

# Starbucks questions integrity of its union elections

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In 1935, in the midst of the depression and massive labor unrest, Congress enacted the National Labor Relations Act (NLRA) - also known as the Wagner Act, 29.U.S.C§151et seq. (Act). It is the cornerstone of United States labor law. Section 7 of the Act guarantees the right of private sector employees to organize into unions, engage in collective bargaining and take collective action such as strikes. As part of the Wagner Act, Congress created a new independent agency, the National Labor Relations Board (NLRB) to enforce this Act.

"It is well established that in conducting elections, the Board must maintain and protect the integrity and neutrality of its procedures. Accordingly, the Board, throughout its history, has zealously safeguarded the integrity of its elections against irregularity and even the appearance of irregularity." *Professional Transportation, Inc.*, 370 NLRB No. 132, \*1 (2021).

The Act gives employees the right to vote for or against a particular union in a secret-ballot election. Now Starbucks is questioning the NLRB's neutrality in conducting elections at various Starbucks stores.

## **Starbucks' complaint**

Last month, Starbucks sent a 16-page letter to the NLRB Chairman Lauren McFerran, to its General Counsel Jennifer Abruzzo, and to the NLRB Inspector General David Berry, asking the Board to suspend all mail-in ballot union elections across the country. Starbucks is claiming that the NLRB and Starbucks Workers United-SEIU colluded, committing misconduct during the voting process in Overland Park, a Kansas City-area café and in other elections in Seattle and Buffalo, New York. These elections were conducted by mail and the ballot counts were held by Zoom.

Starbucks says NLRB employees gave the Workers United-SEIU union confidential real-time information about whether and how mail ballots were received on particular dates, "thereby improperly enabling the Union to monitor the status of voting and, through the process of elimination, identify and specifically target individuals who had not yet voted."

When union reps said pro-union workers hadn't received ballots in the mail, NLRB employees prepared duplicate ballots while arranging for these same workers to vote in person at the agency's local office, without any observers being present.

These special arrangements violated Starbucks's election agreement with the union, Starbucks says, and "converted the mail-ballot only election into an impromptu mixed mail/manual election for a handful of select individuals who were hand-picked and solicited by the Union, and with the NLRB giving improper support to a single party." Significantly, Starbucks was never notified of the changes in voting arrangements and did not agree to them.

The complaint says NLRB employees then went to great lengths to conceal favors to the union. Four NLRB employees attended the ballot counting, which Starbucks and union representatives were obliged to witness via Zoom. When ballots materialized without postmarks, an NLRB employee falsely asserted that "routine Board protocol" allowed some workers to vote in-person at the agency's office. Also, two ballots were "lost" and then "found" during the ballot count.

A career NLRB agent came forward, acting as a "whistle blower" and informed Starbucks of the election irregularities. Starbucks stated in its letter to the NLRB that: "In light of these types of misconduct by NLRB personnel, we request the Board immediately suspend all Starbucks mail-ballot elections nationwide," the company expects the suspension to continue "until there has been a thorough investigation, the outcome has been made public, and safeguards to prevent future misconduct have been implemented." Starbucks also asked the NLRB to have all future union elections conducted manually and in person, as had always been the practice before the COVID-19 pandemic.

NLRB spokesperson, Kayla Blado, has publicly stated that "the Agency doesn't comment on open cases." "Those challenges should be raised in filings specific to the particular matters in question," Blado has said. "The regional staff - and, ultimately, the Board - will carefully and objectively consider any challenges raised through these established channels, which includes opportunities to seek expedited review in both representation and unfair labor practice cases."

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The pro-union group Starbucks Workers United-SEIU has asserted that the new accusations are part of the Seattle corporation's broader strategy to thwart organized labor. Of Starbucks nearly 9,000 cafes, over 200 have voted to unionize but none have been able to reach a contract.

### **NLRB elections perspective**

On a personal note, I was an NLRB Field Attorney at Region 21 of the NLRB in Los Angeles from 1976 to 1980. I was directly involved in conducting numerous secret-ballot union representation elections. During my time working at the NLRB, there was an unwritten rule that if you messed up an election, you were expected to submit your letter of resignation. I even had nightmares about coming late to an election. Consequently, we were all extremely diligent in carrying out our duties. Whichever party lost the election, one of the favorite objections by the losing party was "Board Agent misconduct."

However, in all my time at the Board and in my 42 years as an attorney, thereafter, I have never heard of an allegation of "collusion" between a Board Agent and the union. These allegations of collusion are shocking and totally unprecedented. Of course, we never had mail-in elections or ballot counting via Zoom. Rather, all ballots were cast in person in a curtained voting booth, in secret. Both employer and union representatives were present throughout the voting process and during the ballot count, and had the right to challenge a ballot if there was a question about the employee's eligibility to vote. Board Agents were always completely neutral during the election process, which was totally transparent.

According to Management side attorney, John Golper, of counsel at Ballard, Rosenberg, Golper and Savitt, LLP: "I pray that those allegations aren't true, but if they are, the future of NLRB elections will be pretty scary."

Should the Starbucks allegations of collusion with the Union be found to be valid, the public's confidence in the NLRB's impartiality will be irreparably damaged.

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