2807, 9865 Iron Bridge Road, Chesterfield, VA 23832; Store #11076, 12501 Jefferson Davis Highway, Chester, VA 23831; Store #17213, 14620 Hancock Village Street, Chesterfield, VA 23832; Store #7264, 3555 West Cary Street, Richmond, VA 23221; Store #10925, 790 Southpark Boulevard, Colonial Heights, VA 23834; Store #14196, 7297 Battle Hill Drive, Suite B, Mechanicsville, VA 23111; Store #7780, 13481 Hull Street Road, Midlothian, VA 23112; Store #10895, 10141 Hull Street Road, Midlothian, VA 23112; and Store #23129, 1017 North Arthur Ashe Boulevard, Richmond, VA 23230.
The Petitioner argues that the Employer has again failed to rebut the strong presumption that the single-facility petitioned-for unit at two separate stores is an appropriate unit, as it has failed numerous other times in prior cases. The Petitioner asserts that store managers at both the Arthur Ashe and Carytown stores have significant autonomy and exercise meaningful control over labor relations and store operations, despite the Employer’s centralized policies and procedures. Specifically, store managers have discretion to interview and hire, discipline, train, provide orientation, promote, evaluate, approve or deny time-off requests, and schedule employees without significant oversight from district management. The Petitioner further asserts that the Employer’s evidence fails to establish regular employee interchange at either the Arthur Ashe or Carytown stores to rebut the single-facility presumption.

In *Starbucks Corp. (Buffalo I)*, the Board denied the Employer’s request for review of the Regional Director’s Decision and Direction of Election (DDE) stating that an employer bears a “heavy burden” in overcoming the single-facility presumption and “must demonstrate integration so substantial as to negate the separate identity” of the single store units. *Starbucks Corp. (Buffalo I)*, 03-RC-282115, et al., n. 2. (Dec. 7, 2021) (unpublished). In that regard, the Board rejected the Employer’s argument that a community of interest between petitioned-for employees and excluded employees rebuts the single-facility unit presumption. *Id.* The Board also found that the Employer had failed to overcome the “specific evidence” of store managers’ involvement in such matters as hiring and firing, resolving daily grievances and routine problems, adjusting schedules, approving time off and overtime, evaluating employees, and imposing discipline. *Id.* (citing *Haag Drug Co.*, 169 NLRB 877, 878 (1968)).

3 In denying the Employer’s request for review in *Starbucks (Mesa I)*, the Board again held that the Employer failed to meet “its heavy burden to overcome the presumption that the petitioned-for single store unit is appropriate; the mere fact that the petitioned-for employees may share some community of interest with excluded employees does not serve to rebut the presumption.” *Starbucks Corp (Mesa)*, 371 NLRB No. 71 (February 23, 2022), slip op at 1; see also *Starbucks Corp. (Buffalo 2)*, 03-RC-285929, et al., (March 7, 2022) (unpublished) (denying the Employer’s request for review as the case is not materially distinguishable from *Starbucks Corp. (Mesa I)*, 371 NLRB. No. 71 (2022).

Since *Starbucks (Buffalo I)* and *Starbucks (Mesa I)*, numerous other decisions involving the Employer have reached the same conclusion with respect to the appropriateness of a single-store unit. *Starbucks Corp.*, Board Order, 19-RC-291410 (May 4, 2022) (unpublished) (denying the Employer’s request for review, finding the Employer failed to overcome its heavy burden in rebutting the single-store unit presumption); *Starbucks Corp.*, Board Order, 13-RC-288995 (April 19, 2022) (unpublished); *Starbucks Corp. (Boston)*, Board Order, 01-RC-287618 and 01-RC-287639 (April 6, 2022) (unpublished); *Starbucks Corp. (Eugene)*, Board Order, 19-RC-287954 (March 22, 2022) (unpublished) (denying the Employer’s request for review and finding that any uniformity was outweighed by the lack of significant interchange and the store manager’s local autonomy over personnel functions); *Starbucks Corp. (Knoxville)*, Board Order 10-RC-288098 (March 22, 2022) (unpublished) (denying the Employer’s request for review, finding that the case

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3 The Board further agreed that “the remaining factors under the Board’s single-facility test—similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history—are not sufficient to rebut the single-facility presumption, especially given the lack of centralized control and interchange.”
was not materially distinguishable from Starbucks Corp. (Mesa), 371 NLRB No. 71 (2022); See also Starbucks Corp., 10-RC-289571, Decision and Direction of Election (April 8, 2022); Starbucks Corp., 22-RC-291263, Decision and Direction of Election (March 29, 2022); Starbucks Corp., 05-RC-289214, Decision and Direction of Election (March 25, 2022); Starbucks Corp., Decision and Directly of Election (March 25, 2022); Starbucks Corp., 27-RC-288318, Decision and Direction of Election (March 25, 2022); Starbucks Corp, 19-RC-289815, et al, Decision and Direction of Election (March 25, 2022); Starbucks Corp., 19-RC-288594, Decision and Direction of Election (March 11, 2022); Starbucks Corp., 22-RC-288780, Decision and Direction of Election (March 11, 2022); Starbucks Corp., 01-RC-287618 and 01-RC-287639, Decision and Direction of Elections (March 3, 2022); Starbucks Corp., 10-RC-288098, Decision and Direction of Election (Feb. 24, 2022); Starbucks Corp., 28-RC-289033, Decision and Direction of Election (Feb. 18, 2022); and Starbucks Corp., 03-RC-285929, Decision and Direction of Election (Jan. 14, 2022).

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

II. RECORD EVIDENCE

A. Overview of the Employer’s Operations

The Employer is a multinational corporation that owns and operates an international chain of coffee shops, including nearly 9,000 stores in the United States. The Employer organizes its North American retail operations into 12 regions, divided into areas, regions, and districts. The two petitioned-for unit stores are currently located in District 778. Both the Arthur Ashe and Carytown stores are located in Richmond, Virginia, along with three other Starbucks stores located within a four-mile radius. The remaining ten stores in the Employer’s proposed multi-facility unit are located in and around the Richmond area, including the cities of Hopewell, Chesterfield, Colonial Heights, Mechanicsville, and Midlothian; the distance of these stores from the petitioned-for unit stores range anywhere between 10 to 28 miles.

A store manager (SM) heads each individual store and reports to a district manager. Some stores nationwide have an assistant store manager (ASM). Here, there is no record evidence of any

4 In Joint Exhibits 1-14, the parties submitted the transcripts of witness testimony and exhibits from prior Starbucks hearings in Case Nos. 03-RC-282115, 03-RC-28217, and 03-RC-282139 (Buffalo I); 28-RC-286556 (Mesa I); and 05-RC-289213 and 05-RC-289221 (Richmond) which are incorporated by reference into the record. I note that the parties submitted the transcript testimony of Chris Flett from Mesa I twice instead of submitting the testimony of Chris Flett from Buffalo I. In light of the presumed error, I have taken administrative notice of Flett’s testimony from Buffalo I. I have also taken administrative notice of the following DDE’s submitted into the record as Board Exhibits 7-10: 28-RC-286556 (January 7, 2022) (Mesa I); 03-RC-285929, et al. (January 14, 2022) (Buffalo I); 28-RC-289033 (February 18, 2022) (Mesa II); and 19-RC-287954 (February 18, 2022) (Seattle).
ASM employed at either the Arthur Ashe or Carytown store, or at any of the other stores among the Employer’s proposed multi-facility unit. (Board Exs. 2, 3 and 4). Each store has shift supervisors and baristas comprising the workforce. Cate Dews (SM Dews) is the store manager at the Arthur Ashe store, and Christina Buzby is the store manager at the Carytown store (SM Buzby). Both store managers report to District Manager Tammie Magdaleno (DM Magdaleno), who oversees District 778. She has held this position since July 2020; prior to this position, DM Magdaleno oversaw District 789.

DM Magdaleno reports to Regional Director Sheryl Oltmans, who oversees eight district managers in Region 13, comprising of about 100 stores in central Virginia. She reports to Regional Vice President Lucious McDaniel, III, who oversees the Mid-Atlantic Region, Area 85. Prior to March 2021, both the Arthur Ashe and Carytown stores were located within an entirely different district, District 789, until the Employer re-aligned the stores and moved both Arthur Ashe and Carytown stores to its current District 778.

The district-wide unit facilities sought by the Employer facilities have a mixture of café-style and café-only stores. The Arthur Ashe store is a “café-style” store with the Employer’s standard drive-thru service. The Carytown store is one of the Employer’s oldest café-style stores in Richmond and is the only store in District 778 without a drive-thru.

