Abridged Report to

Starbucks Board of Directors

Concerning Starbucks' adherence to freedom of association and collective bargaining commitments in its Global Human Rights Statement

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Thomas M. Mackall, LLC

CONTENTS

I. INTRODUCTION

Starbucks Corporation requested (1) an assessment of whether and to what extent its policies and practices regarding freedom of association and collective bargaining are consistent with its Global Human Rights Statement ("GHRS"), (2) identification of potential risks that certain policies and practices may not support those commitments, and (3) recommendations of remedial actions to align policies and practices with stated commitments. The following condenses the report provided to Starbucks' Board of Directors, focusing on Starbucks' company-owned retail operations in the United States.

The report reflects an independent assessment of Starbucks' adherence to commitments in its GHRS. Discussion with Starbucks personnel has not included any consultation or discussion with Starbucks' labor counsel representing Starbucks in National Labor Relations Board ("NLRB") and federal court litigation regarding the matters at hand. Starbucks has not asked for anything other than an independent fulfillment of the engagement described above. The conclusions are those of the author, not of any other person or entity.

Starbucks has cooperated with this assessment since its outset. The inquiry proceeded with full support from the Nominating and Governance Committee of the Board of Directors and the CEO of Starbucks, and with the direct cooperation of legal, labor relations, and communications teams.

The inquiry was conducted from July through September 2023. It consisted primarily of reviews of a wide array of public and non-public documents, as well as interviews and ongoing inquiries of Starbucks personnel. Starbucks both identified relevant materials and persons and provided access to information and persons upon request. In no instance did it appear that Starbucks was withholding information, shielding persons from being interviewed, or doing anything other than providing information and support to enable the inquiry. In short, the review was robust, comprehensive, and unhindered.

This report does not set forth legal opinions about whether Starbucks has complied with applicable law in any particular instance. The report does refer to findings and conclusions published in Administrative Law Judge ("ALJ") decisions pursuant to NLRB procedures. The cited ALJ decisions are subject to review and do not constitute final or binding determinations of law or fact. However, ALJs make detailed findings of fact based upon robust presentations of evidence, including witness testimony that the ALJ has an opportunity to hear and assess for credibility and probative value. The ALJ decisions have provided access to testimony or findings based upon testimony from dozens of Starbucks personnel at the unit level. The ALJs' credibility determinations are subject to substantial deference. ALJs are also charged with adhering to NLRB precedent in reaching conclusions of law. Rather than reengaging evidence to make independent factual determinations or attempting to resolve ongoing debates about what the applicable law is or should be, the report refers to ALJ findings as indicators of where the current factual and legal record in a matter may stand.

II. EXECUTIVE SUMMARY

As Starbucks was recovering from challenges created by the prolonged COVID-19 pandemic, it learned in August 2021 that partners at locations in the Buffalo, New York, market were seeking to unionize. What Starbucks initially assumed was isolated activity in a particularly troubled market turned out to be the start of a well-coordinated organizing campaign. By June 2022, more than 300 petitions for union representation had been filed at different locations around the country, and about 500 total petitions were filed by October 2023. NLRB elections have resulted in certified bargaining unit representatives at more than 350 locations. The union in virtually every instance is Workers United, which is affiliated with the Service Employees International Union (SEIU) and represents more than 85,000 workers in the U.S. and Canada.

Global Human Rights Statement

Starbucks' GHRS has not been a material consideration in Starbucks' response to the organizing activity that emerged in late 2021. As written, the GHRS does not provide meaningful behavioral guidance or a clear basis for compliance regarding freedom of association and effective recognition of the right of collective bargaining. In its references to various sources of internationally recognized human rights, the GHRS does embed certain principles regarding freedom of association and collective bargaining:

- Starbucks partners have the right to choose freely to have a labor union represent them, or not, regarding their terms and conditions of employment;
- Starbucks and Starbucks partners have the right to share information and opinions regarding the choice to unionize or not;
- Starbucks partners have the right not to be subject to interference or coercion in exercising their rights of freedom of association or to discrimination or retaliation because of lawful activities related to unions;
- Starbucks will accept partners' lawful choice of a collective bargaining representative and engage in good faith negotiations with a view to reaching agreements on terms and conditions of employment and will provide timely and appropriate information to support meaningful negotiations;
- While these principles derive from international instruments and define areas of opportunity and risk for Starbucks, the precise boundaries of compliance within the U.S. are tied to Starbucks' compliance with U.S. law; and
- The principles of freedom of association and effective recognition of the right of collective bargaining are a foundation for constructive labor relations with representatives chosen by Starbucks partners.

The report recommends that Starbucks revise the GHRS and develop supporting statements, materials, and training as appropriate within Starbucks' governance framework to drive visibility, awareness, and behaviors aligned with clearly stated and defined commitments concerning freedom of association and collective bargaining. The aspiration embodied in these principles can

provide a basis for mitigating risk within any jurisdiction and promoting constructive labor relations with the collective bargaining representatives Starbucks partners have chosen.

Litigation Status

Starbucks' adherence to principles in its GHRS ties to its compliance with U.S. labor laws concerning freedom of association and collective bargaining. Unfair Labor Practice ("ULP") charges have been consolidated into more than 130 complaints filed by the General Counsel of the NLRB. As of the date of the report, most complaints remain pending, and ALJs have issued more than 35 decisions with findings against Starbucks. Starbucks has vigorously defended itself in each case, and each is under review or subject to appeal.

Early Stages of Organizing

Starbucks was not prepared for the emergence of union organizing activity in late 2021. Publication of a letter on behalf of the "Starbucks Workers United Organizing Committee" in Buffalo in late August 2021 alerted the company to organizing there. Starbucks perceived operational and management failures in Buffalo that could and should be addressed directly and swiftly. The company moved decisively to address the operational issues—which some characterized as the worst they had encountered in the company—but without clear governance concerning the special challenge of aggressively seeking to fix significant operational deficiencies within a compliance framework created by the presence of the union to which operators were not in any way accustomed. In the absence of strong and clear governance, accomplishing operational change may have taken priority over careful respect for rights and limitations that were not fully understood by teams unaccustomed to operating in such a constrained environment.

Workers United was certified at eight of the 11 locations where elections were conducted in the Buffalo market. More than 30 NLRB charges arising out of Buffalo were consolidated into a complaint filed by the NLRB's General Counsel. The matters are subject to ongoing litigation, and the NLRB is now considering ALJ findings of multiple violations of the National Labor Relations Act ("NLRA") by Starbucks.

Expansion of Organizing

Starbucks does not appear to have anticipated the large wave of organizing that followed. The company faced an unprecedented acceleration of organizing activity in a short period of time and did not have a fully staffed labor relations team until the end of June 2022. With such weakened governance, basic fundamentals—such as consistent on-the-ground presence and support, properly bespoke training, effective coordination of activities, and development throughout the ranks of a full appreciation of guardrails and rules of engagement—were not as developed as they needed to be, and Starbucks found itself facing hundreds of ULP charges. Missteps could have been avoided had stronger fundamentals been in place.

All indications are that Workers United had prepared thoroughly for its organizing efforts, had careful top-down leadership, and was effective at leveraging Starbucks' early missteps to frame a "Starbucks is anti-union" narrative and engaging multiple stakeholders to drive publicity and

pressure. Consequently, currents contributing to the scrutiny under which Starbucks is now operating were already flowing strongly by June 2022.

Partner Investments

In April 2022, Howard Schultz returned as interim president and CEO and immediately embraced principles that he had followed since the early days of Starbucks focused on investing in and exceeding the expectations of partners. Within a short time, after tours around the country to meet with partners, Starbucks suspended share repurchases to fund new partner investments and announced $1 Billion FY2022 investments "to Uplift Starbucks partners (employees) and the Store Experience." Starbucks championed these new benefits broadly, and stated its intention to comply with its legal obligations concerning unionized locations and its view that the law limited its discretion to implement changes in those locations without bargaining. Starbucks faces two adverse ALJ decisions in connection with the partner meetings and the new partner investments.

No Anti-Union Playbook

Starbucks has shown progress since the labor relations team came to full strength. The assessment found no evidence of an "anti-union playbook" or instructions or training about how to violate U.S. laws or suggesting surreptitious means of interfering with employees' freedom to choose unionization or not. Written materials communicated to employees regarding unions and unionization have expressed the company's preference for a direct relationship and therefore a "no" vote in any election, but they have provided and continue to provide consistent reassurances that Starbucks respects their right to choose and will respect their choice.

Increased Voter Participation and Compliance Efforts

Starbucks has encouraged partners to vote in union elections at their locations. Rates of participation by eligible voters in NLRB elections have increased from less than two-thirds in the early stages to about 80% today. The increase has not diluted union support. The percentage of eligible voters who vote for the union has trended from below 40% to more than 60%, and the union continues to prevail in about 80% of elections. This indicates effective efforts to encourage voting without regard to positions on unionization.

The total number of complaints and charges consolidated into those complaints has dropped considerably since the peak in mid-to-late-2022, but so has the number of petitions per month. The declining rates of charges and complaints do not clearly outpace the declining rates of petitions, and the assessment was unable to determine which factor—decreased numbers of petitions, enhanced compliance, or a combination—has been most consequential. This said, in at least some locations, Starbucks has strengthened on-ground support for operations, provided more bespoke management training, and tailored messages and controlled conditions of communications with employees. On the other hand, a flow of charges and complaints continues.

