UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

STARBUCKS CORPORATION¹
Employer

And

CENTRAL AND ROCK
PARTNERS UNION

Petitioner

DECISION AND DIRECTION OF ELECTION

Starbucks Corporation (the Employer) is a company headquartered in Seattle, Washington that operates a chain of coffee shops throughout the United States. On May 11, 2022,² Central and Rock Partners Union (the Petitioner) filed a petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a unit composed of all full-time and regular part-time baristas and shift supervisors employed at Store 2675 located at 8008 East Central, Wichita, Kansas 67206, excluding office clerical employees, store managers, professional employees, guards, and supervisors as defined in the Act.³ There are approximately 31 employees in the petitioned-for unit.

The sole issue in this proceeding is whether the Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act. The Petitioner contends that it is a labor organization because employees participate in the organization, it exists for the purpose of “dealing with” the Employer, and these dealings concern “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Vencare Ancillary Servs., 334 NLRB 965, 969 (2001); Electromation, Inc., 309 NLRB 990, 994 (1992); cf. Coinmach Laundry Corp., 337 NLRB 1286, 1287 (2003). The Employer contends that it is not a labor organization because employees do not sufficiently participate in the organization, there has been inadequate “dealings with” the employer by the organization, and its dealings have failed to show a concerted effort towards addressing grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work on behalf of the group.

A hearing officer of the Board heard this case by videoconference on June 2. The parties were afforded an opportunity to present evidence regarding whether the Petitioner is a labor organization as defined by the Act. Both parties filed briefs which I have carefully considered.

¹ The Employer’s name and Petitioner’s name appears as stipulated to by the parties.
² All dates are in 2022, unless otherwise noted.
³ The parties also stipulated that, at the time of the hearing, there was no position of assistant store manager employed at Store 67206 nor any such classification for assistant store managers in Kansas. On this basis, the parties agreed to exclude assistant store managers from the unit, subject to the Decision Writer and Regional Director’s decision. Because there are no assistant store managers at this location the issue is not ripe, and the Region will not make any determination as to the eligibility status of this position.
Based on the entire record, and in consideration of the parties’ arguments and relevant Board law, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

I. FACTS

The petitioned-for store has a café and drive-through. It is not located in a retail operation. The store is open from Monday through Sunday, from 5:00 a.m. to 9:00 p.m. There are approximately 25 baristas and 6 shift supervisors in the petitioned-for unit.

Petitioner, Central and Rock Partners Union, was established earlier this year without any affiliation with any other unions or labor organizations. There are four official positions within the organization: three Union Stewards and an Interim President, who is a shift supervisor that founded the organization. Petitioner currently has no constitution, bylaws, or other internal governing procedures. Petitioner intends to hold an internal election for union positions if, and after, winning the representation election at dispute here.

Petitioner aims to represent the 31 employees of the proposed unit and has communicated with employees about unionization, grievances about hours, wages, benefits, working conditions, and the efficacy of store leadership. Petitioner has held no formal meetings and communicates through its Stewards and Interim President. It also uses a group text chat; the Petitioner believes that the group includes the majority of the proposed unit and the store manager. In the past 1-2 months since the Petitioner originated, the Interim President met with the Store Manager approximately twice and the District Manager once to discuss employees’ concerns over issues such as inconsistency of scheduled hours. Petitioner contends that both the Store and District Manager responded that they were unable to change labor hours. Petitioner also contends that the Store Manager responded to grievance and issue discussions by suggesting that the Interim President quit if he is unhappy. Petitioner contends that he was “off the clock” for these meetings and acting in his capacity as Interim President.

The Petitioner solicited and obtained signatures from at least 30% of employees authorizing the Petitioner to represent employees in collective bargaining with the Employer. On April 25, the Petitioner requested recognition as bargaining representative and the Employer declined.