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

Consistency is a touchstone for the Employer and is sustained by a host of nationwide policies and procedures. All stores are subject to detailed operational plans that aim to ensure a consistent customer experience across locations, down to such granular details as the placement of food in display cases and the use of Siren’s Eye, a visual merchandising tool that shows how products should look at each store for every promotion used nationwide. Decisions about store design, equipment placement, marketing and promotions, store budgets, hours of operation, and contracts with vendors and contractors are made at the district level or above.

The Employer maintains various technologies to assist with supply orders, scheduling, and consistency in the store’s application of human resources policies. Certain items like new inventory and select food and beverage items are automatically shipped to stores and arrive without orders or requests from individual stores. Other products not covered by the automatic shipment are shipped using the Employer’s nationwide inventory management system (IMS). On a daily or weekly basis, store managers, assistant store managers, and shift supervisors order and receive food products, merchandise, and supplies using IMS. IMS is also used to transfer supplies and products between stores. There is no evidence that store managers play any role in distribution routes or decisions. If a store runs out of an item before the next delivery, stores have the option of picking

5 The parties refer to Starbucks employees as “partners,” consistent with the Employer’s internal terminology. I will use the term “employee” throughout this decision to maintain consistency with the statutory definitions of the Act and the language of Board precedent.

6 RD Oltmans’ testimony from Case 05-RC-289213 and Case 05-RC-289221 is incorporated into the record as Joint Ex. 13.
up out-of-stock items from another store, usually the closest in proximity, resulting in a transfer in the IMS.\(^7\) The Employer asserts that any employee (and not just managers) can pick up out-of-stock items, in which case hourly employees are paid for their mileage. Individual stores also have the option of purchasing “non-proprietary” products from a nearby market or store.\(^8\)

However, there is no record evidence of any employee at the two petitioned-for unit stores or any employee within District 778 serving as couriers for out-of-stock products. To the contrary, witness testimony confirmed that employees at both the Arthur Ashe and Carytown stores routinely purchase needed items from a nearby market, including dairy products, lids, coffee filters, ice, parchment paper, plastic wrap, or other out of stock items. At the Arthur Ashe store, shift supervisors routinely reimburse employees for the purchases; the cash reimbursements are recorded in the Daily Records Book, which is audited by DM Magdaleno during in-store visits. DM Magdaleno testified that she is only involved in approving cash reimbursement transactions over $20, which rarely occurs. However, witnesses testified that cash reimbursements over $20 are distributed without approval or involvement of their district manager. At the Carytown store, employees have also utilized Instacart to obtain out-of-stock items.

Within the IMS, a store’s projected needs are calculated by the operations services team on a quarterly basis using the Employer’s “Par Builder” tool. The Par Builder tool contains, receives, and uses data regarding the amount of product that a store needs based on orders, sales history, forecast, and sales trends. This data is then used to set a store’s par, which is the anticipated amount of food product and supplies that a store needs per order. Unlike the food ordering system, some systems like Par Builder are not fully automated, and store managers still need to input information into the system related to the specific store. Store managers can and do revise these suggested quantities. For example, when placing an order, a store manager will review the suggested order quantity (SOQ) provided by the inventory management system and either accept the order or modify the order if they feel the SOQ is incorrect. SOQs are calculated based on the store’s sales history and the store’s par, but do not represent strict requirements that must be followed by store managers. Store managers may use the SOQs to guide their discretion in ordering product, but store managers may also ignore the SOQs and use their discretion, experience, and observations to order product and supplies. In fact, RD Oltmans testified that they “can adjust orders as needed if the business changes or if they have an upcoming event.”

The procedure for requesting store maintenance is centralized and the same for all stores. The store manager or shift supervisor are responsible for requesting maintenance by calling a central phone line which connects to the Employer’s Facilities Center (FCC) or submitting a digital work request through the store’s iPad. They are responsible to log all damaged and defective

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\(^7\) Transferring items between stores is recorded in the store’s Daily Records Book or with an IMS ticket. The record is absent of any evidence documenting such transactions between stores in District 778.

\(^8\) RD Oltmans testified that employees can purchase non-proprietary items such as dairy products from a store across the street (e.g., a grocery store), or borrow the item from another store of the Employer’s.
equipment and requests for maintenance into a “Daily Records Book” kept in each store. All employees (management and non-management) have access to central phone lines to contact a multitude of other support departments related to personnel/payroll, emergency/security, and store operations. Frequently used contacts include the Customer Contact Center (for employees to provide customer-related issues), Partner Contact Center (regarding pay issues, employee complaints and questions), Partner Relations Support Center (regarding general HR issues), and Logistic Services (regarding product order and deliveries). A “Helpline and Email Reference Guide” of all central phone numbers and email addresses is ordinarily kept in the daily records book of each store. However, RD Oltmans testified that employees are not required to utilize the numbers in the daily records book and “can report issues to their store manager.” Witness testimony confirms that employees at both the petitioned-for unit stores go to their store managers with any issues including personnel problems, schedule changes, timekeeping, and time-off requests.

DM Magdaleno holds period planning meetings six times a year with all of her store managers in advance of the Employer’s six promotional periods and distribution of the period planning kits (known as Siren’s Eye). District managers also hold monthly partner planning meetings with all the store managers in their district to discuss staffing needs. District managers are expected to visit the stores within their district every other week, spending 60-70% of their time in the stores. RD Oltmans oversees 100 stores in central Virginia and only has the opportunity to visit some individual stores once every four to six weeks, limiting her ability to visit each store in her districts. DM Magdaleno testified that she visits each store once every two weeks. However, a Carytown shift supervisor testified that he only sees DM Magdaleno once every two months, with little interaction with store employees. As such, the record reflects that store managers are handling the day-to-day operations without daily oversight from district managers.9

District managers, in conjunction with regional directors, are responsible for setting the hours for the stores in their district. The Employer’s “Partner Hours” tool helps forecast customer demand on a store-by-store basis to determine each store’s scheduling and hiring needs. District managers are responsible for hiring store managers, and for hiring and promoting assistant store managers. Store managers have no role in determining where a newly promoted assistant store manager will be placed.

All job applications for baristas and shift supervisors must be placed online at the Employer’s career website; walk-in applications are not accepted.10 All applicants must complete the pre-screening questionnaire. The application is tracked through the Employer’s online hiring platform called Taleo. Applicants must pick a store location, but an applicant can apply for multiple positions. DM Magdaleno confirmed that store managers decide whether to share a

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9 DM Magdaleno acknowledged that when she is not receiving calls or texts from stores managers, they are handling local matters adequately.
10 RD Oltmans testified that the Employer employs an hourly recruiter to recruit applicants for Area 85. However, there is no record evidence that the hourly recruiter is involved in the decision to interview and/or hire applicants for either the Arthur Ashe or Carytown store or any store in District 778.
candidate’s application between stores. Applicants are hired to work at a specific store, known as their “home” or “assigned” store.

Store managers have the discretion to select the candidates, handle the interview, evaluate the candidates’ merit, and directly hire candidates. Store managers are responsible for hiring and staffing decisions at the Arthur Ashe and Carytown stores. According to DM Magdaleno, store managers “interview and make hiring decisions based on the interview.” DM Magdaleno is not involved in selecting, interviewing, or hiring applicants at the store-level. Uniform offer letters are provided to all successful applicants, and employment is contingent upon completion of a standard background checks by the Employer.

Store managers conduct performance evaluations of employees once or twice a year, and have the discretion to promote baristas to barista trainer and shift supervisor positions. District managers are not involved in interviewing or hiring barista trainers or shift supervisors. The record reflects that in May of 2021, the Employer operated a program where a team of three employees with barista training certifications circulated among the stores to help train baristas due to a staffing crunch. However, the record evidence shows that the program was only temporary in order to address the immediate staffing crunch caused by the opening of a new store at Broad and Strawberry in June 2021. There is no evidence that any employee from either the Arthur Ashe or Carytown store served as a traveling barista trainer.

The Employer argues that store managers do not have discretion in interviewing applicants because they expect store managers to follow a script outlined in the interview guide, since the online application process requires answers to certain questions. Although RD Oltmans testified that store managers should follow the questions in the interview guide, neither RD Oltmans nor DM Magdaleno are present when store managers interview applicants. Other than general

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11 DM Magdaleno testified that she has directed store managers to interview and hire applicants for another store in District 778. However, the record reflects the hirings pertained to a new store opening in District 778 located at Broad and Strawberry in June 2021. DM Magdaleno testified that a new store requires 70% of employees to be transferred from another store; stores hire and train new employees, who are then transferred when the new store opens. However, the record reflects that not every store participated in the hiring and training of new employees for the Board and Strawberry opening, and no employee was disciplined for not training a barista or shift supervisor. There is also no evidence that a barista or shift supervisor is required to transfer to a new store to meet the 70% transfer metric. Accordingly, I do not find that a store manager’s involvement in hiring employees who are then transferred to a new store diminishes the store manager’s local autonomy. I note that the Board has already determined that store managers who may serve as substitute managers in other stores had no bearing on the degree of interchange between the petitioned-for employees and other employees in the district. Starbucks Corp., Board Order, 19-RC-289815, et al., (April 27, 2022) (unpublished).