Manager-to-Partner Communications

While training materials and guidance to managers focus on compliance, Starbucks commits consistently within that context to communicating its strong preference for non-unionized

operations. Starbucks trains its managers to engage lawfully with employees. As common and direct as this guidance is, however, even well-intentioned managers operating in a delicate environment can have difficulty navigating the nuanced boundaries between that which is lawful and appropriate and that which is not. ALJs have found that store-level managers or supervisors have stepped out of bounds in many instances. Starbucks may consider steps to promote more consistently compliant manager communications.

Discipline and Discharge

Starbucks also faces adverse ALJ decisions in discipline and discharge cases, which often cite inconsistent application of disciplinary standards as indicators of discrimination or retaliation. Discharges at unionized locations occur at the same rate as at non-unionized locations, but those in union locations garner special attention because of the adverse impact on the free exercise of one's right to freedom of association that terminations of union activists can have.

While Starbucks must continue to manage its business effectively, which includes enforcing standards and taking appropriate disciplinary actions even during union campaigns, such actions are subject to heightened scrutiny. This places a premium on ensuring consistency in application of standards, looking both backward to before the onset of organizing, and laterally to ensure that persons are not being singled out for discipline.

Collective Bargaining

Starbucks must also meet its obligations to recognize and bargain with chosen representatives. Starbucks has made demonstrable progress in negotiating an agreement with a Teamsters Local in Pittsburgh. On the other hand, Starbucks and Workers United have not completed negotiations for a collective bargaining agreement at any of the more than 350 locations where Workers United has been certified. Starbucks' and Workers United's competing allegations of failure to bargain in good faith are currently being heard at the NLRB, but the practical challenge of bargaining contracts at hundreds of locations remains regardless of the legal issues.

Risk Mitigation and Opportunities

Starbucks has an opportunity to further integrate its approach to labor relations and the principles embedded in the GHRS as it endeavors to have constructive engagement with elected representatives of its partners, in particular Workers United. As adverse ALJ decisions have accumulated, Starbucks faces stricter scrutiny and will likely need to build more significant buffers around legal boundaries than previously considered necessary. Embracing an aspiration for constructive labor relations based upon mutual trust may support this effort.

This starts with tone from the top. With new leadership, Starbucks has an opportunity to set a tone that refreshes and reinforces a commitment to applicable law but goes beyond that to continuing to reinforce the value of participating in elections and providing reassurance of Starbucks' commitment to respect the legitimacy of chosen representatives, while working to reach agreements expeditiously.

III. RECOMMENDATIONS FOR GLOBAL HUMAN RIGHTS STATEMENT

1. Revise the Global Human Rights Statement and develop supporting statements, materials, and training as appropriate within Starbucks' governance framework to drive visibility, awareness, and behaviors aligned with clearly stated and defined commitments concerning freedom of association and collective bargaining. More specifically:

    a) Define clearly how the GHRS resides within the hierarchy of Starbucks' governance framework to support governance, visibility, and impact.

    b) Define commitments to freedom of association and collective bargaining in terms of values, practices, and behaviors to which Starbucks commits and which are informed by specified international human rights instruments.

    c) Integrate defined commitments consistently and coherently into relevant activities, including domestic and global labor relations policies and practices, with particular attention to resolving any identified tensions between the commitments and applicable laws.

    d) Socialize defined commitments through communications and training.

2. Incorporate defined commitments into appropriate review, audit, and reporting procedures.

IV. STARBUCKS' GLOBAL HUMAN RIGHTS STATEMENT

In the first paragraph of the GHRS,[1] the company states:

> We respect the human rights of individuals and communities impacted by our operations and products, and we commit to respect the principles of the: UN Guiding Principles on Business and Human Rights; UN Global Compact; OECD Guidelines for Multinational Enterprises; International Bill of Rights; ILO Core Labor Standards; Women's Empowerment Principles; Children's Rights and Business Principles; and Framework Principles on Human Rights and the Environment.

Each reference to an international instrument is hyperlinked, which generally takes the reader to the underlying source for the reference.[2] The key references in the GHRS recognize, either explicitly or implicitly, rights of freedom of association and effective recognition of collective bargaining.[3]

The GHRS makes a separate specific reference to rights of freedom of association and collective bargaining, saying that it "adhere[s] to ILO Core Labor Standards, including the rights to non-discrimination, equal pay for equal work, freedom of association, participation in collective bargaining and just and favorable conditions of work, such as ensuring the health and safety of our partners."[4]

V. FINDINGS

Finding: Starbucks' GHRS has not been a material consideration in Starbucks' response to the organizing activity that emerged in late 2021.

Starbucks' GHRS has not been a material consideration in the company's response to the organizing activity that emerged in late 2021. Although some persons within Starbucks in the early stages of the organizing activity were aware of the GHRS and the language it contains, it appears that no one understood that the GHRS commitments to freedom of association and collective bargaining might impose obligations other than complying with state or federal labor laws. Persons more directly involved with responses to the organizing activity appear to have had limited to no awareness of the GHRS and, therefore, did not understand that its provisions might apply in any way to employees' organizing activities and Starbucks' responses to them. Indeed, the exhaustive review of written materials, communications, and training materials failed to disclose any reference or linkage to the GHRS.

Finding: Starbucks' GHRS does not provide meaningful behavioral guidance or a clear basis for compliance regarding freedom of association and effective recognition of the right of collective bargaining.

Increased awareness alone would not likely have resulted in greater impact of the GHRS regarding union activity in the U.S. As written, the GHRS and supporting materials do not provide meaningful guidance about behaviors that may follow from commitments to respect rights of freedom of association and collective bargaining.

The GHRS articulates its commitments by direct reference to multiple international instruments that embed the rights and by explicit mention of the rights in connection with its statement of adherence to ILO Core Labor Standards. Nothing in the GHRS describes any behaviors or practices that define the commitments. Nor does any supplemental explanation, training material, or other document or communication within the organization appear to expand upon the commitments or explain what they mean for Starbucks. Although the international instruments to which the GHRS refers clearly identify freedom of association and collective bargaining within the panoply of globally recognized human rights, they too provide minimal if any guidance about what this may mean for private enterprise.

In the absence of clearly defined and communicated expectations deriving from respect for freedom of association and collective bargaining, the commitments to these principles may be displaced by other overriding values. This risk is heightened with these particular principles, the exercise of which can be perceived to challenge traditional approaches to the employment relationship and to create operational and reputational risks for the company. The more powerfully competing values hold sway, the greater the risk the competing values rather than those embedded in global statements may drive decision-making in response to organizing activities and affect assessments of legal and compliance risks.

Commitments informed by international principles but defined in terms of practices and behaviors that the company is prepared to stand behind and promote can mitigate such risk. Commitments

so defined are more likely than the current iteration of the GHRS to drive behavior and decision-making and to create opportunity for Starbucks to demonstrate what it stands for regarding freedom of association and collective bargaining, domestically and abroad.

VI. PRINCIPLES OF FREEDOM OF ASSOCIATION & COLLECTIVE BARGAINING DERIVED FROM GHRS

The principles of freedom of association and effective recognition of the right of collective bargaining are not defined by an extensive body of international laws, standards, and jurisprudence setting forth a compliance roadmap for private enterprise. Key instruments typically set forth general principles applicable to governments that take on obligations to respect, promote, and realize the rights contained therein.[5] The International Labor Organization ("ILO"), the competent body in the international system to establish and supervise international labor standards and to promote fundamental rights at work,[6] creates obligations for and supervises standards with respect to member states, not individual private enterprises.[7] The supervisory bodies of the ILO are not courts of law that develop binding precedent regarding what the principles may require of businesses in any given circumstance.[8]

The instruments do lay down principles that can and should inform private enterprises' human rights commitments. Furthermore, the ILO's Committee on Freedom of Association ("CFA"), while not creating binding judicial precedent, provides evidence of consensus application of the principles to specific instances arising within a particular legal framework. With this background understanding, the following principles may fairly be extracted from the GHRS.

Principle 1: Starbucks partners have the right to choose freely to have a labor union represent them, or not, regarding their terms and conditions of employment.

The ability to choose for or against unionization—not the outcome of the choice—is the very essence of the principle of freedom of association. Either choice is equally valid, so long as the choice is exercised freely without interference, restraint, or coercion by any entity.[9]

Principle 2: Starbucks and Starbucks partners have the right to share information and opinions regarding the choice to unionize or not.

Employers and partners alike—particularly in the US, including Starbucks—may recognize that either choice is valid, but they are rarely neutral about which choice is preferred. The choice to unionize can be perceived as evidence of failure or rejection of leadership or individual managers, and a decision to unionize can have operational, financial, and other impacts for both employers and partners. It is human nature to have competing views on these issues, and tallies of votes in majority rule systems for choosing exclusive bargaining representatives are rarely unanimous. Exchanging information and viewpoints pertaining to and leading up to a vote for or against union representation supports the democratic principles embodied in freedom of association.

Key instruments to which the GHRS refers, as well as the CFA, have embraced the necessary correlation of freedom of expression and freedom of association, while also cautioning against their becoming competing rights aimed at eliminating each other.[10] The right to freedom of

association does not extinguish the rights of an employer to freedom of expression, but as discussed in the following section, the employer's exercise of its rights must respect the principle of freedom of association.