II. POSITION OF THE PARTIES

A. The Employer

The Employer contends that the Petitioner is not a labor organization because employees do not sufficiently participate in the organization, there has been inadequate “dealings with” the employer by the organization, and its dealings have failed to show a concerted effort towards addressing grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work on behalf of the group. Specifically, Employer contends that employees did not collectively select the Interim President, Union Stewards, or Petitioner’s organization as a representative and the Petitioner’s contact information suggests that the organization consists of only the Interim
President. See Grand Union Co., 123 NLRB 1665, 1667 (1959). The Employer also contends that one Union Steward is not a rostered employee at the store. The Employer points to the lack of internal union structure and official meetings as evidence that employees have not been participating within the Petitioner’s organization. Rather, the Employer contends that this is simply evidence of communication amongst store employees.

The Employer argues that the Petitioner has not sufficiently shown that it exists for the purpose of “dealing with” the Employer because it has no founding documents that identify this purpose. The Employer also contends that the Petitioner’s prior advocacy efforts were based on the Interim President’s individual intentions and motivations and not based on the intention of the organization as a whole.

The Employer also argues that the Petitioner has not sufficiently shown that its “dealings with” the Employer concern grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The Employer contends that the Interim President’s meetings with the Store and District Manager was simply a fulfillment of his job duties as Shift Supervisor and that the evidence suggests that these interactions were too limited to be considered dealings rather than analogous information exchanges. See Electromation, Inc., 309 NLRB 990, 995 (1992); E.I. du Pont de Nemours & Co., 311 NLRB 893, 894 (1993). Finally, the Employer points to the inclusion of the Store Manager in the group text chat and lack of prior collective bargaining or affiliation with a union as evidence that the Petitioner was not concertedy “dealing with” the Employer regarding grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

B. The Petitioner

The Petitioner contends that it is a labor organization because employees participate in the organization, it exists for the purpose of “dealing with” the Employer, and these dealings concern “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Vencare Ancillary Servs., 334 NLRB at 969; Electromation, Inc., 309 NLRB at 994; cf. Coinmach Laundry Corp., 337 NLRB at 1287. Petitioner contends adequate employee participation based on soliciting and obtaining more than 30% of employees’ voluntary authorization for the Petitioner to represent the bargaining unit in collective bargaining with the Employer. The Petitioner also claims that employees participate by disseminating their grievances and concerns about working conditions to Union Stewards and responding to organization-related questions from the Interim President.

The Petitioner further contends that it has shown that it exists for the purpose of “dealing with” the Employer, and these dealings concern “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” The Petitioner notes that its lack of formal structure does not disqualify it from being a labor organization, especially when a union is in the early stages of development like the Petitioner. See Roytype, Division of Litton, 199 NLRB 354 (1972); Michigan Bell Telephone Co., 182 NLRB 632 (1970); Butler Mfg. Co., 167 NLRB 308 (1967); see also NLRB v. Cabot Carbon Co., 360 U.S. 203 (1959); Comet Rice Mills, 195 NLRB 671, 674 (1972); Yale University, 184 NLRB 860 (1970); Stewart-Warner Corp., 123 NLRB 447 (1959). The Petitioner argues that the question of its previous and current activities “dealing
with” the Employer is irrelevant and that it has met the requirements of existing to “deal with” the Employer concerning “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” The Petitioner proffers that its active solicitation of feedback from bargaining unit employees regarding wages, hours and benefits, establishes that it exists for the purpose of “dealing with” the Employer regarding such topics.

III. BOARD LAW AND GUIDANCE

A proposed bargaining representative must qualify as a “labor organization” to lawfully obtain an election or certification. Section 2(5) of the Act defines “labor organization” as “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” 29 U.S.C. § 152(5).

The Board uses a three-part test to determine whether a labor organization exists: (1) employees must participate; (2) the organization must exist, at least in part, for the purposes of “dealing with” the employer; and (3) these dealings must concern “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Vencare Ancillary Servs., 334 NLRB at 969; Electromation, Inc., 309 NLRB at 994; cf. Coinmach Laundry Corp., 337 NLRB at 1287. These requirements are interpreted liberally. NLRB v. Cabot Carbon Co., 360 U.S. 203, 211-13 (1959); Electromation, Inc., 309 NLRB at 993.