12 DM Magdaleno testified that store managers make the decision to hire shift supervisors (either as a promotion for a barista or an outside hire). RD Oltmans also confirmed that store managers make the decision to promote to shift supervisors.
statements or expectations, there is no record evidence that either SM Buzby or SM Dews strictly adhere to the interview guide or use them for reference purposes. More importantly, the record evidence shows that the interview questions are not requirements, but points of reference and suggestions for the store managers. The Interview Guide states: “This document is for reference only. Please enter interview notes and feedback in the Taleo applicant tracking system.” Joint Ex. 14 (also referred to as ER. Ex. 10).

In addition to hiring, store managers are responsible for creating the work schedules for the employees at their store. The Employer uses a Partner Planning tool called Partner Hours, which uses demand forecasts and information about employee availability to generate store schedules. Employees formerly indicated their availability to work on a standard Partner Availability Form. Employees now provide this information online when they submit their applications. Store managers input the information into the scheduling system. Employees can modify their schedule as needed. The Partner Planning tool then generates a proposed schedule based on these availabilities and forecasted demand. Weekly work schedules are generated three weeks in advance and posted weekly at the individual stores. While the goal for all stores is to follow the weekly automated schedule, store managers regularly make changes to the schedule as needed.

Employees can utilize the Shift Marketplace App to swap shifts with other employees. However, employees at the Arthur Ashe and Carytown stores still direct all scheduling issues (i.e., swapping shifts with co-workers in their store, time off request, etc.) to their store manager, who is authorized to make changes and grant time off requests. Employees must submit time off requests three weeks in advance. Unexpected time off requests are subject to the store manager’s discretion based on the staffing needs of the store. There is no evidence that store managers in District 778 are required to consult with DM Magdaleno before approving schedule changes or time off requests.

Store managers, assistant store managers, and shift supervisors are known as Key Holders who have access to the Employer’s “Playbuilder” application, which is used to project in-store workflow, product needs, and employee tasks and assignments. The Playbuilder application calculates how many employees should be assigned to various stations (beverage bar, cash register, etc.) during a shift based upon the product mix and time of day and determines what tasks those employees should perform. The “Play Caller” (a Key Holder) can then assign individual employees to the different positions. The Employer asserts that Playbuilder removes discretion and judgement from the local store manager in assigning work and employee tasks. However, there is

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13 RD Oltmans testified that the paper version of the Partner Availability Form is no longer being used.

14 Store managers also make handwritten changes to time-keeping records in the Daily Records Book and review payroll records to ensure accuracy, especially when the store’s iPad is not functioning, and employees cannot manually clock-in and clock-out using the iPad. DM Magdaleno testified that she audits these time-card corrections when reviewing the store’s Daily Records Book. I note, however, that the audit occurs after the store manager has already inputted the corrections into the payroll system and employees have already been paid.
no record evidence that any Key Holder utilizes the app on a regular basis at either petitioned-for unit store. In fact, an Arthur Ashe shift supervisor testified that neither he nor SM Dews use the Playbuilder application. Instead, he tries to put employees in the stations they are best at and rotates employees equally among the different stations. Since the drive-thru station is one of the toughest and least favorite stations at the store, he has utilized a “rock, paper, scissors” method to fairly determine which employee would start the drive-thru station before rotating employees around. A Carytown shift supervisor testified that he also does not use Playbuilder. Rather, the employees at his store are usually strong at every station, allowing him to switch employees into stations as needed. There is no evidence in the record to suggest that a store manager, assistant store manager, or shift supervisor has been disciplined for failing to use the Playbuilder application, or for choosing to ignore the application’s suggestions. In fact, RD Oltmans testified that store managers and shift supervisors have the ability to change the play depending on staffing needs or to accommodate break schedules.

All employees in District 778 (and nationwide) are subject to the same policies, procedures, rules and regulations found in the “Partner Guide,” commonly referred to as the employee handbook. Employees can access the Partner Guide and other uniform personnel information on the Employer’s centralized website called the “Partner Hub.” The Employer’s Partner Guide specifies that the store manager is “ultimately in charge of all store operations and directs the work” of employees and “is responsible for personnel decisions, scheduling, payroll and fiscal decisions.” The Partner Guide instructs employees to approach store managers with questions, concerns, conflicts or problems of any kind. DM Magdaleno testified that the “chain of command starts with the store manager,” and the store manager can resolve employee complaints without reporting them to her.

The Employer’s nationwide disciplinary system includes documented coachings, written warnings, and final corrective actions. Store managers receive training to use the “Virtual Coach,” which offers guidance on administering disciplines to store employees. RD Oltmans testified that store managers are responsible for disciplining baristas and shift supervisors and could not verify whether store managers used the Virtual Coach at all times. Store managers have the discretion to issue lower-level disciplines to store employees without involvement or approval from district managers. DM Magdaleno testified that stores managers should only deviate from the Virtual Coach at her recommendation or after consultation with Partner Resources. DM Magdaleno further testified that stores managers must seek her approval over separation decisions, yet the record is absent of specific instances of her involvement in any discharge decisions at either petitioned-for unit store. There is also no evidence that a store manager was disciplined for not following the Virtual Coach or was ever informed that failure to follow the Virtual Coach would result in disciplinary action. Instead, the record reflects that the Virtual Coach is to “complement, not replace” the store manager’s active “assessment and judgment.” ER Ex. 12.

The Employer’s witness testified that both the Arthur Ashe and Carytown stores have high number of transfers. Specifically, within the last two years, the Arthur Ashe store had 49 employees transfer into the store, and 30 employees transfer out. At the Carytown store, 19 employees have transferred into the store, and 19 employees have transferred out. The record is

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15 A district manager disciplines store managers and assistant store managers.
absent of any documentation confirming the number of transfers, the time period for the transfers dates, and the circumstances surrounding the transfers.  

The record evidence shows that store managers are responsible for their individual store’s performance. RD Oltmans testified that store managers build a schedule based off the labor hours budget which they are required to manage. DM Magdaleno testified that store managers are rewarded for their store’s sales performance and meeting metrics. RD Oltmans confirmed that the bonus structure for store managers is based on achieving sales target for the individual stores and not a district sales target. Therefore, store managers are rewarded for how their individual stores operate on a day-to-day basis. In addition, the record evidence shows that store managers are directly responsible for determining whether certain “channels” remain open. The Employer has four “channels,” or avenues of sales transactions where customers can place orders: in-store register; drive-thru; mobile app; and Door Dash/Uber Eats. DM Magdaleno testified that store managers can shut down one of the channels during an emergency or because of staffing issues.

C. Employee Skills, Functions, and Working Conditions

Baristas and shift supervisors working at the 14 facilities within District 778 use the same skills and perform the same functions. Employees working in the Employer’s stores are required to wear an Employer-branded green apron and adhere to the Employer’s dress code. As part of the Employer’s effort to standardize the customer experience, the Employer developed written work rules and routines for preparing and serving food and drink items. In addition to standardized routines, the Employer developed 24 hours of standardized training for new employees. An employee’s initial training (“First Sip”) is conducted by the store manager, and a barista trainer conducts the remainder. The Employer also has centralized training for employees promoted to barista trainer and shift supervisor.

Wages and benefits are determined by the Employer at the corporate level, with benefits consistent across the U.S. with a set increase every year. As noted above, store managers can promote baristas to the position of shift supervisor, thereby issuing pay raises to employees, without requiring outside approval. Store managers can also promote employees to barista trainers, thereby granting them an additional monetary reward after each training session. Store managers cannot change an employee’s salary without approval from a district manager, regional director and partner resource.

16 The Employer’s witness speculated that since both the Arthur Ashe and Carytown stores are located near Virginia Commonwealth University, the transfers were the result of students moving back home during breaks from school. I note that the record is absent as to whether any of these transfers involved the opening of the Broad and Strawberry store in District 778 in June 2021, or whether these transfers were temporary or permanent.

17 DM Magdaleno testified that although store manages need to get her approval before shutting down a channel, she may not always be notified in advance of the occurrence.
Employees’ benefits are also the same for all the employees nationwide. They receive the same vacation, time off, and family leave benefits; health, dental, vision, life, and disability insurances; stock grants; investment and 401(k) plans; COVID-19 benefits; and free coffee and food while working.

Store hours are also determined at the corporate level. Here, DM Magdaleno and RD Oltmans determine the store hours for the facilities in District 778 based upon business trends. The Carytown store operates daily from 5:30 a.m. until 8:00 p.m. The Arthur Ashe store operates from 5:30 a.m. until 9:00 p.m. during the week and from 6:00 a.m. until 9:00 p.m. on the weekends.  