Principle 3: Starbucks partners have the right not to be subject to interference or coercion in exercising their rights of freedom of association or to discrimination or retaliation because of lawful activities related to unions.

This principle is a direct corollary to the rights of partners to exercise freely their right to choose representation and is implicit in the limitations on expression and opinion noted above. As with any employers, Starbucks must guard against the risks that strong views regarding unionization at Starbucks may be communicated in a context or manner that is actually or perceived to be coercive or threatening and that these viewpoints may otherwise inform adverse actions against persons holding opposing views.

Interference, coercion, discrimination, and retaliation, or threats thereof, regarding lawful union-related organizing activities are not consistent with international principles and are not compatible with the GHRS.

Principle 4: Starbucks will accept partners' lawful choice of a collective bargaining representative and engage in good faith negotiations with a view to reaching agreements on terms and conditions of employment and will provide timely and appropriate information to support meaningful negotiations.

Once a representative is lawfully chosen, the workers' right to have their representative recognized for the purpose of collective bargaining is fully vested, and the employer should engage in constructive negotiations with such representatives with a view to reaching agreements on terms and conditions of employment.[11] This includes sharing information necessary to promote meaningful negotiations and taking steps to promote voluntary negotiation of the collective agreements covering the terms of agreement.

In short, once the choice is exercised for union representation, then Starbucks' only valid option is to recognize and bargain with the union concerning the terms and conditions of partners' employment. This is the heart of effective recognition of the right of collective bargaining.

Principle 5: While these principles derive from international instruments and define areas of opportunity and risk for Starbucks, the precise boundaries of compliance within the U.S. are tied to Starbucks' compliance with U.S. law.

Starbucks has stated that the principles of freedom of association and collective bargaining are "highly nuanced and manifest themselves through the application of a nation's laws."[12] At least with respect to the manifestation of these principles in the U.S., this statement is correct. Compliance with the principles of freedom of association and collective bargaining as set forth in the GHRS are tied directly to compliance with U.S. law.

The NLRA includes significant protections for rights of freedom of association and collective bargaining and provides a basis for determining compliance with the principles articulated above. Section 7 of the NLRA affirms the right of employees to choose union representation, bargain

collectively through their chosen representatives, and "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as their right to "refrain from any or all of such activities."[13] Section 8(c) affirms the constitutional right of parties—including employers—to express opinions and viewpoints in connection with union activities, provided the expression does not contain a "threat of reprisal or force or promise of benefit."[14]

Section 8(a)(3) prohibits discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.[15] Section 8(a)(1) makes it an unfair labor practice for an employer to set employment rules or to take an employment action that restrains, coerces, or interferes with employees in the exercise of their Section 7 rights.[16] "Interference" includes any action that tends to interfere with the free exercise of employee rights under the Act.[17] This has comprised a wide range of activities, including imposing harsher restrictions on union-related discussions among employees than on non-work-related topics; lending more than minimal support or approval to union decertification or disaffection petitions; taking adverse employment action against employees because of their protected, concerted activities; and imposing work rules that chill employees' exercise of rights under the NLRA.

"Coercion" under Section 8(a)(1) does not "turn on the employer's motive or whether the coercion succeeded or failed [but instead on] whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act."[18] Coercion has also comprised a wide range of activities, including questioning employees about their own or coworkers' union activities or sympathies based on context and circumstances, spying or creating the impression of spying, promising benefits if employees reject the union, conferring benefits to induce votes against a union, and conveying a message that selecting a union would be futile.

By virtue of its membership in the ILO, the U.S. has a good faith obligation to give effect to the principles of freedom of association and effective recognition of the right of collective bargaining within its territories.[19] The NLRA explicitly embraces these principles and provides for protections against interference, coercion, discrimination, and retaliation. The list of protections set forth above is not exhaustive yet echoes prohibitions that have been recognized through the ILO. International instruments and bodies give due regard to the protections so defined and applied. Compliance with these standards as set forth in the GHRS is tied directly to compliance with U.S. law.[20]

Principle 6: The principles of freedom of association and effective recognition of the right of collective bargaining are a foundation for constructive labor relations with representatives chosen by Starbucks partners.

The principles of freedom of association and effective recognition of the right of collective bargaining embedded in the GHRS do not impose a global compliance framework that subjects Starbucks to standards beyond those set forth in U.S. labor law. They do, however, embody animating principles that remain constant regardless of the precise manner and means of implementation in a particular country.[21] These principles are constitutional principles of the ILO. The ILO's constitutional framework views cooperation among management and labor as essential to progress and prosperity.[22] The CFA has recognized that the principles encourage labor

relationships based upon mutual confidence and respect and enabled by constructive dialogue.[23] The aspiration embodied in these principles can provide a basis for mitigating risk within any jurisdiction and for promoting constructive labor relations with the collective bargaining representatives Starbucks partners have chosen.[24]

VII. LITIGATION STATUS

As noted above, compliance with the GHRS ties to Starbucks' compliance with U.S. labor laws concerning freedom of association and collective bargaining, *viz*. the NLRA. The proposition that "Starbucks has not been found to have violated the law as part of any enforced order of the NLRB to date" remains correct.[25] But that does not negate the growing corpus of charges, complaints, and adverse findings against the company.

Allegations of violations of the NLRA are initiated through ULP charges filed with the NLRB. Any person or organization may file a charge.[26] Charges are relatively easy to file and are commonly filed in connection with union organizing campaigns, particularly campaigns that have any element of top-down union coordination. No inference of wrongdoing can or should be derived from the charge or its allegations alone.

Whether or not a charge may have merit is determined through the processes it triggers. Regional Offices of the NLRB investigate charges, which require notice to and an opportunity to respond by the charged party. The Regional Office will generally investigate and assess the merits of the allegations and may encourage withdrawal, dismissal, or settlement. Settlements may include admissions or non-admissions of wrongdoing. Charges that are dismissed, withdrawn, or settled are closed.

Charges that are not closed are reviewed by the NLRB's General Counsel, who determines whether to institute formal proceedings on some or all of the underlying allegations by issuing a formal complaint.[27] A complaint initiates a process before an ALJ, who hears matters not settled or decided through summary judgment in accordance with formal procedures that include evidentiary rules, subpoena powers, and sworn testimony. Based on the record, the ALJ issues findings of fact, conclusions of law, and recommendations for dismissal or relief.

If no exceptions are filed to the ALJ decision, the NLRB will issue an order adopting the findings, conclusions, and recommendations.[28] If exceptions are taken, the NLRB may decide the matter based on the record before the ALJ or "decide the matter after oral argument or after reopening the record to receive further evidence or may make other appropriate disposition of the case."[29]

The NLRB decision is subject to appeal to an appropriate United States Court of Appeals and to the United States Supreme Court. No order of the NLRB is final or enforceable until appeals are exhausted.

Since union organizing activity came to light in the Buffalo region in August 2021, Starbucks has had more than 800 ULP charges filed against it. Of those, about 150 have been closed or withdrawn. Of the more than 650 charges that remain active, approximately 440 have been consolidated into more than 130 complaints filed by the General Counsel of the NLRB. Just over

200 charges, nearly equal to the number of charges filed since March 2023, remain active as of the date of this report but have not been taken to complaint. If the charges as of the report date are closed or withdrawn at the same rate as charges that have been filed overall since August 2021, about 150 will progress to complaint, either alone or consolidated with other charges.

From October 2022 to the report date, ALJs issued more than 35 decisions regarding allegations arising out of the post-August 2021 organizing activity. In only two of those cases have the ALJs recommended dismissal of the complaint because of failure to prove any of the alleged violations.[30] As adverse ALJ decisions accumulate, new decisions are citing them as bases for issuing "broad and extraordinary" relief because of a "proclivity to violate the Act."[31]

Starbucks has vigorously defended itself in each case and has taken issue with each of the ALJ decisions against it, seeking review by the NLRB. As of the report date, the NLRB has issued decisions affirming and adopting in whole or in part each of the ALJ decisions it has considered.[32] Each of these matters is subject to appeal.

The purpose of the report is not to assess whether and to what extent the NLRB General Counsel's decisions to issue complaints or the findings and conclusions of the ALJs, the NLRB, or federal courts may or may not be correct. Apart from their impact on partners' perceptions, public opinion, and news reports, the legal weight of allegations, findings of fact, and conclusions of law in those materials will be determined through the administrative and judicial system, the processes and procedures of which are recognized as protecting freedom of association and collective bargaining.[33]

VIII. ONSET AND EXPANSION OF UNION ORGANIZING ACTIVITY

Starbucks was not prepared for the emergence of union organizing activity beginning in late 2021.

As of early August 2021, unions did not represent employees at any company-owned retail stores in the U.S. The notion that Starbucks employees may wish to unionize seemed so remote to the company that it had no trained and dedicated labor relations team. The self-perception was strong that Starbucks' commitment to exceeding expectations of its people and its customers translated into a common experience and basis for trust among partners across its many outlets.