While the existence of structural formality within a union can support a determination of “labor organization” under Section 2(5) of the Act, the absence of structural formality does not disqualify a union as a labor organization. See NLRB v. Cabot Carbon Co., 360 U.S. 203, 211-13 (1959); Butler Mfg. Co., 167 NLRB 308 (1967); Yale University, 184 NLRB 860 (1970); Stewart-Warner Corp., 123 NLRB 447 (1959); cf. Raymond Karvis Center for Performing Arts. 351 NLRB 143 (2007), enfd. 550 F.3d 1183 (D.C. Cir. 2008) (discussing internal union elections, stating that “the Board should not lightly interfere with the internal affairs of unions”). A union is similarly not disqualified from labor organization status when its representative activities are limited because it is in the early stages of development and has not yet won representation rights. Roytype, Division of Litton, 199 NLRB 354 (1972); Michigan Bell Telephone Co., 182 NLRB 632 (1970); see also Comet Rice Mills, 195 NLRB at 674. A union can establish labor organization status over either obstacle by showing employee participation and that it was formed for the purpose of representing its membership and intends to do so if certified. Id.

IV. ANALYSIS

Record evidence establishes that the Petitioner meets the statutory definition of “labor organization.” As a newly developing organization, the Petitioner has adequately met the three elements required to be a labor organization: (1) employee participation; (2) organization existence, at least in part, for the purposes of “dealing with” the employer; and (3) that these dealings concern “grievances, labor disputes, wages, rates of pay, hours of employment, or
conditions of work.” Vencare Ancillary Servs., 334 NLRB at 969; Electromation, Inc., 309 NLRB at 994; cf. Coinmach Laundry Corp., 337 NLRB at 1287.

The Petitioner has established employee participation. The requisite showing of at least 30% of employees’ voluntary authorization for the Petitioner to represent the bargaining unit in collective bargaining with the Employer is evidence of employee participation. Further employee participation occurs when the three Union Stewards receive and funnel employee concerns to the Interim President. In its brief, the Employer mistakenly contends that one Steward did not appear to work at the petitioned-for store; however, all three Stewards are listed on the partner list that the Employer provided with its Statement of Position. (Ex. 1(d), Attachment B, Rows 4, 19, 22; Tr. 9.) A lack of internal union elections and formal meetings does not negate that employees have participated in the organization by holding union positions, communicating about organizing, grievances, and working conditions to union officials acting in their capacity as Stewards or Interim President, and authorizing the Petitioner to represent them in collective bargaining. Electromation, Inc., 309 NLRB at 994 (“Any group…may meet the statutory definition of ‘labor organization’ even if it lacks a formal structure, has no elected officers, constitution or bylaws, does not meet regularly, and does not require the payment of initiation fees or dues.”) (citations omitted). Thus, employees sufficiently participate in the organization.

The Petitioner has also established that it exists, at least in part, for the purposes of “dealing with” the employer concerning “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Vencare Ancillary Servs., 334 NLRB at 969; Electromation, Inc., 309 NLRB at 994; cf. Coinmach Laundry Corp., 337 NLRB at 1287. Contrary to the Employer’s assertions, the organization is not required to identify any by-laws, constitution, or other documents that state its purpose of “dealing with” the Employer. See Electromation, Inc., 309 NLRB at 993-94. The Petitioner’s various communications with and solicitation of employees, along with its stated purpose, suggest that it exists, at least in part, for the purpose of “dealing with” the Employer concerning “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