D. Employee Interchange

Once hired, employees are assigned to a “home” store where they are oriented, trained, and regularly scheduled for work. According to RD Oltmans, the Employer’s employees work as a “community” in a “team environment.” In accordance with the Partner Guide, an employee “may be assigned to work at a Starbucks store other than the normal place of work and the partner will be expected to do so.” In this regard, employees pick up shifts at stores beside their assigned home store through what the Employer refers to as “borrowed” employees and “borrowed” shifts. The record evidence demonstrates that this interchange is voluntary and may be initiated by employees seeking additional hours. The interchange may also precede a permanent transfer from one home store to another, or may be related to other extenuating circumstances such as new store openings, temporary store closures, or staffing shortages.

There is no record evidence of any involuntary interchange in District 778, or any disciplinary actions against any employee for refusing to work a shift at another store in District 778. In fact, RD Oltmans affirmed that the Employer does not “force people to work at other stores,” there is no mandatory assignments at other locations, and no employee has been disciplined for not working at a borrowed store. Witness testimony also confirmed that it was not a regular occurrence to have borrowed employees working at either the Arthur Ashe or Carytown store. A Carytown employee testified that in a year and half, he has only picked up two borrowed shifts at another store.

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18 The record does not reflect the operating hours for the other Starbucks stores in District 778.

19 Store managers may also be borrowed by other stores to act as a dual manager, when another store manager, for example, is on extended leave of absence.

20 A shift supervisor testified that the store manager will ask if anyone wants to volunteer to work at another location and will sometimes throw in a free dinner as an incentive. The record also revealed that shift supervisors at the Arthur Ashe store have their own group chat with SM Dews where she solicits volunteers to work borrowed shifts. There is no evidence that all the shift supervisors in District 778 participate in a similar group chat.

21 He specifically volunteered for one of the borrowed shifts in order to get drive-thru experience, allowing him to position himself as a potential assistant store manager, since his home store is the only café store without a drive-thru.
The record reflects that from January 17 – 20, 2022, the Carytown store was closed for renovations. During this period, employees either took time-off or voluntarily chose to work hours at a borrowed store.

To support its contention that employees engage in substantial and frequent interchange among the 14 stores in District 778, the Employer provided raw data regarding employees working in District 778, including in and out of the petitioned-for unit Store #23129 and Store #7264, during the data period from April 29, 2019 through January 30, 2022. This evidence includes Excel spreadsheets referred to as “Aggregated DataA85” for fiscal years 2019-2022 (Employer Exhibits 3(a)-(j)) and the graphs and multiple charts prepared by the Employer’s statistical expert, Dr. Michaylyn Corbett, pertaining to the stores in District 778 (Employer Ex. 2). The graphic depictions prepared by Dr. Corbett represent a data analysis for District 778 during a “Full Period” from April 29, 2019 through January 30, 2022 and a “Short Period” from March 29, 2021 through January 30, 2022, after the two petitioned-for unit stores were added to District 778. The Employer neither presented Dr. Corbett as a hearing witness, nor did the Employer rely on prior record testimony of other statistical experts provided in prior hearings involving the Employer to explain how the graphic depictions, backup data, code work, and statistical calculations were prepared. Though not specifically stipulated by the parties, I find that Dr. Corbett’s statistical charts and graphs admitted as Employer Exhibit 2 were created in substantially the same manner as other statistical charts and graphs submitted by the Employer in prior hearings.

Specifically, the Employer proffered a set of seven charts and graphs, three maps, and four charts regarding employee tenure, for the two data periods, the “Full Period” and the “Short Period.” The seven charts in both periods present statistics showing:

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22 The parties stipulate that Dr. Corbett is a qualified expert in statistical analysis and labor economics. While I have duly considered the evidence submitted on behalf of Dr. Corbett, I will afford it only the appropriate weight explained in detail in this decision.

23 Dr. Corbett is a colleague of Dr. Abby Turner, both of whom are economists employed by Charles River Associates, a global economic litigation consulting firm; Dr. Turner has provided testimony and similar statistical charts in other hearings involving the Employer. Board Ex. 2; Joint Ex. 12. The parties stipulate that the interchange data here was created by pulling data in substantially the same manner as it was in 03-RC-282115, 03-RC-282127, and 03-RC-282139 (Buffalo 1); 03-RC-285929, 03-RC-285986, and 03-RC-285989 (Buffalo 2); 28-RC-286556 (Mesa I); and in 05-RC-289214. Board Ex. 2.

24 The Employer presented four charts which compared shifts worked by currently active and all other employees. I note these shifts could include employees borrowed from another store, or who quit, were fired, or transferred to another store.

25 As noted in the charts, Dr. Corbett took steps to exclude store managers. I note that the charts do not reflect whether Dr. Corbett took steps to control the impact of COVID-19 and permanent transfers from stores within and outside District 778.
1. percentage of employees who worked for one or more stores in District 778;
2. percentage of employees who worked at the petitioned-for unit Store #23129 and Store #7264 and other stores in District 778;
3. percentage of employees who worked at the petitioned-for unit Store #23129 and Store #7264 and other stores in District 778;
4. percentage of all employees who worked at each individual District 778 store who were borrowed employees (including the two petitioned-for unit stores even though they were part of District 789 for two years during the Full Data Period);
5. percentage of store days that individual District 778 store used at least one borrowed employee;
6. percentage of partner days across District 778 that were borrowed, by the day of the week;
7. percentage of partner days across District 778 that were borrowed, by specific dates; and
8. maps representing the borrowing partners between stores in District 778.

The Employer relies on its data to argue that employee interchange is widespread in District 778, including at the two petitioned-for unit stores. The Employer argues that Dr. Corbett’s statistical analysis of the above information, over the “Full” data period, revealed during a two-and-nine-month period, that approximately 27% of employees worked in two or more stores in District 778. Conversely, about 73% of employees working in District 778 worked in only a single store during the same data period. With respect to both Store #7264 and Store #23129, about 44% of employees worked in two or more stores. Conversely, about 56% of the employees working Store #7264 and Store #23129 worked exclusively in that store. However, I note that these percentages are not accurate reflections of the two petitioned-for unit stores interchange within District 778,

26 The Employer asserts that a store in District 778 borrows employees one out of every six days.

27 The chart notes that there were 2,821 partner-days borrowed during the full data period, and the overall district average of partner-days borrowed was 2.1%. The Employer argues that borrowing remains close to the average of 2.1% of shifts across all days of the week, and 2.1% of shifts are borrowed from another store each day.

28 I note that these percentages include employees who may have worked in another store only once.

29 I note that this percentage includes employees whose home store may or may not be that single store.

30 I find that the Employer’s proffered statistical interchange percentages in District 778 and the petitioned-for unit stores are lower than the interchange percentages presented in Case 19-RC-287954, DDE (February 18, 2022) (Board Ex. 10), and where the Board denied the Employer’s request for review. Starbucks Corp., Board Decision, Case 19-RC-287954 (March 22, 2022) (unpublished). As it has done in prior cases, the Board determined that the Employer’s statistics had the same shortcomings identified in Starbucks Corp (Mesa), 371 NLRB No. 71 (2022) and failed to establish regular interchange. Id.
since both stores were part of another district for at least two years during this same Full data period.\footnote{Since Dr. Corbett did not testify, the record is unclear how the two petitioned-for unit stores’ exclusion from District 778 for a two-year period were factored into the interchange percentages involving District 778 during the Full data period, if any.}

Although not argued in its brief, the Employer provided interchange data during the “Short Period” after the two petitioned-for unit stores were re-aligned to District 778. During the Short data period of about 10 months, approximately 26% of employees worked in two or more stores in District 778. Conversely, about 75% of employees working in District 778 worked in only a single store during the “Short Period.” About 48% of employees at Store #7264 and about 52% of employees at Store #23129 worked in two or more stores during the “Short Period.” Conversely, about 52% of the employees at Store #7264 and about 48% of the employees at Store #23129 worked exclusively in those stores.