On August 23, 2021, a letter to Kevin Johnson, then-Starbucks president and chief executive officer, was posted on Twitter. Signed by 49 partners identifying themselves as the "Starbucks Workers United Organizing Committee," it announced the formation of a union and called for Starbucks to sign a document they entitled "Fair Election Principles" which in some respects restated U.S. law and in other respects asked Starbucks to forfeit legal rights.[34] On August 30, Workers United filed representation petitions for three locations in the Buffalo market, and eventually filed petitions at eleven of the 21 locations within the market.[35]

In a manner common among U.S. employers, Starbucks focused on its operational and management failures in the region, failures that could and should be addressed directly and swiftly. Operators coming in from outside the market have indicated that the circumstances in Buffalo were worse than they had encountered anywhere else in Starbucks and set about to fix the problems. In

doing so, they appear to have been well-intentioned—their concern was focused on partners and operations, and they sought to fix the problems they encountered, which included resetting standards and expectations, rebuilding accountability, addressing staffing issues, reestablishing the personal presence of managers, fixing substandard facilities, and reengaging and training employees.

The special challenge was that, despite good intentions and the unsurprising focus on fixing operational issues, the presence of the union created a compliance framework to which the operators were not accustomed. Although internal and external counsel and two employees in other roles with some labor relations experience joined the dozens of operators in the region, people had no understanding of who specifically was calling the shots.

In the absence of strong and clear governance regarding compliance with new and unique boundaries limiting discretion, the risk of stepping over those boundaries can be subordinated to the risk of failing to move quickly to accomplish desired changes, particularly where there is an acute focus on fixing major problems. In Buffalo, accomplishing operational change may have taken priority over careful respect for rights and limitations that were not fully understood by teams unaccustomed to operating in that kind of constrained environment.

From 11 petitions in the Buffalo market, Workers United was certified as the bargaining representative of partners at eight locations.[36] The activity also resulted in hundreds of unfair labor practice allegations contained in more than 30 charges filed with the NLRB and consolidated into a complaint initiated by its General Counsel. The ALJ found numerous violations of U.S. labor law protections. This matter is still subject to ongoing litigation, but the possibility remains that the Board will affirm ALJ findings that Starbucks violated the NLRA.[37]

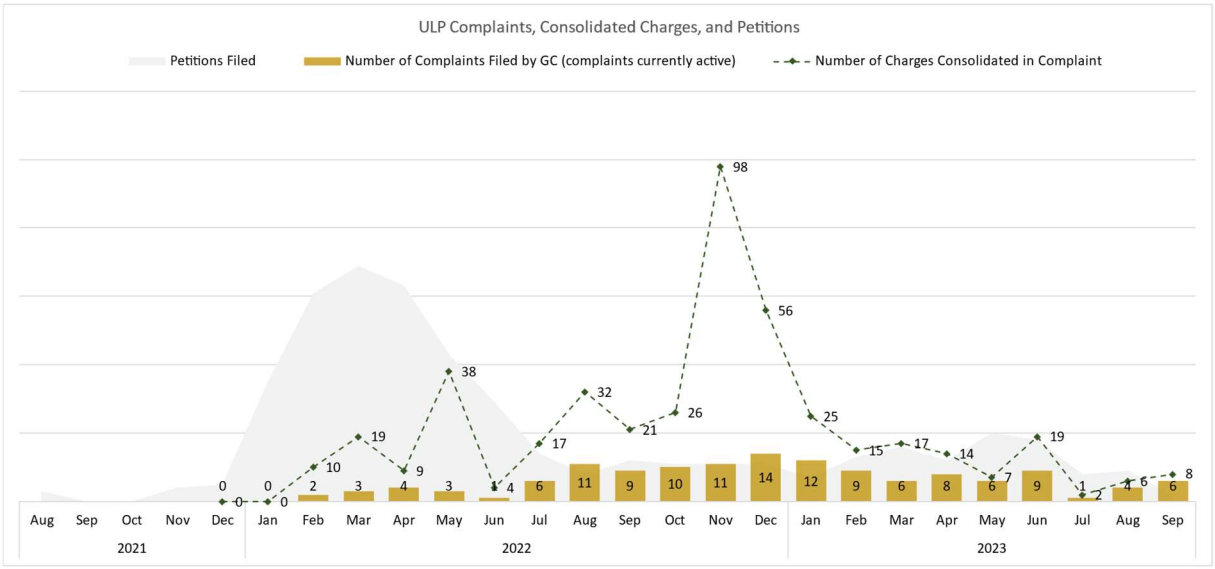
Starbucks was not prepared for the emergence of union activity in Buffalo and does not appear to have anticipated the wave of organizing that was about to follow. At least some within Starbucks viewed Buffalo as isolated activity in a union-friendly region, a view that soon proved to be incorrect. Between mid-November and the end of 2021, new petitions were filed in Buffalo, Arizona, Massachusetts, Washington, Tennessee, and Colorado. In the first three months of 2022, about 165 new petitions were filed. By June, the total petitions filed had exceeded 310.

The rapid acceleration of organizing activity in such a short period of time appears to be unprecedented, and, because Starbucks had not yet had to deal with unionization of its workforce, it did not have the internal capacity to manage the volume effectively. Unsurprisingly, governance was weakened. Starbucks was able to leverage existing communications channels, utilize outside resources, and take other steps to react to the unprecedented developments. But basic fundamentals—such as consistent on-the-ground presence and support, properly bespoke training, effective coordination of activities, and development throughout the ranks of a full appreciation of guardrails and rules of engagement—were not as developed as they needed to be.

The consequences of this were significant. Stronger governance could have mitigated the missteps by ensuring the fundamentals were more effectively in place.

The chart below shows a timeline from the first Workers United petition through September 2023. Graphed on the timeline are representation petitions filed in each month (the gray-shaded area),

complaints issued by the NLRB General Counsel each month, and the number of charges that were consolidated into the complaints issued.



This chart shows that, by the time Starbucks had built its internal capacities and any outcomes of the ramped-up team may have had time to take effect, many of the activities giving rise to allegations of non-compliance likely had already occurred. Indeed, the die had already been cast in many respects.

The extent and pace of organizing activity beginning in 2021 and accelerating into 2022 required significant pre-planning and coordination. Evidence of "salts" being hired into stores, including in the Buffalo region, the consistency and content of the "dear CEO" letters and the attached principles, the consistent use of "Starbucks Workers United" to identify the organizing entities, and the deployment of organizers necessary to speak with employees in hundreds of locations all suggest careful, top-down leadership of the organizing effort.

In such situations, unions often count on employers not being prepared and making missteps. Well-trained organizers know well how to recognize and report legal violations, and in some instances can even provoke them. Through these efforts, all of which are generally within the legal rights of the union, the organizing union leverages the administrative procedures available to them to amplify multiple instances of allegations and non-compliance at a small percentage of stores and craft a narrative about the target company and its practices. Once multiple charges containing similar allegations are filed with the NLRB in various regions, the NLRB is naturally inclined to pay attention to and scrutinize the growing volume. As allegations are found to have merit and result in complaints, which is quite probable when companies are not prepared, the imprimatur of the NLRB General Counsel can attach to the allegations. The union can, in turn, use the narrative developed through the formal complaints to engage multiple stakeholders to drive publicity and pressure against the target organization.

These efforts work best when employers are not prepared and managers oblige by stepping, or appearing to step, beyond legal boundaries during organizing. By the end of June 2022, organizing was not only underway but had ripened into representation petitions at over 300 stores. Although

the number of stores constitutes a very small portion of Starbucks' overall operations, the store-level responses to organizing activity provided ample fodder for such campaign tactics. By spring 2022, press reports, reinforced by the growing volume of NLRB charges and complaints, had established a public "union-busting" narrative, and the currents contributing to the scrutiny under which Starbucks is now operating were already flowing strongly.

With a change in leadership, Starbucks took bold steps through summer 2022 to bolster trust from and reinvest in its partners but now faces legal compliance risk in connection with those efforts.

In April 2022, Howard Schultz returned as interim president and CEO of Starbucks, replacing the incumbent, Kevin Johnson. By the end of June, the incumbent general counsel and president of retail had also departed. Mr. Schultz quickly became the face of a program promoting outreach to Starbucks partners, which included a massive investment in enhanced wages and benefits.

Mr. Schultz voiced a commitment to connect with partners around the world to understand their ideas and thinking. More concretely, Starbucks declared a suspension of its share repurchasing program to fund investments in partners and stores. Driving value and exceeding customers' expectations by engaging and exceeding the expectations of the people who deliver customer service has been fundamental to the company since its founding, and it was perceived that this fundamental value had taken a back seat to "Wall Street short-termism."[38]

Efforts to address these issues included engaging partners at locations around the country. Attempting not to violate legal rules against soliciting grievances and making promises to people in the midst of organizing campaigns, the sessions focused on non-union locations.

In early May 2022, Starbucks announced $1 Billion FY2022 investments "to Uplift Starbucks partners (employees) and the Store Experience."[39] Starbucks championed these new benefits broadly and implemented them at non-union stores between June and October 2022.[40] For stores where a union had been certified or active union organizing was known, Starbucks explained that it did not believe it had discretion to make these changes without bargaining, but did reiterate that it would provide increases previously announced and comply with all applicable laws.[41]

Starbucks did not engage Workers United or other unions about providing the benefits to stores where employees had voted for representation. In response to communications from Workers United stating that it waived objections to Starbucks providing the enhanced wages and benefits to employees who had chosen representation and requesting Starbucks to do so, Starbucks stated that it was "unwilling to remove isolated [mandatory bargaining] subjects from the bargaining process."

