

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

STARBUCKS CORPORATION

Employer

and

Case 03-RC-285929

WORKERS UNITED

Petitioner

**REPORT ON OBJECTIONS, ORDER SETTING ASIDE ELECTION
AND ORDER DIRECTING RERUN ELECTION**

A revised tally of ballots issued on April 22, 2022, which shows there is one determinative challenged ballot. Thereafter, the Employer filed five objections. I have determined that Objection 1 is sustained. I am setting aside the first election and I am directing a rerun election be conducted. As a result, the determinative challenged ballot does not need to be determined and neither do Objections 2 through 5.

PROCEDURAL HISTORY

Based on a petition filed on November 9, 2021, and pursuant to a Decision and Direction of Elections issued by the Acting Regional Director of Region 3 on January 14, 2022,¹ Region 3 conducted a mail ballot election in this matter.

The Region mailed ballots to eligible voters on January 31 where voters were to mail their ballots so they would be received by the Region 3 office by close of business on February 22, with the ballot count being originally scheduled for February 23. However, on January 31, the Employer filed with the Board a Request for Review of the Acting Regional Director's Decision and Direction of Elections, and the Board did not issue its Order denying that Request until March 7. Consequently, the ballots were commingled and counted on March 9. That tally of ballots shows there were approximately 39 eligible voters, 8 were cast for the Petitioner, 7 were cast against the Petitioner, 2 were void ballots, and there were zero challenged ballots.

On March 16, the Employer timely filed an objection to the conduct of the election along with a separate offer of proof. The Employer alleged Region 3 personnel failed to process one or more timely-cast ballots that were delivered to the Regional office prior to the March 9 ballot count. The Petitioner did not file a response to the Employer's objection. By Order dated March 23, this case was transferred from Region 3 to Region 10.

Pursuant to Section 102.69 of the National Labor Relations Board (NLRB) Rules and Regulations, and the NLRB Representation Proceedings Case Handling Manual (Part Two), Sections 11390 – 11397, I caused an administrative investigation and review of the Employer's objection to be conducted. The administrative investigation revealed that seven ballot envelopes

¹ All dates are for the year 2022 unless otherwise noted.

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

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

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

The Board will generally permit mail ballots received after the due date, but before the count, to be opened and tallied. *Watkins Construction Co.*, 332 NLRB 828, 828 (2000). However, the Board customarily does not permit mail ballots received *after* the count to be opened. *Classic Valet Parking, Inc.*, 363 NLRB 249 (2015).

Thus, as explained in my Administrative Review Decision and Order on Objections, I found the Board agent conducting the count should have presented these ballots to the parties during the count, but did not do so. Because six of the unopened ballots are from eligible voters and were sufficient in number such that they may affect the results of the election, I sustained, in part, the Employer's objection. I directed Region 3 personnel to process the seven mail ballot envelopes received on February 25 in accordance with the Board's established count procedures for mail ballot elections.

Thereafter, on April 22, Region 3 conducted a second ballot count. Of the seven mail ballots received on February 25, the Region counted five, the Employer challenged one, and the parties agreed one voter was ineligible. The final tally on the April 22 revised tally of ballots shows there were approximate 39 eligible voters, 10 ballots were cast for the Petitioner, 10 were cast against the Petitioner, 2 were void ballots, and 1 was a challenged ballot, which is sufficient to be determinative.² The number of valid votes counted plus challenged ballots equals 21.

THE EMPLOYER'S OBJECTIONS

On April 28, the Employer filed timely objections to conduct affecting the election. A copy of the objections is attached to this Report. I caused an administrative investigation and review of the Employer's objections to be conducted.

² The Employer challenged the ballot of (b) (6), (b) (7)(C) on the basis that (b) (6) was no longer employed when (b) (6) cast (b) (6) ballot.

In Objection 1, the Employer alleges Region 3 personnel's action in their handling of the ballot count casts doubt on whether all valid ballots were counted, and undermines the integrity of the election and the parties' confidence in the election results. In Objection 2, the Employer alleges Region 3 personnel engaged in election misconduct by failing to include one or more timely-cast ballots in the March 9 virtual ballot count. In Objection 3, the Employer alleges Region 3 personnel engaged in election misconduct by representing to the parties that all ballots received by the Region were present during the March 9 virtual ballot count. In Objection 4, the Employer alleges Region 3 personnel engaged in election misconduct by failing to notify the Petitioner and the Employer of the fact that it had received timely-cast ballots that it did not include in the March 9 virtual ballot count. In Objection 5, the Employer alleges Region 3 personnel engaged in election misconduct by failing to maintain the chain of custody over a dispositive number of timely-cast ballots, thereby tainting the election process and undermining the election results.

To set aside an election based on Board agent misconduct or Regional office procedural irregularities, the objecting party must show that there is evidence that "raises a reasonable doubt as to the fairness and validity of the election." *Durham School Services, LP*, 360 NLRB 851, slip op. at 4 (2014), citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2d Cir. 1969), *cert. denied* 396 U.S. 1010 (1970); see also *Physicians & Surgeons Ambulance Service*, 356 NLRB No. 42, slip op. at 1 (2012), *enfd.* 477 Fed.Appx 743 (D.C. Cir. 2012). In addition, the Board applies an objective standard to potential disenfranchisement cases in order to maintain the integrity of its own election proceedings. *Garda World Security Corp.*, 356 NLRB 594 (2011). Under that standard, an election will be set aside if the objecting party shows that an election irregularity possibly disenfranchised a sufficient number of voters to affect the election outcome. *Dayton Malleable Iron Co.*, 123 NLRB 1707, 1709 (1959); *Midwest Canvas Corp.*, 326 NLRB 58 (1998).