The Petitioner, on the other hand, argues that the Employer’s own interchange aggregate data shows that employee interchange among the stores in District 778 and the two petitioned-for unit Store #23129 and Store #7264 is insignificant. The Petitioner argues, for example, that in 2019, the employees in Area 85 worked 152,691 work periods, and 150,222 work periods were worked by employees in their home store, evidencing only 1.62% of interchange in fiscal year 2019.\footnote{I note that the store-level statistical interchange percentages at the Arthur Ashe and Carytown stores during the Short Period are similar to the 54% statistical interchange percentage for the petitioned-for unit store in Case 19-RC-287954 which was rejected by the Board as sufficient evidence of regular interchange. \textit{Starbucks Corp.}, Board Decision, 19-RC-287954 (March 22, 2022) (unpublished).} The Petitioner asserts that the data for District 778 only shows a mere 0.82% of work periods by borrowed employees. The Arthur Ashe store only had 0.82% employees working at other stores and borrowed employees only worked 1.87% of work periods at Arthur Ashe store. With respect to Carytown, only 0.40% of employees worked borrowed work periods outside their home store, and 0.87% of work periods were worked by borrowed employees at Carytown. The Petitioner provided a similar analysis for the other fiscal years from 2020 through 2022, with

\footnote{The Petitioner’s term “work period” refers to one shift (partial or full) worked by an employee with varying hours. In its brief, the Petitioner references work periods for the Region. It appears that the Employer’s aggregate data includes all the stores in Region 13 in Area 85 (comprised of multiple districts, including District 778). Employer Ex. 3(a) showed 152,690 total work periods for the Region. Among that number, 2469 were borrowed work periods, resulting in 150,221 work periods performed at the home store. I note that these numbers are one less than the Petitioner’s figures, as the Petitioner included a heading in the excel spreadsheet in its calculations. I do not rely on the Petitioner’s analysis of the “work periods,” as they focus on the entire Region instead of focusing on the interchange between the two petitioned-for unit stores and District 778. Rather, I find that the Employer’s interchange data is insufficient for the reasons set forth in this decision.}
similar percentages of borrowed work periods performed by borrowed employees or the petitioned-for unit store employees.\textsuperscript{34}

The Petitioner further asserts that the Employer’s charts and graphs are misleading, as they only show that some employees worked “as least one shift” at another store “per year,” instead of focusing on the actual percentage of hours, shifts or days worked by “borrowed” employees. This evidence has already been rejected by the Board in other cases involving the Employer’s other locations as insufficient evidence of regular interchange to rebut the single-facility presumption. More importantly, employee interchange is completely voluntary. In addition, the Petitioner contends that the Employer failed to provide the more relevant “Borrowed Partner Analysis” calculations that it included in other cases.

Unlike the prior cases involving the Employer (including Buffalo I, Buffalo II, Mesa I, and Knoxville), the Employer did not provide the Borrowed Partner Analysis for District 778 or for either petitioned-for unit store. The Borrowed Partner Analysis, if provided, would have shown by fiscal year: 1) the percentage of all shifts and hours worked in District 778 that were worked by borrowed employees; 2) the percentage of shifts and hours worked at Store #23129 and Store #7264 by borrowed employees; and 3) the percentage of shifts and hours worked by Store #23129 and Store #7264 employees borrowed elsewhere. Those exhibits indicated that at the petitioned-for stores in Buffalo I, Buffalo II, Mesa I and Knoxville, the vast majority of available hours and shifts were worked by employees assigned to those stores, not borrowed employees.

One of the Employer’s charts, however, reflects the average percentage of employees borrowed during the Full period: there were only “2,821 partner-days borrowed,” resulting in an “overall district average of 2.1% of partner-days borrowed.” In the Short period, there were only 820 partner-days borrowed with a district wide average of 1.5% partner-days borrowed. Er. Ex. 2.

\textbf{E. Distance Between Locations}

The petitioned-for unit Store #23129 (Arthur Ashe) and Store #7264 (Carytown) are less than two miles apart in Richmond. The two petitioned-for unit stores are geographically close to three other stores in District 778, all located less than five miles from either the Arthur Ashe or Carytown store.\textsuperscript{35} Seven stores are located in and around the Richmond area including the cities of Chesterfield, Chester, Mechanicsville, and Midlothian; distances range between 10 to 20 miles from either petitioned-for unit store. Two stores (Store #14534 located in Hopewell, Virginia and Store #10925 located in Colonial Heights, Virginia) are located about 26 miles from either petitioned-for unit store.

\textbf{F. Bargaining History}

\textsuperscript{34} The percentages ranged from 1% to 5% during the other fiscal years.

\textsuperscript{35} Distances noted are as reported by Google Maps.
There is no history of collective bargaining at either the Arthur Ashe or Carytown store, or at any other store in District 778.  

III. ANALYSIS

The Appropriateness of a Single-Facility Petitioned-For Unit

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate unless it has been so effectively merged or is so functionally integrated with other facilities that it has lost its separate identity. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962); *New Britain Transp. Co.*, 330 NLRB 397, 397 (1999). “Although other combinations of employees here may also constitute an appropriate unit,” the issue is only whether the employees at each petitioned-for store “alone constitute an appropriate unit.” *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997). “There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the most appropriate unit; the Act only requires that the unit be *appropriate.*” Id. (quoting *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950)); see also *Haag Drug Co.*, 169 NLRB at 877 (“It is elementary that more than one unit may be appropriate among the employees of a particular enterprise.”)

The party contesting a single-facility unit bears a “heavy burden of overcoming the presumption.” *California Pacific Medical Center*, 357 NLRB 197, 200 (2011); *Starbucks (Mesa)*, 371 NLRB No. 71, slip op. at 1 (February 23, 2022). To rebut this presumption, the Employer “must demonstrate integration so substantial as to negate the separate identity” of the single store units. Id.

The Board examines several factors to determine whether the single-facility presumption has been rebutted: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866, 867 (2003); *J & L Plate, Inc.*, 310 NLRB 429, 429 (1993). These same factors apply in the retail chain setting. See, e.g., *Red Lobster*, 300 NLRB 908, 912 (1990); *Foodland of Ravenswood*, 323 NLRB at 666.

The Board has long applied its single-facility presumption to retail chain operations, finding that its prior decisions had “overemphasized the administrative groups of merchandising outlets at the expense of factors such as geographic separation of the several outlets and the local managerial autonomy of the separate outlets. *Sav-On Drugs, Inc.*, 138 NLRB 1032 (1962). The Board expanded upon this policy in *Haag Drug*, stating, “[o]ur experience has led us to conclude that a single store in a retail chain, like single locations in multioutlet enterprises in other industries, is presumptively an appropriate unit for bargaining.” 169 NLRB 877 (1968) (emphasis in original).

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

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36 The parties stipulate there is no contract bar or other bar to an election in this matter. Board Ex. 2.
...(W)here an individual store lacks meaningful identity as a self-contained economic unit, or the actual day-to-day supervision is done solely by central office officials, or where there is substantial employee interchange destructive of homogeneity, these circumstances militate against the appropriateness of a single-store unit.  Id. at 879.

Thus, whether the single-facility presumption has been rebutted requires a case-by-case, fact-intensive analysis, as “[e]ach case must be assessed on its own facts.”  Dattco, Inc., 338 NLRB 49, 50 (2002); see Frisch’s Big Boy, 147 NLRB at 551, 552 (1964) (Board decided that it would “apply to retail chain operations the same unit policy that it applies to multi-plant enterprises in general, that is . . . in the light of all the relevant circumstances of the particular case”).

Here, I find that the petitioned-for single-store unit at the Arthur Ashe store and the Carytown store is an appropriate unit, and the Employer has not met its heavy burden to rebut the single-facility presumption.

A. Centralization of Operations

The Board has long recognized that it “is common in retail chain operations, and particularly in food chains, [for there to be] a considerable degree of centralized administration in the functioning of ... stores.”  Angeli’s Super Valu, 197 NLRB 85, 85 (1972).  The Employer operates a highly centralized national retail chain operation, and it emphasizes executing a standardized customer experience across its locations.  To accomplish this, it relies heavily on its centralized operating procedures, including distribution channels, store layout/design, product offerings, pricing, marketing, promotions, staffing, and how employees prepare and serve its products, as evidence of functional integration.  An employer’s centralized control over multiple facilities weighs in favor of a multi-facility bargaining unit.  Trane, 339 NLRB 866, 867-68 (2003).  While these factors regarding centralization weigh in favor of a multi-facility bargaining unit, centralized control is not the only or a primary factor to be considered regarding single-store units in the retail industry and does not rebut the single-facility presumption where other evidence shows local control over day-to-day operations.  California Pacific, 357 NLRB at 198 (“even substantial control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single location presumption”);  Trane, 339 NLRB at 867-68;  New Britain Transportation, 330 NLRB at 397.

The functional integration of two or more plants in substantial respects may weigh heavily in favor of a more comprehensive unit, but it is not a conclusive factor.  See Dixie Belle Mills, Inc., 139 NLRB 629, 632 (1962);  J&L Plate, 310 NLRB 429 (1993).  The Board will find a single store in a retail chain operation to be an appropriate unit of collective bargaining “absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity.”  Haag Drug Co., 169 NLRB at 877.

As discussed below, I find that the Employer’s centralized operations is outweighed by evidence of local autonomy in operations and labor relations.  Furthermore, I find that the
Employer has not demonstrated that the functional integration in its operation has obliterated either the Arthur Ashe or Carytown store’s separate identity.