Unions filed ULP charges, which were consolidated into a complaint by the NLRB General Counsel. At the end of September 2023, an ALJ issued a decision characterizing the new benefits as a "corporate-wide antiunion policy of explicitly conditioning eligibility for increased enhanced wages and benefits on its employees' refraining from seeking union representation for the purposes of collective bargaining" and concluding that the policy and certain statements about it violated the NLRA.[42]

The ALJ found discriminatory and retaliatory intent based primarily upon Starbucks' consistent clarification that only non-union locations were being awarded the benefits, its failure to engage

with the unions about providing the enhanced package at represented locations, and the ALJ's determination that Starbucks' stated lack of discretion regarding changes at union locations was incorrect.[43] The ALJ concluded that Starbucks' granting the increases to non-union employees but withholding them from union employees violated 8(a)(1) (prohibiting interference, coercion, or restraint) and 8(a)(3) (prohibiting discrimination).[44] The ALJ recommended a "broad" and "extraordinary" cease-and-desist order on grounds that Starbucks "has a demonstrated proclivity for violating the Act and infringe [sic] upon the statutory rights of its employees in any number of means during the course of their organizing efforts."[45] The ALJ further recommended awarding the wage and benefits increases retroactively to all employees denied the increases, to make those employees whole for any foreseeable resulting losses, and to compensate such employees for any other resulting direct or foreseeable pecuniary harms, plus interest.[46]

A week later, in early October 2023, another ALJ issued an adverse decision regarding a statement during an otherwise constructive partner engagement session. The ALJ did not find any personal intention to threaten the employee, but rather found that the context of the statement rendered it coercive under the NLRA.[47]

Both decisions are subject to challenge and subsequent review by the NLRB. The first presents potential risk of financial liability. Both present risk of final determinations that Starbucks' actions violated the protections in the NLRA.

IX. CONTINUING ENGAGEMENT WITH UNION ORGANIZING ACTIVITY: FREEDOM OF ASSOCIATION

Starbucks is effectively encouraging participation in union elections regardless of viewpoints on unionization, which is consistent with partners' right to choose freely to have a labor union represent them, or not, regarding their terms and conditions of employment.

Since the summer of 2022, the number of new petitions each month has declined markedly, and Starbucks appears to have progressed in managing engagement with union-related activity lawfully.

The inquiry found no evidence that Starbucks had, or even contemplated, any sort of "anti-union playbook" or had designs to instruct or train anyone on how to violate U.S. laws. Nor is there any suggestion that Starbucks actively sought to interfere with employees' freedom to choose unionization. It is true that Starbucks has clearly communicated its preference for a direct relationship and has encouraged employees to vote against unionization, but Starbucks has also reassured partners continually that it respects their right to choose and will respect their choice.

For example, on One.Starbucks.com, a publicly accessible website where Starbucks posts information pertaining to the ongoing organizing and related activity, Starbucks states squarely, "We're fully committed to our partners' right to unionize and will not tolerate any inappropriate behavior directed toward partners who are interested in a union." Beside that is a box entitled "The Right to a Secret Ballot," which states, "Starbucks will ensure that all partners voting in person are able to do so privately and that no one will know how a partner voted unless they choose

to share that information themselves."[48] Another page includes clear and neutral instructions about the mechanics of voting in either an in-person or a mail-in election.[49]

Other written and video materials include similar encouragements to vote, and people receive encouragement to vote when an election is pending at a unit. Preferences for "no" votes are clearly expressed in some instances, but partners are encouraged to vote no matter what their viewpoint is. This is fully consistent with U.S. law and the principles in the GHRS.

A review of employee voting behavior supports the view that Starbucks is effectively encouraging people to exercise their right to choose, regardless of whether they support or oppose unionization. Voter participation in elections has trended to more than 80% of eligible voters. As voter participation among eligible populations has increased, majority union support among voters has remained steady and units have consistently voted for union representation about 80% of the time. This data supports the inference that Starbucks effectively encourages voting regardless of one's views about unionization, which is consistent with the principle of freedom of association.[50]

ALJ decisions to date indicate that additional steps to prevent interference and coercion, and discrimination or retaliation because of lawful activities related to unions, present the most significant opportunities to strengthen compliance.

The total number of complaints and charges consolidated into those complaints has dropped considerably since the peak in 2022. This may indicate that efforts to promote legal compliance and observe appropriate safeguards are having a positive effect and may also result from the decreased number of active petitions. In at least some locations, Starbucks has strengthened on-ground support for operations, provided more bespoke management training, and tailored messages and controlled communications with employees. Such practices increase the probability of full compliance in the period leading to a union vote.

Starbucks has chosen to strike a delicate balance. On the one hand, the investigation shows consistent efforts to comply with U.S. laws in its engagement with employees during organizing campaigns. Starbucks' training materials and guidance to managers are indeed focused on compliance. On the other hand, within the context of legal compliance, Starbucks has consistently committed to communicating its preference for direct communication with partners, i.e., for non-unionized operations. Starbucks' readiness to communicate its preference creates an additional burden to provide sufficient on-ground support to reinforce messages and guidance regarding compliance and to ensure appropriate attention to boundaries and buffers between proper communications and the legal limits imposed by U.S. labor law. Despite any number of efforts to promote compliance, however, complete control in an organization as vast as Starbucks is not feasible, and people are going to make mistakes no matter how they are trained. In addition, some activities—such as employee meetings in which information is shared—may be subject to closer scrutiny in order to prompt change in existing Board law, despite efforts by the employer to ensure compliance.[51]

While recognizing indications of progress in compliance and promotion of participation in union elections, as well as challenges presented by changing political winds, two types of matters present significant areas of opportunity for Starbucks to strengthen compliance: allegedly unlawful promises and threats in manager-to-partner communications and allegedly discriminatory or

retaliatory discipline and discharge. The chart showing ULP Complaints, Consolidated Charges, and Petitions above[52] demonstrates a significant trend downward over time of the number of complaints and charges consolidated into them. Charges consolidated into complaints can contain multiple allegations of different types of behavior alleged to violate the NLRA. When assessed based upon types of allegations, approximately 40% of the cases involve conversations with store-level managers in which the managers are alleged to make unlawful promises or threats, and about 40% involve discharge and disciplinary matters arising out of inconsistent enforcement of policies.

As noted previously, charges themselves are not probative of any wrongdoing. On the other hand, complaints and litigation arise out of charges. Taking focused steps to address issues presented by cases involving manager-to-partner communications and discrimination and retaliation are likely to pay substantial dividends in the form of strengthening compliance and reducing the number of allegations of non-compliance rising to the level of NLRB and federal court litigation.

Manager-to-Partner Communications

In any union organizing campaign, an employer must turn to its management team as the primary point of engagement with employees. Every Starbucks manager at locations where petitions are filed should obtain training that promotes compliance with U.S. law. Indeed, as noted previously, there is no evidence of "anti-union" training, but clear evidence of training to promote legal compliance. Like many employers across the U.S., a key aspect of this training includes TIPSS and FOE.[53]

Starbucks' training appropriately attempts to provide examples and guidance to illustrate these points, and managers are encouraged to get help if they need it, but the general framework of TIPSS and FOE is what is likely taken away from the sessions. As common and direct as this guidance is, however, well-intentioned managers managing in a delicate environment can have difficulty navigating the nuanced boundaries between that which is lawful and appropriate and that which is not. ALJs have found that store-level managers or supervisors have stepped out of bounds in many instances.

Discipline, Discharge, and Inconsistent Application of Standards

Another opportunity relates to discharges and disciplinary actions. An analysis comparing rates of involuntary turnover in petitioned and unionized stores to those rates in all stores regardless of union activity shows no material difference. Rates generally vary between 1% and 2% month over month. Nevertheless, discipline and discharge in environments that are unionizing garner special attention, and deservedly so, because of the adverse impact on the free exercise of one's right to freedom of association that actions against union activists can have.[54]

Starbucks now has procedures in place to assess actions that may give rise to allegations of discrimination or retaliation, particularly discharges. At the same time, Starbucks has generally been a company that has supported humane application of disciplinary rules while also insisting on accountability. ALJ decisions have most typically upheld challenges to discharge and discipline based upon evidence that the level of enforcement of and accountability against standards increases after union organizing begins or appears to differ from one person to another.[55]

Starbucks should continue to manage its business effectively, which includes enforcing standards and taking appropriate disciplinary actions even during union campaigns. At the same time, the heightened scrutiny and risk of actions in that context places a premium on ensuring consistency in application of standards, looking both backward to before the onset of organizing and laterally, to ensure that persons are not being singled out for discipline. Minimizing risk may include acceding to more measured steps in progressive discipline.

X. COLLECTIVE BARGAINING

Starbucks faces challenges regarding adherence to the principle that it will accept partners' lawful choice of a collective bargaining representative and engage in good faith negotiations with a view to reaching agreements on terms and conditions of employment.

More than 350 elections have resulted in certified choices for union representation. Both Starbucks and the chosen union for these units—typically Workers United—have a duty to bargain in good faith with each other with a view to reaching agreement. They are not obligated to reach agreement, but they are obligated to meet at reasonable times and places and make genuine efforts to reach agreement.