In *North American Aviation, Inc.*, 81 NLRB 1046 (1949), the Board ordered a new election based on several "irregularities," including postage missing from return envelopes sent with the mail ballot kits. This standard does not even require that the challenger show that any specific voter was disenfranchised. *Id.*; See also *Davis & Newcomer Elevator Co.*, 315 NLRB 715 (1994) (applying a similar standard to mail-in elections). Under the objective standard applied by the Board to potential disenfranchisement cases, an election will be set aside if the objecting party shows that the number of voters possibly disenfranchised by an election irregularity is sufficient to affect the election outcome. *Garda World Security Corp.*, *supra*.

The basic facts are not in dispute. Seven ballot envelopes were not presented by the Board agent to the parties during the first ballot count on March 9, but they were presented to the parties at the April 22 count and a revised tally of ballots issued.

Where conduct is attributable to a Board agent, the question is whether "the manner in which the election was conducted raises a reasonable doubt as to fairness and validity of the election." *Polymers, Inc.*, *supra*; see also *Durham School Services, LP*, *supra*. In *New York Telephone Co*, 109 NLRB 788, 790 (1954), a discrepancy existed between the number of returned ballots and the number of tallied ballots. The missing ballots were eventually accounted

for and there was no evidence of tampering. The Board nevertheless directed a second election because a question existed as to the validity of the election process. The Board stated:

The Board is responsible for assuring properly conducted elections and its role in the conduct of elections must not be open to question. Where, as here, the irregularity concerns an essential condition of an election, and such irregularity exposes to question a sufficient number of ballots to affect the outcome of the election, in the interest of maintaining our standards there appears no alternative but to set this election aside and to direct a new election. (Id. 790-791)

CONCLUSION AND ORDER

Having duly considered the objections, the offer of proof, and the relevant evidence from the case file, I am sustaining Objection 1 because sufficient irregularities occurred in the conduct of the election that warrant setting aside the election.

Thus, **IT IS ORDERED** that the mail ballot election that commenced on January 31, is set aside and a rerun election shall be conducted.

DIRECTION OF RERUN ELECTION

The National Labor Relations Board will conduct a rerun secret ballot election among the unit employees. Employees will vote whether they wish to be represented for purposes of collective bargaining by Workers United. The manner, date, time, and place of the election will be specified in a Notice of Rerun Election. The Notice shall also contain the following language:

NOTICE TO ALL VOTERS

The mail ballot election conducted on January 31, 2022, has been set aside for administrative election irregularities beyond the control of any party to the election. Therefore, a rerun election will be held in accordance with the terms of this Notice of Rerun Election. All eligible voters should understand the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, free from interference by any of the parties.

Eligible to vote in the rerun election are those employees in the unit as outlined in the Decision and Direction of Elections who were employed during the payroll period ending immediately before the date of the Notice of Rerun Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any 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 which commenced less than 12 months before the date of the first election, 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; (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 date of the first election and who have been permanently replaced.

Voter List

The Employer must provide the Regional Director and parties named in the decision an alphabetized 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, accompanied by a certificate of service on all parties. When feasible, the Employer must electronically file the list with the Regional Director and electronically serve the list on the other parties.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Friday, May 20, 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.** The Employer's failure to file or serve the list within the specified time or in the proper format is 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 in the specified time or in the proper format if it is responsible for the failure.

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.nlr.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.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

Notice Posting

The Employer must post copies of the Notice of Rerun Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full working days prior to 12:01 a.m. on the day of the election and must also distribute the Notice of

Rerun Election electronically to any employees in the unit with whom it customarily communicates electronically. A letter outlining additional details will issue accompanying the Notice of Rerun Election. The Employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is estopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) 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 rerun 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.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. 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.

Although neither the filing of a request for review nor the Board's granting a request for review will stay the rerun election in this matter unless specifically ordered by the Board, all ballots will be impounded where a request for review of a decision is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. 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: May 18, 2022

A handwritten signature in black ink that reads "Terry D. Combs".

Terry D. Combs
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
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STARBUCKS CORPORATION

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Case No.: 3-RC-285929

**STARBUCKS CORPORATION'S OBJECTIONS
TO CONDUCT OF THE ELECTION**

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

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

The Employer timely-filed a Request for Review, which the Board did not rule upon prior to the scheduled count on February 23, 2022. As a result, under Section 102.67(c) of the NLRB’s

Rules and Regulations, the ballots were impounded and remained unopened pending such ruling or decision. On March 7, 2022, the Board issued its Order denying the Employer's Request for Review. On March 7, 2022, Region 3 informed the Parties that it was rescheduling the ballot count to March 9, 2022.

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

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

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

After the election, on March 16, 2022, Starbucks filed an objection that Region 3 personnel engaged in election misconduct by failing to process one or more timely-cast ballots that were

delivered to the Regional office prior to the March 9 ballot count, based on the facts above.

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

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

Despite Region 10 finding seven additional valid ballots in Region 3's casefile after the initial count, the ballots of additional partners who timely cast their ballots remain unaccounted for. At least four additional partners who timely voted, either by dropping their ballots off at Region 3's office or by mailing their ballots well in advance of the count, did not have their ballots

counted. Simply stated, the timely-cast ballots of four more partners have been “lost” and not accounted for by Region 3. Given the current count, these votes are determinative in the election.

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

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

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

Region 3’s objectionable conduct includes the following:

OBJECTION 1

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

OBJECTION 2

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

OBJECTION 3

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

OBJECTION 4

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

OBJECTION 5

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

* * *

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

Respectfully submitted,

/s/ Alan I. Model
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