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

The Board considers evidence of local autonomy in daily operations and labor relations to be key considerations in assessing the appropriateness of single-store units in retail chain operations. For example, in *Haag Drug*, the Board found that one of 11 restaurants operated by an employer in a geographic area was an appropriate unit despite a “high degree of centralized administration,” including central profit-and-loss records, payroll functions, and chainwide handling of purchasing, vendor payments, and merchandising. 169 NLRB at 878. In finding the single-facility unit appropriate, the Board noted that the centralized operations bore “no direct relation to the employees’ day-to-day work and employee interests in the conditions of their employment.” *Id.* at 879. In the context of a retail chain operation, “one of the most weighty factors in determining the appropriateness of a single store unit is the degree of control vested in the local store manager.” *Friendly Ice Cream*, 705 F.2d at 578. Accordingly, the Board considers “the local manager’s effective control of those areas ‘which most directly affect the restaurant’s employees’” to be significant. *Id.*, (quoting *Magic Pan, Inc. v. NLRB*, 627 F.2d 105, 108 (7th Cir. 1980))

The Employer’s Partner Guide states that the individual store manager “is ultimately in charge of all store operations, directs the work [of employees, and] is responsible for personnel decisions, scheduling, payroll and fiscal decisions.” Here, the record evidence demonstrates that “the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring….and is personally involved with the daily matters which make up their grievances and routine problems.” See *Haag Drug Co.*, 169 NLRB 877, 878 (1968); see *Renzetti’s Mkt., Inc.*, 238 NLRB 174, 175-76 (1978) (emphasizing that daily supervisor is “better able to comment on the job performance of employees over whom he has constant supervision”). The record also reflects that store managers are held accountable for their store’s sales performance and are rewarded with bonuses when they meet or exceed their individual store’s metrics.

The Employer asserts that applications and hiring are handled on a district-wide basis, and store managers will sometimes interview and hire employees for other stores in the district. Although district managers directly hire store managers and assistant store managers, the record evidence shows that store managers are responsible for interviewing, hiring and promoting at their individual stores. The Employer further contends that its automated tools and company-wide policies decrease the autonomy that local store managers have over in-store daily matters, including Playbuilder and Virtual Coach. 37

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37 Contrary to the Employer’s assertion, I find that the Employer’s modern-day technologies do not limit the store manager’s autonomy over day-to-day operations.
However, the testimony submitted by the Employer, which I consider to be conclusory and generalized, fails to rebut the specific record evidence. In *Starbucks (Mesa)*, the Board noted that the Employer must provide more than “conclusory evidence to establish that Store Managers have little discretion in personnel matters, especially where there is specific evidence indicating otherwise.” *Starbucks (Mesa)*, 371 NLRB No. 71, slip. op. at 2. Here, it is undisputed that store managers have discretion to interview and hire employees and promote employees to shift supervisors without approval from upper management.\(^{38}\) In addition to hiring and promoting, the record evidence demonstrates that store managers onboard new employees, conduct evaluations, administer disciplines, create and schedule employees, and approve or deny time-off requests. The record evidence shows that store managers have the authority to make these decisions without any involvement or approval from DM Magdaleno. There is no evidence that DM Magdaleno has overridden a store manager’s promotion decisions or disciplinary actions. Witnesses also testified that they do not use the Playbuilder App at either petitioned-for unit store. With respect to the Virtual Coach, the record is absent regarding the specific application of the Virtual Coach at either petitioned-for unit store.

The Board has found similar levels of local autonomy to support a finding that a single-facility unit is appropriate for bargaining.\(^{39}\) *Cargill, Inc.*, 336 NLRB 1114, 1114 (2001) (finding local autonomy when supervisors make assignments, supervise work, schedule maintenance inspections, impose discipline, handle initial employee complaints, and schedule vacations); *Eschenbach-Boysa Co.*, 268 NLRB 550, 551 (1984) (finding local autonomy where stores managers conduct interviews, hire employees, grant time off, and resolve employee problems and complaints even though upper-level manager “reserves for himself many management prerogatives [because] he necessarily must leave many of the day-to-day decisions . . . to his managers”); *Foodland of Ravenswood*, 323 NLRB at 667 (“[R]esponsibility . . . to hire part-time employees, to schedule and assign employees, to approve overtime, to grant time off, to impose and recommend discipline, to evaluate employees and recommend their promotion, and to resolve and handle formal and informal employee grievances, constitutes significant evidence of local authority over employees’ status such that centralized control over other matters does not overcome the appropriateness of a single- store unit.”); *Walgreen Co.*, 198 NLRB 1138, 1138

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\(^{38}\) The Employer’s witnesses affirmed that store managers interview and hire applicants and promote baristas to shift supervisors without any approval or involvement by upper management.

\(^{39}\) The cases cited by the Employer in its brief in which the Board found the single-store presumption to be rebutted involved local managers whose autonomy was much more circumscribed than here. *Super X Drugs of Illinois, Inc.*, 233 NLRB 1114, 1115 (1977) (district manager set hours employees are to work and allocated those hours among employees (i.e., set schedules) and was directly involved in routine grievances and problems); *Kirlin’s Inc. of Cent. Ill.*, 227 NLRB 1220 (1977) (upper-level management handled scheduling, reviewed all employment applications before hiring and shared final authority to fire employees); *Big Y Foods, Inc.*, 238 NLRB 860, 861 (1978) (upper-level managers on location multiple times per week “and may remain at a particular market the entire day,” independently resolved employee grievances, evaluated employee performance, and were responsible for interviewing and selecting prospective employees).
(1972) (finding store manager’s autonomy significant where district managers visited individual store, at best, monthly and manager had authority for most hiring).

Accordingly, the record evidence establishes, and I find, that store managers are vested with significant autonomy in handling a range of operational and labor relations matters at the local level, notwithstanding the existence of centralized policies and procedures.

C. Employee Skills, Functions and Working Conditions

There is largely no dispute that the employees in the 14 facilities within District 778 (including the Arthur Ashe and Carytown stores) have similar skills, functions, and working conditions. The Employer sets wages and benefits for all employees, and store managers have no authority to change them. While uniformity in working conditions “is of some significance, no greater control or uniformity has been shown here than is characteristic of retail chain store operations generally.” Haag Drug Co, 169 NLRB at 879. Thus, even where wages and benefits are centrally determined, the more immediate question for the Board is whether employees perform their work under the supervision of a local manager. In that framework, “the community of interest of the employees in a single store takes on significance, for the handling of the day-to-day problems has relevance for all the employees in the store, but not necessarily for employees of the other stores.” Id. at 878; see also Renzetti’s Market, Inc., 238 NLRB 174, 175 (1978) (finding that “the Employer’s centralized administration is not, in our view, the primary factor which we must consider in determining whether the employees working at Store No. 1 enjoy a community of interest separate and distinct from the employees at Store No. 2.”).

Accordingly, I find, that the employees’ uniform skills, functions, and working conditions are outweighed by other factors, including the store managers’ significant local autonomy and the lack of significant employee interchange. See Starbucks (Mesa I), 371 NLRB No. 71, slip op. 2.

D. Employee Interchange

Employee contact is considered interchange where a portion of the work force of one facility is involved in the work of the other facility through temporary transfer or assignment of work. New Britain Transportation Co., 330 NLRB 397, 398 (1999). However, a significant portion of the work force must be involved, and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. Id. For example, the Board found that interchange was established and significant where, during a one-year period, there were approximately 400 to 425 temporary employee interchanges among three terminals in a workforce of 87, and the temporary employees were directly supervised by the terminal manager of the terminal where the work was being performed. Dayton Transport Corp. 270 NLRB 1114 (1984). On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear

40 I do not find the Carytown store’s status as the only café without a drive-thru to be a distinguishing factor.
how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met, including where a party fails to support a claim of interchange with either documentation or specific testimony providing context. *Cargill, Inc.*, 36 NLRB 1114 (2001); *Courier Dispatch Group*, 311 NLRB 728, 731 (1993). Employee interchange must be considered in total context. *Gray Drug Stores, Inc.*, 197 NLRB 924 (1972); *Carter Camera Shops*, 130 NLRB 276, 278 (1961). Also important in considering interchange is whether the temporary employee transfers are voluntary or required; the number of permanent employee transfers; and whether permanent employee transfers are voluntary. *New Britain Transportation Co.*, supra. Permanent transfers are less probative than temporary transfers, and voluntary transfers are less probative than mandatory ones. *Id.; Starbucks (Mesa I)*, 371 NLRB No. 71, slip op. 1, n.5.

The Employer has presented the same arguments and similar interchange data as in other cases involving stores in other parts of the country to support its contention that employees engage in regular and substantial interchange. The Employer emphasizes that its employees are trained and expected to work at multiple stores and argues that its charts prove that this is a regular occurrence.