After nearly two years since the first elections, however, Starbucks does not have any collective bargaining agreements in place in the U.S. Starbucks has made progress bargaining a first agreement with Teamsters, Local 513, which represents employees in a single location in Pittsburgh. But the experience with Workers United has been quite different.

From Starbucks' perspective, bargaining units were certified as single stores at the insistence of Workers United. In Buffalo, Starbucks sought a market-wide unit, but conceded to single-store unit votes without invoking mechanisms that would have brought bargaining to a halt for months or even years with little to no legal risk for Starbucks.[56] Starbucks declared publicly its intention to bargain in good faith with Workers United at each of the represented locations.[57]

On the other hand, despite seeking single-store units for representation purposes, Workers United has sought to bargain on a nation-wide, then market-wide basis, which Starbucks contends attempts to expand into multi-store units the single-store units for which Workers United fought successfully at the organizing stage.

Starbucks has insisted on in-person bargaining. The right to insist upon in-person bargaining has been recognized by the NLRB for decades as the most effective and efficient means to reach agreement.[58] Workers United, on the other hand, appears to insist upon the right to hybrid bargaining, through which persons attend both in-person and virtually. Starbucks has objected to this.

Starbucks asserts that it has worked diligently to staff and schedule meetings with Workers United bargaining teams for stores they represent. Starbucks has scheduled or attempted to schedule more than 200 sets of negotiations and more than 400 bargaining sessions, each related to a single store, and Starbucks representatives have been present at more than 100 negotiations since October 2022.

According to Starbucks, Workers United has not shown up for many of the sessions and has declared that no bargaining will take place unless Starbucks accepts the "reality" of hybrid participation. As of the first week of October, Starbucks had already proposed 18 sessions for the month, with no acceptance from Workers United. For the 12 months preceding the report, Workers United accepted only about 21% of the sessions proposed and arranged by Starbucks.

Workers United contends that Starbucks has engaged in superficial bargaining at sessions that have taken place, unreasonably refused to allow some persons to participate remotely with others participating in person, and refused to coordinate as requested through Workers United's President.

The debate between Starbucks and Workers United about these issues has been documented in regular written correspondence. There have been no telephone calls between the parties, however, except perhaps at a store level, and almost no substantive exchanges and discussions among the parties at the tables when they have appeared together.

The parties are litigating these issues through the NLRB. Both Starbucks and Workers United have filed multiple unfair labor practice charges against the other alleging the other's failure to bargain in good faith. No Starbucks charge against Workers United has gone or is likely to go to complaint. Workers United's charges against Starbucks, on the other hand, have gone to complaint and are now the subject of hearings before an ALJ. Starbucks will have the opportunity to present its claims against Workers United in defense of this complaint.

This circumstance presents multiple challenges for Starbucks. In the hearing, Workers United and the NLRB General Counsel have alleged that Starbucks' actions must be viewed in the context of recent findings of widespread violations. It is naïve to think that this argument will not have some weight in the judge's considerations.[59]

With each side pointing fingers, substantive dialogue will not move forward. Starbucks should redouble its efforts to change this. Meantime, the absence of a collective bargaining agreement should not interfere with the ability to find other ways pending completion of agreements to engage the legitimate representatives of partners. This issue will not resolve without Starbucks' engaging constructively with the union.

ENDNOTES

[1] The GHRS is accessible to the public at Starbucks' ESG Resource page, https://www.starbucks.com/responsibility/reporting-hub/, which contains "[a]ll of [Starbucks'] key Environmental, Social, and Governance progress and reports, one single, consolidated view." The direct link to the GHRS is https://content-prod-live.cert.starbucks.com/binary/v2/asset/137-72282.pdf. The public may also view the statement at https://stories.starbucks.com/press/2020/global-human-rights-statement/.

[2] *UN Guiding Principles on Business and Human Rights* (https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf); *OECD Guidelines for Multinational Enterprises* (https://www.oecd.org/daf/inv/mne/48004323.pdf) (The hyperlink is to the 2011 version, which was in effect at the time the statement was developed. The Guidelines were revised recently in 2023, well after the GHRS was adopted, and are now entitled *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*.); *International Bill of Rights* (https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet2Rev.1en.pdf) (this link is to a fact sheet from the UN's Office of the High Commissioner of Human Rights regarding the International Bill of Human Rights. The *International Bill of Human Rights* consists of the *Universal Declaration of Human Rights ("UDHR")*, adopted by the UN General Assembly in 1948, and the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and Cultural Rights*, two treaties adopted in 1966 by the UNGA.); *ILO Core Labor Standards* (https://www.ilo.org/declaration/lang--en/index.htm) (the link is to the *ILO Declaration of Fundamental Principles and Rights at Work* (adopted 1998, amended 2002)). The *UN Global Compact* hyperlink takes the reader back to the ESG Resources page. The *UN Global Compact* requires signatories, of which Starbucks is one, to submit periodic Communications on Progress, such as those reflected on the ESG Resources Page. The Ten Principles of the *UN Global Compact* may be found at https://unglobalcompact.org/what-is-gc/mission/principles. All of these hyperlinks were last accessed on September 25, 2023.

[3] The *Women's Empowerment Principles*, *Children's Rights and Business Principles*, and *Framework Principles on Human Rights and the Environment* are not material to this analysis.

[4] Each reference to *ILO Core Labor Standards* embeds a hyperlink to the ILO Declaration on Fundamental Principles and Rights at Work (DECLARATION).

[5] The *International Bill of Human Rights* consists of treaties adopted by the UN General Assembly. The *ILO Declaration on Fundamental Principles and Rights at Work* addresses ILO member states. *See* note 2 above.

[6] *See, e.g.*, *OECD Guidelines*, Commentary on Chapter V, para. 53 (2023).

[7] Conventions of the International Labor Organization bind member states that ratify them. *See, e.g.*, *ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)* and *ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. ILO member states have obligations by virtue of their membership to make good faith efforts to respect, promote, and realize the fundamental principles and rights at work identified in the *ILO Declaration on Fundamental Principles and Rights at Work* regardless of whether they have ratified conventions relating to those rights. Para. 2.

[8] The CFA is the primary supervisory body for assessing protection by governments of the principles of freedom of association and effective recognition of the right of collective bargaining regardless of whether they have ratified conventions relating to the principles. The CFA consists of representatives of governments, employers, and workers. Its members are not judges and do not take oaths of office. The committee endeavors to arrive at consensus conclusions and recommendations in specific cases guided by the applicable principles and the experience and expertise of the members. *Id.*, Introduction, Para. 3 & Annex Para. 14. The object of the procedure is not to blame or punish, but to engage in tripartite dialogue to promote respect for the principles with cognizance of different national realities and legal systems. *Id.*, Introduction, Para. 3. Its compilation of decisions is intended to raise awareness and guide reflections for the effective respect of the principles, not to create binding jurisprudence. *Id.*, Para. 4. Although the CFA may not distinguish between allegations leveled against governments or individuals accused of infringing freedom of association, the Committee's focus is whether the government has adequately

protected the rights at issue. *See, e.g.*, *Compilation of Decisions of the Committee on Freedom of Association, Annex I: Procedures for the Examination of Complaints Alleging Violations of Freedom of Association*, Para. 17.

[9] The *Universal Declaration of Human Rights* provides that everyone has the right to freedom of association, including the right to form and join trade unions for the protection of his interests, and that nobody may be compelled to belong to an association.[9] *UDHR*, Art. 20 and 23. The ILO has reasoned that the principle of freedom of association as set forth in its Convention 87,[9] "lays down a right [to associate] and not an obligation[,] [so] that workers … remain completely free either to make use of this right or not to do so." Edward E. Potter, *Freedom of Association, The Right to Organize And Collective Bargaining—The Impact on U.S. Laws and Practices of Ratification of ILO Conventions, No. 87 and No. 98* (Wash.: Lab. Pol'y Ass'n) (1984), *quoting* Int'l Lab. Conf., Rep. VII, 31st Sess. 88 (1947).

[10] *See* UDHR, Art. 19 and 30; ILO Constitution, Annex I. https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:P62_LIST_ENTRIE_id:2453907:NO#declaration; U.N. ILOCFA, 357th Rep., Case No. 2683, United States (2010), para. 584; *see also ILO Compilation of Decisions of the Committee on Freedom of Association* (Sixth Ed. 2018), para. 256.

[11] *See OECD Guidelines*, Part V.1.b.

[12] *Starbucks 2023 Proxy Statement*, Shareholder Proposal 8 and Board Recommendation to Proposal, pp. 81 and 82.

[13] 29 U.S.C. § 157.

[14] *Id.* § 158(c).

[15] *Id.* § 158(a)(3).

[16] *Id.* § 158(a)(1).

[17] *American Freightways Co.*, 124 NLRB 146, 147 (1959).

[18] *Id.*

[19] *See UN Declaration on Fundamental Principles and Rights at Work.*

[20] *See, e.g.*, *A Response by the International Organisation of Employers to the Human Rights Watch Report— "A Strange Case: Violations of Workers' Freedom of Association in the United States by European Multinational Corporations,"* International Labour and Social Policy Review (Special Ed. May 2011, Geneva, Switzerland) ("IOE Report"). The notion that U.S. law fails to protect against "interference" consistent with international standards appears to rest primarily upon a misreading of the work by Mr. Potter cited at note 9 *above,* which addressed technical issues that may be encountered were the U.S. to ratify Conventions No. 87 and No. 98.