Furthermore, the Interim President testified that he previously engaged management in discussions, off the clock and in his capacity as Interim President, on issues concerning employees as a whole, such as working conditions and hours. The Petitioner discussed scheduling inconsistency with management because he had heard from multiple employees that this was an issue. The Employer contends that the Interim President was merely fulfilling his duty as Shift Supervisor to report employee’s concerns to management. This characterization is flawed. The Petitioner states that he met with the Store Manager and District Manager 2-3 times off the clock and that management “shut him down” by responding that management had no ability to address scheduling concerns and suggesting that he should quit to avoid issues with working conditions. In response, the Interim President stopped approaching management about these concerns because he did not believe that there was any further recourse with that approach and instead focused on union recognition efforts. If the Interim President was simply fulfilling his reporting duties as Shift Supervisor, then his obligation to report such concerns would not cease just because management was unwilling to act and he should have continued to report
employees’ concerns to management. Furthermore, the Employer provides no evidence that the five other Shift Supervisors fulfilled their reporting requirements in a similar manner. In contrast to the Employer’s contentions, these events suggest that the Interim President acted in the capacity of a union official and on behalf of employees concerning hours of employment or conditions of work and that the Petitioner decided to stop meeting with management when it realized that its “dealings with” the Employer were stifled because it had not yet won representation rights that would obligate bargaining. Both these limited “dealings with” the Employer and various communication with and solicitation of employees adequately establish that the Petitioner exists, at least in part, for the purpose of “dealing with” the Employer concerning “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Vencare Ancillary Servs., 334 NLRB at 969; Electromation, Inc., 309 NLRB at 994; cf. Coinmach Laundry Corp., 337 NLRB at 1287.

Based upon the record evidence set forth above, I find that the Petitioner is an organization that exists, at least in part, for the purpose of representing employees in dealings with their employer regarding their terms and conditions of employment and that employees participate in the functioning of the Petitioner. Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

V. CONCLUSIONS

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

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

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.4

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

4. The parties stipulated, and I find that there is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein, and there is no contract bar or other bar to an election in this matter.

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4 I take notice of evidence in this and other cases including 14-RC-296161, to find that: The Employer, Starbucks Corporation, a Washington corporation with headquarters located in Seattle, Washington, and facilities located throughout the United States, is engaged in the retail operation of restaurants including its facility at 8008 East Central, Wichita, Kansas 67206 (Store 2675). In the past 12 months, a representative period, the Employer derived gross revenues in excess of $500,000 and purchased and received at its Kansas facilities goods valued in excess of $50,000 directly from points outside the State of Kansas. Further, the Employer attested in the commerce questionnaire it submitted in this case that during the last calendar year the Employer provided services valued in excess of $50,000 directly to customers outside the State and purchased and received goods valued in excess of $50,000 from enterprises who received the goods directly from points outside the State.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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

   **Included:** All full-time and regular part-time baristas and shift supervisors employed by the Employer at its Store 2675 located at 8008 East Central, Wichita, Kansas 67206.

   **Excluded:** Office clerical employees, store managers, professional employees, guards, and supervisors as defined in the Act.

**VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Central and Rock Partners Union.

**A. Election Details**

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Tuesday, July 19, 2022, ballots will be mailed to voters from the National Labor Relations Board, Region 14, Subregion 17, 8600 Farley Street – Suite 100, Overland Park, Kansas 66212-4677. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, August 2, 2022, should communicate immediately with the National Labor Relations Board by either calling the Subregion 17 Office at (913) 967-3000, the Agent Assigned at (918) 770-8198, the Election Specialist at (913) 275-6525 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the Subregion 17 Tulsa Resident Office, 224 South Boulder Avenue, Room 322, Tulsa, OK 74103-3027, on Tuesday, August 16, 2022, at 10:00 a.m. In order to be valid and counted, the returned ballots must be received in the Subregional office, prior to the counting of the ballots.

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5 The parties stipulated to a mail ballot election following the rise in COVID-19 cases in the region. See *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020).
B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 10, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Also eligible to vote using the Board’s challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

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

C. Voter List

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

To be timely filed and served, the list must be received by the regional director and the parties by Thursday, July 7, 2022. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list.6

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

6 The Petitioner has not agreed to waive the 10 days that it is entitled to receive the voter list prior to the election.
When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

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

RIGHT TO REQUEST REVIEW

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

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

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

Dated: July 5, 2022

/s/ Andrea Wilkes

ANDREA J. WILKES
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