The Petitioner, on the other hand, argues that the nature of interchange between employees is purely voluntary, and the Employer’s data analyses are flawed by failing to demonstrate regular or substantial interchanged as require by the Board. The Petitioner also emphasizes that the Employer’s own aggregate data show a lack of regular or substantial interchange between employees in District 778, or the two petitioned-for unit stores. Specifically, the Petitioner asserts that interchange for the petitioned-for unit employees at Arthur Ashe and Carytown with other employees in District 778 is insignificant and shows that the petitioned-for unit employees hardly ever worked outside their home stores.

I find that Dr. Michaelyn Corbett’s statistical chart and graphs have the same shortcomings previously rejected by the Board in prior cases involving the Employer by failing to shed light on whether the Arthur Ashe or Carytown employees engage in frequent, regular interchange with other employees in District 778. The Employer’s charts focus on the number of employees who ever worked at more than one store in District 778, and reflect only days worked, rather than the percentage of hours or shifts worked within District 778 or at either the Arthur Ashe or Carytown store. The Employer’s charts do not analyze how often the Arthur Ashe or Carytown employees work at multiple stores, show whether they work an entire shift or pick up an hour or two after working at their home store, or indicate whether they work one hour or 20 hours at a different store.

41 I note that the statistical charts and graphs submitted by the Employer in other cases involving other locations did not show the actual number of borrowed hours or shifts worked at a borrowed store by employees at the petitioned-for unit store, or the number of borrowed hours or shifts worked by borrowed employees at the petitioned-for unit store. See prior Decision and Direction of Elections submitted as Board Exhibits 7 – 10. Since Dr. Corbett’s charts and graphs were produced using similar methods, I find that her statistical charts and graphs also do not provide this information here.
The Board specifically rejected the statistical charts and graphs submitted by the Employer’s proffered experts in Starbucks (Mesa I) and Starbucks (Knoxville). Starbucks (Mesa), 371 NLRB No. 71, slip op. at 1(denying the Employer’s request for review and finding that the Employer’s evidence failed to show “how often those employees worked at other locations or how often ‘borrowed’ employees worked at Store 5610,” the petitioned-for unit store); Starbucks Corp. (Knoxville), Board Order 10-RC-288908 (March 22, 2022) (unpublished). In denying the request for review, the Board in Starbucks (Knoxville) stated that “even taking the Employer’s data and expert testimony at face value, the evidence of interchange is insufficient to rebut the single-facility presumption as previously for the reasons explained in Starbucks (Mesa), supra, slip op. at 1-2.” Here, the Employer is relying on Dr. Corbett’s statistical charts and graphs, but the Employer has not submitted any evidence differentiating Dr. Corbett’s statistical charts from those that have already been rejected by the Board in Starbucks (Mesa I) and Starbucks (Knoxville).42 Therefore, I find that the Employer’s evidence in this case is not materially distinguishable from that presented in Starbucks (Mesa I), supra, and fails to establish that the petitioned-for unit employees at either the Arthur Ashe or Carytown store have frequent or regular interchange with the employees in District 778.43

The Employer further argues that I should not rely on the “voluntary” nature of the interchange or that Board law finds voluntary transfers to be less probative, but instead focus on whether an employer has “created a staffing model that is specifically designed to ensure that staffing needs are met by partners who regularly work in multiple stores.” (ER. Brief, p. 47, emphasis in original). The Employer cites no case law in support of its position, and there is no evidence in the record to support the Employer’s assertion that employees are expected and directed to cover shifts throughout the district.

I am bound by extant Board law that applies the single-facility presumption to retail chain operations and considers voluntary employee transfers to be less significant than involuntary transfers in assessing whether the single-facility presumption has been rebutted. See Starbucks Corp., (Mesa I), 371 NLRB No. 71, slip. op. 1, n.5. Here, the record establishes that interchange


43 See also, Board Order denying review in Starbucks (Buffalo 1), 03-RC-282115, 03-RC-282127, 03-RC-282139 (December 7, 2021) (finding that the Employer’s data “indicate that the petitioned-for stores ‘borrow’ only a very small percentage of their labor from other stores”).
is largely voluntary for store employees seeking additional hours or training.\textsuperscript{44} I note that the Employer’s data does not account for whether the interchange was voluntary versus non-voluntary. I also note that there is little evidence in the record of regular contact between the employees in District 778.\textsuperscript{45} I further find that the Employer’s proffered evidence regarding transfers in and out of the petitioned-for unit stores is not sufficient evidence of employee interchange.\textsuperscript{46}

As discussed above, the Employer did not provide the same “Borrowed Partner Analysis” calculations that it included in other cases to show the percentages of hours and shifts worked at the district level and at the two petitioned-for unit stores by borrowed employees, by fiscal year.\textsuperscript{47} More recently, the Board noted the Employer’s failure to “provide the Region with specific evidence showing the number of shifts and hours that “borrowed” partners worked at the Hopewell store” even though the Employer had provided store-specific data in other case. \textit{Starbucks Corp.}, Board Decision, n. 1, 22-RC-288780 (April 19, 2022)(unpublished); \textit{Starbucks Corp.}, Board Decision, n. 1, 22-RC-291263, (April 27, 2022) (unpublished). The Board found that the “party seeking to rebut the single-facility presumption based on the degree of employee

\textsuperscript{44} \textit{New Britain Transp. Co.}, 330 NLRB 397, 398 (1999) (“[V]oluntary interchange is given less weight in determining if employees from different locations share a common identity”); \textit{Red Lobster}, 300 NLRB at 911 (noting that “the significance of that interchange is diminished because the interchange occurs largely as a matter of employee convenience, \textit{i.e.}, it is voluntary”) (emphasis added).

\textsuperscript{45} \textit{Hilander Foods}, 348 NLRB at 1203 (“There is no evidence that . . . employees have had frequent contact with employees at the other facilities as a result of central training, central meetings, community service projects, or the newsletter.”). There is no evidence of any informal group chats used by the employees within District 778 or that employees at either petitioned-for unit store regularly picked up out-of-stock items from nearby locations. \textit{Eschenbach-Boysa Co.}, 268 NLRB 550 (1984) (finding single store units appropriate notwithstanding that “[o]nce or twice a week, uniforms, small equipment, or food is transferred between the two restaurants to relieve temporary shortages”).

\textsuperscript{46} There is no evidence in the record regarding the circumstances of the transfers or whether the transfers at either petitioned-for unit store occurred when both stores were located in an entirely different district or in District 778. I also note that a new store opened in District 778 in June 2021, and new store openings require 70% of transfers from existing stores. There is no evidence in the record whether the new store’s opening impacted the transfer rate of employees in District 778 or other surrounding districts.

\textsuperscript{47} At best, the record shows that the average percentage of employee days borrowed across all days of the week at the district level during the Full data period amounted to only 2.1% and only 1.5% during the Short data period. The Full Period showed 2,821 partner-days borrowed,” resulting in an “overall district average of 2.1% of partner-days borrowed” and in the Short data period, there were only 820 partner-days borrowed with a district wide average of 1.5% partner-days borrowed. ER. Ex. 2. Both figures show insignificant level of interchange based on the actual number of days borrowed.
interchange has the burden to prove regular interchange at the petitioned-for facility” and the Employer “failed to provide the Region with relevant evidence that it could have provided in this case.” Id. As such, the Board determined that “the statistics provided by the Employer fail even to establish regular interchange throughout the district and, instead, demonstrate that interchange among employees” in the district “is limited and infrequent.” Id. Accordingly, I find that the Employer’s failure to provide relevant store-specific data is further evidence of the Employer’s failure to establish regular interchange among the employees at the Arthur Ashe and Carytown stores and even among the employees within District 778.

For the reasons stated above, I find that the evidence presented regarding the level of employee interchange between the petitioned-for unit employees at the Arthur Ashe and Carytown stores and other employees in District 778 is not sufficient to rebut the strong presumption in favor of the petitioned-for single store unit.

E. Distance Between Locations

Geography is frequently a matter of significance in resolving geographical scope issues. Dixie Bell Mills, Inc., 139 at 632; see also Van Lear Equipment, Inc., 336 NLRB 1059, 1063 (2001); D&L Transportation, 324 NLRB 160 (1997); New Britain Transportation Co., 339 at 398. Generally, plants that are close in proximity to each other are distinguished from those that are separated by meaningful geography. Id.

The Employer argues that the close proximity of the stores in District 778 strongly rebuts the single-store presumption. Only three other stores are located less than five miles from either the Arthur Ashe or Carytown store in the Richmond area. Seven stores are located less than 20 miles from either petitioned-for unit store (in and around the Richmond area), and two stores are located around 26 miles from either petitioned-for unit store outside of the Richmond area. The Board has found facilities in close proximity to be geographically separate and appropriate units for collective bargaining.48 I further find that close proximity of the stores, while not determinative, is outweighed by the other factors discussed above which strongly support the petitioned-for single-facility unit.