[21] *See CFA Compilation of Decisions*, para. 16.

[22] *See* ILO Constitution, Preamble, and Annex I, Art I(b) and Art III(e). Originally part of the Treaty of Versailles (1919), the ILO constitution has since been amended several times and stands alone as a separate instrument. In 1944, the ILO's General Conference adopted the Declaration of Philadelphia, which has been annexed to the ILO constitution.

[23] *See, e.g.*, *CFA Compilation of Decisions*, para. 1328 ("It is important that both employers and trade unions bargain in good faith and make every effort to reach agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties"); U.N. ILOCFA, 284th Rep., Case No. 1523 (United States) (1992) (satisfactory labor relations depend primarily on the attitudes of the parties toward each other and on their mutual confidence and excessively legalistic attitude conflicts with that development). As noted above, such statements by the CFA do not reflect binding pronouncements of law and are not cited as such. Rather, they reflect tripartite consensus conclusions in particular cases to promote respect for trade union rights in law and practice.

[24] Mitigating risk of adverse human rights impacts is at the heart of the *UNGP* framework in which private enterprise has a responsibility to respect human rights. Principle 23 calls for business enterprises in all contexts to not only comply with applicable laws but to respect internationally recognized human rights and to seek ways to honor the principles of internationally human rights when faced with conflicting requirements.

[25] One.Starbucks.com, Standing Firmly Behind Our Partners' Rights and Our Commitment to Bargain in Good Faith (Published February 21, 2023) https://one.starbucks.com/get-the-facts/standing-behind-our-partners-and-our-commitment-to-bargain-in-good-faith/.

[26] *NLRB Casehandling Manual*, Part 1, Unfair Labor Practice Proceedings (July 2023), 10018.2.

[27] *NLRB Casehandling Manual*, Part 1, Unfair Labor Practice Proceedings (July 2023), 10260 ff.

[28] *Id*. at 10450.

[29] *Id.*

[30] ALJ Decision No. 13-CA-300739 (NLRB Div. of Judges Sept. 7, 2023). (Allegations of failure to accommodate transfer request of employee because of union activity not proven). ALJ Decision No. 21-CA-296716 (NLRB Div. of Judges Dec. 6, 2022) (allegation of captive audience meeting and supervisor telling employees they could not speak about union while working were not proven) (exceptions filed by General Counsel of NLRB).

[31] *See, e.g.*, ALJ Decision No. 19-CA-294579, at 39 (NLRB Div. of Judges Sept 28, 2023); ALJ Decision 10-CA-298974, at 29 (NLRB Div. of Judges Sept. 29, 2023).

[32] *See e.g.,* ALJ Decision Nos. 19–CA–289275 (NLRB Div. of Judges Nov. 3, 2022); 19–CA–289771 (June 20, 2023) (affirmed and adopted by Chairman McFerran and Members Kaplan and Wilcox); ALJ Decision Nos. 07–CA–292971 (Aug. 9, 2023); 07–CA–293916 (Aug. 9, 2023) (decision and modified order affirmed and adopted by Chairman McFerran and Members Wilcox and Prouty).

[33] *See* U.N. ILO CFA, 284th Report, Case No. 1523 (United States), para 193 (1992); U.N. ILO CFA, 256th Report, Case No. 1437 (United States), para 234 (1988).

[34] These "Dear Kevin" and later "Dear Howard" letters became a common practice for announcing the commencement of organizing activity at locations.

[35] ALJ Decision No. 03-CA-285671, at 20 (NLRB Div. of Judges Mar. 1, 2023).

[36] ***Id.***

[37] ***Id.***

[38] *Statement before Senate Committee on Health, Education, Labor, and Pensions*, March 22, 2023, p.6. Found at https://one.starbucks.com/get-the-facts/building-a-different-kind-of-company/.

[39] https://stories.starbucks.com/press/2022/starbucks-commits-one-billion-in-fy2022-investments-to-uplift-partners-employees-and-the-store-experience/.

[40] ALJ Decision No. 19-CA-294579, at 6-7 (NLRB Div. of Judges Sept. 28, 2023). *See, e.g.*, https://stories.starbucks.com/press/2022/starbucks-commits-one-billion-in-fy2022-investments-to-uplift-partners-employees-and-the-store-experience/.

[41] *Id.*

[42] *Id.* at 2.

[43] *Id.* at 25-29.

[44] *Id*. at 31.

[45] *Id.* at 39 (footnote and citations omitted).

[46] *Id.* 39-40.

[47] ALJ Decision No. 21-CA-294571, at 7-8 (NLRB Div. of Judges Oct. 6, 2023).

[48] https://one.starbucks.com/tobeapartner/.

[49] https://one.starbucks.com/yourvote/.

[50] These data are reflected in charts in Appendix II.

[51] *See, e.g.*, ALJ decisions: 03-CA-296757 (NLRB Div. of Judges Aug. 25, 2023); 31-CA-299257 (NLRB Div. of Judges, May 12, 2023); 18-CA-299560 (NLRB Div. of Judges Apr. 6, 2023). About 38 percent of complaints filed in 2022 and 26 percent in 2023 involve "captive audience" allegations. The General Counsel of the NLRB is seeking to prompt a change in Board law, which has permitted employers to hold mandatory employee meetings during paid time wherein the company representatives engage in speech concerning unions. On April 7, 2022, the NLRB General Counsel issued Memorandum GC 22-04 ("GC Memo") titled "The Right to Refrain from Captive Audience and other Mandatory Meetings." In the memo, the General Counsel asserts that prior NLRB case precedent finding such mandatory meetings lawful was wrongly decided and at odds with fundamental labor law principles. Starbucks appears to provide the notice to employees regarding meetings on company time that the General Counsel recommends, yet this remains a topic of focus for the current NLRB. This presents Starbucks with a challenge of how to continue to communicate efficiently and effectively with its partners while adapting to the new approach of the NLRB General Counsel, who may be elevating such complaints to a sympathetic Board.

[52] *See* p. 14 above.

[53] TIPSS is an acronym for prohibited behaviors: Threatening partners with harm or reprisals related to their terms and conditions of employment; Interrogation of partners regarding their or their co-workers support for unionization; Promising, directly or indirectly, any benefits or rewards for partners who avoid or abandon support for a union; Spying on or Surveillance of partners to determine their relative support for unionization; or Solicitation of workplace-related grievances and/or implicitly promising to resolve them.

FOE is an acronym for permissible behaviors. Managers may share Facts about the company, election process, or the union's track record; their Opinions of union, so long as the statement are free of threats of reprisal or promises of benefits; and their personal Examples or Experiences regarding unions.

[54] *See, e.g.*, *McKinny v. Starbucks*, 77 F.4th 391, 397 (6th Cir. 2023), *cert. filed* (U.S. Oct. 3, 2023) (No. 23-267). In *McKinney*, the Sixth Circuit found injunctive relief under 10(j) appropriate where Starbucks terminated seven partners in Memphis, six of whom were on the organizing committee, just weeks after their involvement in a media event. The Court noted that the termination had an "inherently chilling effect" on union activity. *Id*. In describing the underlying facts of the case, upon which the district court found reasonable cause to believe that Starbucks violated the NLRA in terminating the employees—a holding not challenged on appeal—the court noted that the terminated employees admitted that their actions violated company policy but testified that the company had rarely if ever enforced such violations in the past. Starbucks has filed a petition for certiorari to the U.S. Supreme Court on grounds that the Sixth Circuit's standard for granting injunctive relief is incorrect. *See, McKinny*, 77 F.4th at 397.

[55] For example, an ALJ found that a store in Ithaca, New York, violated the Act when it issued written warnings for eight partners, issued documented coachings to three employees, and terminated six employees for violations of published policies and standards. The ALJ found the discipline was unlawful because the standards and policies were either not consistently enforced or the discipline was more severe discipline for infractions that pre-dated the store's awareness of employees' organizing activities, particularly where there was no evidence in the record that Starbucks terminated any Ithaca employee prior to the organizing campaign. At a store in Overland Park, Kansas, an ALJ found that the dress code policy was enforced more strictly after the manager learned of employees' organizing efforts and the filing of petition for a union election. There, the store manager told employees he would enforce the dress code policy more strictly—and did—after employees began wearing shirts that reflected union logos. The ALJ relied on evidence that prior to the organizing activity employees regularly wore shoes, hats, and shirts with visible logos and pins that did not comply with the dress code policy without discipline.

[56] This is known as a technical refusal to bargain. Upon making a technical refusal to bargain to test the determination of a proper unit, the refusal to bargain is treated as an unfair labor practice and adjudicated accordingly. During the pendency of the proceedings, the parties have no legal duty to bargain.

[57] *Starbucks says it will negotiate with Buffalo, New York workers*, https://www.cnbc.com/2021/12/20/starbucks-says-it-will-negotiate-with-buffalo-new-york-workers-.html (Dec. 20, 2021).

[58] See, e.g., *Colony Furniture Co*., 144 NLRB 1582, 1589 (1963); *Redway Carriers*, 274 NLRB 1359 (1985); *U.S. Cold Storage Corp.*, 96 NLRB 1108, 1108 (1951), enfd. 203 F.2d 924 (5th Cir. 1953); *Twin City Concrete, Inc.*, 317

NLRB 1313, 1314 (1995); *Chemung Contracting Corp.*, 291 NLRB 773, 774 n.3 (1988); *Fountain Lodge, Inc.*, 269 NLRB 674, 674 (1984).