F. Bargaining History and Section 9(c)(5)

48 Lipman’s, 227 NLRB at fn.7 (1977) (finding stores located only 2 miles apart appropriate single-facility units); Red Lobster, 300 NLRB at 908, 912 (finding stores with an average distance of 7 miles apart and all within a 22-mile radius appropriate single-facility units); New Britain Transp., 330 NLRB at 398 (“[G]eographic separation [of 6 to 12 miles], while not determinative, gains significance where, as here, there are other persuasive factors supporting the single-facility unit); Kroger Limited Partnership, 348 NLRB 1200 (2006) (finding distances ranging from 8 to 14 miles did not favor a multilocation unit); Bashas’ Inc., 337 NLRB 710, 711 (2002) (facilities within a 30-mile area, but located within the same county, failed to establish geographic proximity).
There is no history of bargaining at either petitioned-for unit store or any other store in District 778, or any request for bargaining in a more comprehensive unit. Thus, bargaining history, at best, is a neutral factor. *Trane*, 339 NLRB at 868, n.4; *Red Lobster*, 300 NLRB at 912. If anything, it lends support to the appropriateness of a single-facility unit. *Lipman’s*, 227 NLRB 1436, 1438 (1977) (in finding single store units in retail chain appropriate, emphasizing “the fact that there is no bargaining history for any of these employees, and the fact that no labor organization seeks to represent the employees on a broader basis”).

The Employer also argues that finding the petitioned-for single store unit to be appropriate would violate Section 9(c) of the Act by giving controlling consideration to the extent of organization.\(^{49}\) The presumption favoring a single-facility unit simply recognizes that organizing a single facility is presumptively less arbitrary than organizing only select employees performing similar work at the same location. An employer satisfies its burden of overcoming the single facility presumption when, in essence, it demonstrates that a single-facility unit is nevertheless arbitrary under the Board’s multi-factor analysis. As discussed above, the Board has relied on a single-facility presumption for 60 years, and Board decisions applying that presumption have been upheld by the appellate courts. Indeed, the D.C. Circuit has explained that “Section 9(c) requires only that the extent of organization not be the controlling factor; consideration of that factor among others is entirely lawful.” *San Miguel Hosp. Corp. v. NLRB*, 697 F.3d 1181, 1185 (D.C. Cir. 2021); see, *e.g.*, *Friendly Ice Cream*, 705 F.2d 570, 576 (1st Cir. 1983) (the Board’s single-facility presumption “is consistent with the Act, has a rational foundation, and reflects the Board’s expertise.”); *NLBB v. J.W. Mays, Inc.*, 675 F.2d 442, 444 (2d Cir. 1982) (Board’s application of single-facility presumption was not arbitrary). The Board examines multiple factors for assessing the appropriateness of a single-facility unit for a multi-facility employer. See, *e.g.*, *Trane*, 339 NLRB at 867; *J & L Plate, Inc.*, 310 NLRB at 429.

Relatedly, the Employer argues that allowing a single-store unit is not conducive to stable labor relations and would fracture District 778. The Employer supports this claim by stating its preference for a district-wide unit but provides no specific evidence that a single-store unit would harm labor stability. While “chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation.” *Haag Drug*, 169 NLRB at 878. The Board will find a single store in a retail chain operation to be an appropriate unit for collective bargaining “absent a bargaining history in a more comprehensive unit or functional integration of a sufficient degree to obliterate separate identity.” *Id.* At 877. The Employer’s concern for its employees cannot serve “as a basis for avoiding its duty to bargain with the employees’ selected representative.” *Walgreen Co. v. NLRB*, 564 F.2d 751, 754, fn.7 (7th Cir. 1977).

**IV. CONCLUSION**

Based upon the record and in accordance with the discussion above, I am not persuaded that this case is materially distinguishable from the other similar cases involving the Employer.
where the presumption favoring single-store units has not been overcome or that the unit requested by the Petitioner is otherwise inappropriate. *Starbucks (Mesa I)*, 371 NLRB No. 71, slip op. at 1. Therefore, I find that the petitioned-for single units limited to Store #23129 (Arthur Ashe) and Store #7264 (Carytown) is appropriate, and the Employer has not rebutted the single-facility presumption. I further find that given the lack of centralized control over labor relations and employee interchange, the remaining factors under the Board’s single facility test – similarity of employee skills, functions, and working conditions; geographic proximity; and bargaining history – are not sufficient to rebut the single-facility presumption.

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

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

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

2. The parties stipulated and I find that the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

The Employer, Starbucks Corporation, a Washington corporation with headquarters located in Seattle, Washington, and facilities located through the United States, including Store #23129 located at 1017 North Arthur Ashe Boulevard, Richmond, Virginia and Store #7264 located at 3555 West Cary Street, Richmond, Virginia, is engaged in the retail operation of restaurants. During the 12-month period ending February 28, 2022, the Employer derived gross revenues in excess of $500,000 and purchased and received goods at its two Richmond stores valued in excess of $50,000, which were shipped to its Richmond stores directly from points outside of the Commonwealth of Virginia.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties stipulated and I find that there is no history of collective bargaining between these parties in the proposed bargaining units identified above and there is no contract or other bar in existence to an election in this case.

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

**INCLUDED:** All full-time and part-time baristas and shift supervisors employed by the Employer at its Store #23129 located at 1017 North Arthur Ashe Boulevard, Richmond, Virginia.

**EXCLUDED:** All store managers, office clericals, guards, professional employees, and supervisors as defined by the Act.

**OTHERS PERMITTED TO VOTE:** At this time, no decision has been made regarding whether assistant store managers are included in, or excluded from, the bargaining unit, and individuals in this classification may vote in the election but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

7. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and part-time baristas and shift supervisors employed by the Employer at its Store #7264 located at 3555 West Cary Street, Richmond, Virginia.

**EXCLUDED:** All store managers, office clericals, guards, professional employees, and supervisors as defined by the Act.

**OTHERS PERMITTED TO VOTE:** At this time, no decision has been made regarding whether assistant store managers are included in, or excluded from, the bargaining unit, and individuals in this classification may vote in the election but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

V. **DIRECTION OF MAIL BALLOT ELECTIONS**

The National Labor Relations Board will conduct a secret mail ballot election among the employees in each of the units found appropriate above.\(^{50}\) Employees will vote whether or not

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\(^{50}\) The parties stipulated to a mail ballot election, and I find that it is appropriate in these cases. As of the date of this Decision, the current positivity rate for COVID-19 is 22.2% in Richmond, in excess of the 5% rate identified by the Board in *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020). See https://www.vdh.virginia.gov/coronavirus/see-the-numbers/covid-19-in-virginia/covid-19-in-virginia-testing/ (last visited June 2, 2022). Thus, regardless of the parties’ stipulation, I find that the Board’s *Aspirus* factors point to the appropriateness of mail ballot elections.
they wish to be represented for purposes of collective bargaining by Mid-Atlantic Regional Joint Board, Workers United a/w Service Employees International Union.

A. Election Details

The elections will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining units.51

At 3:00 p.m. on Thursday, June 9, 2022, ballots will be mailed to voters from the office of the National Labor Relations Board, Region 5.

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 5 office by 3:00 p.m. on Thursday, June 30, 2022.52 All ballots will be commingled and counted by an agent of Region 5 of the National Labor Relations Board at 3:00 p.m. on Thursday, June 30, 2022. In order to be valid and counted, the returned ballots must be received in the Baltimore Regional Office prior to the counting of the ballots.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, June 16, 2022 should communicate immediately with the National Labor Relations Board by either contacting the Baltimore Regional office (Region 5) at (410) 962-2822 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

If the dates the ballots are due to be deposited by the Region in the mail, or the date set for their return, or the date, time, and place of the count for the mail ballot election are postponed or canceled, the Regional Director, in his discretion, may reschedule such dates, times, and places for the mail ballot election.

B. Voting Eligibility

Eligible to vote are those in each of the above units who were employed during the payroll period ending May 29, 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

51 The parties stipulated that the ballots and Notice of Election do not need translation in any other language other than English.
52 The parties stipulated, and I find that a 3-week period from the mailing of mail ballot kits to the ballot count is appropriate.
strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

C. Voter List

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

To be timely filed and served, each list must be received by the Regional Director and the parties by Monday, June 6, 2022. Each list must be accompanied by a certificate of service showing service on all parties. The Region will no longer serve the voter list.

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

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

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not

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53 The Petitioner agreed to waive the 10-day period that it is permitted to receive the voter lists prior to the elections.
object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

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

D. Posting of Notices of Election

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

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

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

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

Dated at Baltimore, Maryland this 2nd day of June, 2022.

(SEAL)  

/s/ Sean R. Marshall
Sean R. Marshall, Regional Director
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