[59] In any event, Starbucks must run its businesses, even where it has recognized the union but does not have a collective bargaining agreement. In *Wendt Corporation*, 372 NLRB No. 135 (August 26, 2023), the NLRB deviated from precedent by holding that employers with a collective bargaining relationship its employees' representative but have not yet reached agreement for a collective bargaining agreement, may not unilaterally change employees' terms and conditions if they exercise discretion when doing so even if the actions are generally consistent in kind and degree with the past practice. *Id*. at 9. As such, Starbucks managers may be constrained from making certain discretionary decisions they deem necessary to run the business, even if they've consistently taken similar steps for years. To address that potential problem, Starbucks should endeavor to find efficient and effective ways to engage its partners' collective bargaining representatives and bargain for contracts with appropriate management rights clauses.

APPENDIX I

THOMAS M. MACKALL, LLC

Mr. Mackall is a former global executive and law firm partner with 30 years' experience including domestic and global labor relations, business and human rights, international labor standards (with a particular focus on freedom of association and effective recognition of the right of collective bargaining), corporate campaigns, human resource and labor relations policy development and implementation, Taft-Hartley multi-employer pensions, labor and employment law and litigation, and PR and communications.

Since 2018, Mr. Mackall has represented U.S. employers as a member of the Governing Body of the International Labor Organization. Located in Geneva, Switzerland, the ILO was established by the Treaty of Versailles in 1919 and is now the UN specialty organization for the world of work and the UN's only tri-partite agency (having government, employer, and worker delegates). Since its founding, the ILO has been recognized as the multilateral body responsible for establishing, promoting, and supervising international labor standards. The ILO's fundamental principles and rights at work, including freedom of association and effective recognition of the right of collective bargaining, are generally identified as "internationally recognized human rights."

Shortly after joining the Governing Body, Mr. Mackall was appointed to the ILO's Committee on Freedom of Association (CFA). Since June 2023, he has served as the Employer Vice-Chairperson of the CFA. The CFA is part of the ILO's supervisory system. It is a tri-partite committee established by the Governing Body of the ILO and is charged with receiving and hearing claims that governments have failed to protect freedom of association and collective bargaining.

Mr. Mackall also serves as a Senior Counsel to the United States Council on International Business (USCIB) and as Regional Vice President for North America for the International Organization of Employers (IOE). USCIB is the U.S. affiliate of the IOE, and the IOE represents employers' interests at the ILO. He is also the Chairperson of the Steering Committee of the Global Business Network on Forced Labor, an initiative of the ILO's Employers' Bureau.

The work undertaken in this Report is separate and independent of any relationship that Mr. Mackall may have with the ILO, IOE, or USCIB. No conclusions should in any way be attributed to the ILO, IOE, or USCIB.

From approximately 2004 to 2018, Mr. Mackall was an executive at Sodexo, a food, facilities, and other services provider, which at the time of his employment had more than 400,000 employees in approximately 80 different countries world-wide and 125,000 in North America. From 2012 to his retirement in 2018, Mr. Mackall was Vice President for Global Labor Relations. In that role, Mr. Mackall's responsibilities included leadership of North American labor relations, promoting local labor relations policies and practices globally that supported both local competitiveness and the company's global labor and human rights commitments, development of business and human rights policies and practices, and overseeing relationships with local and global labor organizations. Before assuming the global vice president role, Mr. Mackall, inter alia, led the company's response to a global corporate campaign instigated by a US-based union, served as

interim Vice President for External Communications in North America, managed national and international labor relationships, and led the integration of global labor commitments into North American labor relations policies and practices.

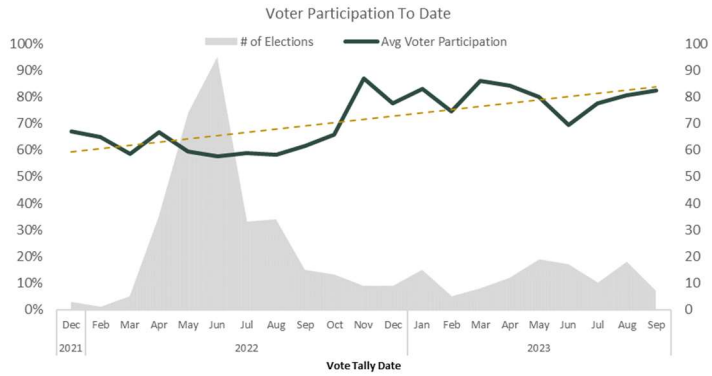
Near the end of his employment with Sodexo, Mr. Mackall was appointed as a Management Trustee to the National Retirement Fund (NRF), a Taft-Hartley Pension Fund with approximately $2B in assets sponsored by Workers United. The Board of Trustees consisted of six employer trustees and six union trustees, all of whom were officers of Workers United or one of its joint boards. Mr. Mackall continued as a Trustee for the NRF until about October 2022.

From 1990 to 2000, Mr. Mackall practiced law with two major law firms, Kirkpatrick & Lockhart (now K&L Gates) and Hunton & Williams (now Hunton Andrews Kurth). As a partner in the Washington, DC, office of Hunton & Williams, Mr. Mackall represented employers in labor and employment matters, including in federal and state courts and before the NLRB and other government agencies.

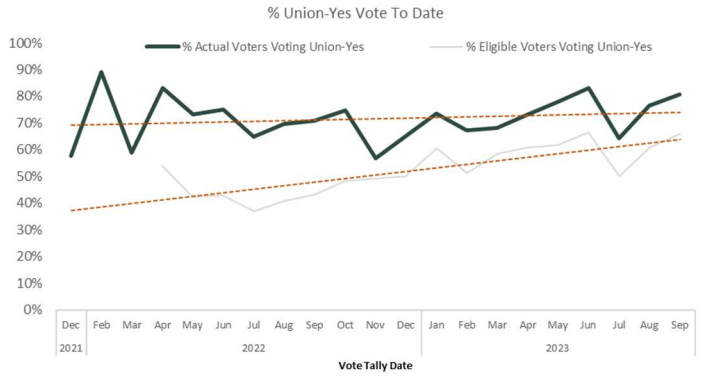
Mr. Mackall is currently a member of the Maryland, Pennsylvania, and Washington, DC, bars. He also serves on the Disciplinary Board for Member Firms on behalf of the Association of Professional Social Compliance Auditors. He previously served as Chairperson of the Maryland State Advisory Committee to the U.S. Commission on Civil Rights and the Board of Trustees for the Tahirih Justice Center, which provides access to justice for women and girls seeking asylum in the U.S. from gender-based violence in their countries of origin.

APPENDIX II

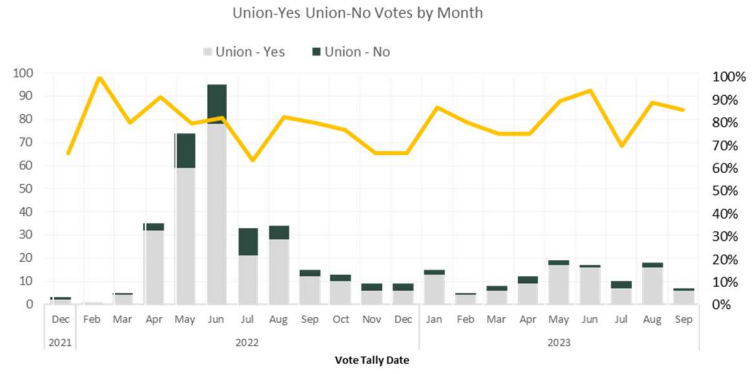
Data available through the NLRB enable compilation of petition locations, petition dates, vote dates, total eligible voters in a unit, number of yes votes, number of no votes, tally dates, and outcome certification dates. Data presented through the charts below show a) steady increases in voter participation, b) steady levels of support in elections for union representation, and c) consistent union success in elections:



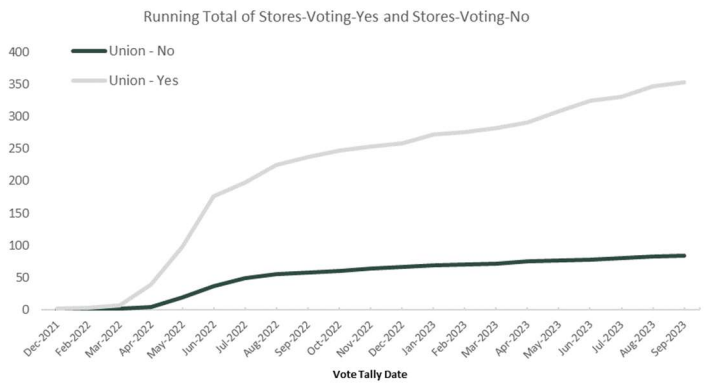
Voter participation has trended on average from just about 60% participation to a current level of more than 80% average participation.



As voter participation rates have increased, union support as a percentage of total vote has remained steady, and union support as a percentage of eligible voters has trended from below 40% to over 60%.



Voting units have continued to select union representation approximately 4 to 1.



Of the units that have voted (437), more than 80% (353) have voted for union representation.