

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

July 8, 2023

To: Jennifer Abruzzo  
General Counsel

From: David Berry  
Inspector General

A handwritten signature in black ink, appearing to read "D. Berry", is written over the printed name of David Berry.

Subject: Report of Investigation – OIG-I-569

This memorandum addresses an investigation conducted by the Office of Inspector General (OIG) involving a Region 14 mail ballot election. The investigation was initiated after the OIG received a certain number of Hotline complaints regarding the conduct of the election.

On February 2, 2022, a petition was filed in Region 14 (14-RC-289926) by the Chicago & Midwest Regional Joint Board – Workers Union/SEIU (Petitioner) involving Starbucks Corporation (Employer). Pursuant to a stipulated election agreement, a mail ballot election was held on March 16, 2022. Following the election, the Employer filed 17 objections. The objections raised a number of allegations as to whether the Region 14 personnel engaged in “misconduct” while conducting the election. As required by the NLRB’s case processing procedures regarding objections that allege Board agent misconduct, the matter was transferred to another Region, in this instance Region 29. The Region 29 Director then made determinations regarding certain objections and initiated an administrative investigative process by way of a hearing to address the remaining objections. On February 24, 2023, the hearing officer issued a report with recommendations.

The nature of the information provided through the OIG’s Hotline generally mirrored the information that formed the basis for the Employer’s objections, but also included allegations that documents may have been removed from the Region’s case file. While the OIG has oversight for all of the NLRB’s functions, that oversight does not extend to making determinations regarding the merits of objections in representation matters. In representation matters, those decisions are within the purview of the Regional Director and the Board. Therefore, our focus for this investigation was not whether the conduct of the Region 14 personnel was “misconduct” as alleged in the Employer’s objections, but rather whether the case record was complete and whether the management of the election was appropriate, negligent, or gross mismanagement. We express no opinion on the merits of the Employer’s objections.

With regard to the determination of whether the case record was complete, we determined that the NxGen case file contained the appropriate record of the e-mail communication between the parties and Region 14 personnel. We also determined that there were no deletions of relevant documents from the case file, but not all case-related records were

timely uploaded to the case file to allow for proper supervision. Based on our review of case notes and our experience in reviewing case files, we determined that the notes were appropriate to the circumstances. We observed, from our review of e-mail messages, that certain telephonic communication between the Union representative and the [REDACTED] was not documented in the case file. That information, however, was documented in a case log entry by the Field Examiner and in an e-mail message between the Field Examiner and the [REDACTED]. The case file also did not contain a complete record of when duplicate ballots were mailed. We also determined, however, that the case file did not contain a record of the communication between the Regional Director and Regional personnel. As a result, the case file did not document the Regional Director's determinations regarding the Employer's request for an extension of time or the Regional Director's concerns and involvement in the election.

We determined that the Region 14 Director mismanaged the election. We also determined that the mismanagement could have a significant adverse impact on the NLRB in performing its statutory mission. We therefore find that the mismanagement is appropriately characterized as "gross mismanagement." We also determined that the Regional Director lacked the appropriate candor when interviewed during our investigation.

## FACTS

1. On March 1, 2022, the Employer filed the voter list with the names of 18 individuals. The Employer's representative served the Petitioner's representative, the Regional Director, and the Field Examiner. (IE 1)
2. On March 1, 2022, after receiving the Employer's voter list, the Petitioner's representative notified the Employer's representative and the Region that two names were missing from the voter list. (IE 2)
3. On March 2, 2022, the Employer filed an amended voter list with the Region, adding two individuals who were left off the original list bringing the total number of eligible voters to 20. The amended voter list was served on the Petitioner's representative, the Regional Director, and the Field Examiner. (IE 3)
4. The [REDACTED] did not receive either the original or amended list directly from the Employer's representative. Also, there are no e-mail records showing the Regional Director or the Field Examiner forwarded either list to the [REDACTED]. The [REDACTED] did, however, receive NxGen system notification e-mails that each list was filed. (IE 4)
5. The election notice and agreement required that the ballots be mailed on March 16, 2022, and that the ballots be counted on April 8, 2022. Both documents also stated that the voters are to contact the Region if they do not receive a ballot and believe that they are eligible to vote. The election agreement set March 23, 2022, as the date that individuals "should" contact the Region to request duplicate ballots. (IE 5)
6. Between March 23, 2022 and March 31, 2022, the Petitioner's representative had repeated communications with Regional personnel regarding individuals who had not received ballots. The Petitioner's representative requested that duplicate ballots be provided. The names provided by the Petitioner's representative included the names of the two individuals who were left off the

original voter list. In the communication, Regional personnel did not inform the Petitioner's representative that the individuals needed to contact the Region themselves. The communication by Regional personnel confirmed that the Region would send the duplicate ballots as requested by the Petitioner's representative. (IE 1 and 6)

7. On March 23, 2022, the Field Examiner e-mailed the [REDACTED] regarding the Petitioner's concern that individuals had not received ballots. The message includes a reference to "7 of the 18 voters." This was an apparent reference to the number of individuals listed on the original voter list, which was 18. (IE 1, and 7)

8. Our review of the case file did not find documentation that Regional personnel reviewed the voter list to verify that the [REDACTED] mailed the ballots to the individuals on the amended list.

9. According to the case file log entry, on March 31, 2022, the Petitioner's representative and the Field Examiner had a telephone conversation during which the Petitioner's representative stated that three individuals had not received ballots. The Petitioner's representative requested that the individuals be permitted to pick up ballots at the Regional Office, fill them out, and hand them in because the count was the following Friday. The Petitioner's representative stated that Region 19 allowed that in the past. The Field Examiner told the Petitioner's representative that she would call him back. (IE 8)

10. According to the case file log entry, the Petitioner's representative and the Field Examiner had a telephone call on April 1, 2022. During that call, the Petitioner's representative was frustrated because the [REDACTED] told him that she had not sent "duplicate" ballots to two individuals that were previously identified as not receiving a ballot because those individuals were not on the original voter list. The Petitioner's representative also explained that he told the [REDACTED] that one individual on the voter list did not have an apartment number and he provided the number to the [REDACTED] and asked that a duplicate ballot be sent. The entry also states "I told him that someone would be in the office next Monday, Wednesday, Thursday, and Friday and that the individuals could call me and" with no additional text. (IE 8)

11. On April 1, 2022, at 12:15 p.m., the Field Examiner sent an e-mail message to the Petitioner's representative telling him that the identified individuals could call her, and that she will assist them in scheduling a time to visit the Region's office and pick up a ballot. (IE 9)

12. According to an e-mail message, dated April 1, 2022, at 3:03 p.m., between the Field Examiner and the [REDACTED], the [REDACTED] had a conversation with the Petitioner's representative "yesterday," and the [REDACTED] is sending out three duplicate ballots "today." The message also states that the Field Examiner spoke with the Supervisory Field Examiner, and they agreed that the individuals could call to schedule an appointment next week to pick up a duplicate ballot and return it. The Field Examiner asked the [REDACTED] to place a duplicate ballot in the mail and prepare a second duplicate ballot to be left at the Region's office so that they could meet with the individuals the following week. The information regarding a conversation during which the Supervisory Field Examiner approved allowing individuals to pick up ballots was not otherwise documented with a case file log entry or memorandum. (IE 10)

13. The e-mail message between the Field Examiner and the [REDACTED] and the case file log entry together show that it was not until March 31, 2022, that the [REDACTED] realized that two of the individuals reported by the Petitioner's representative as not receiving ballots were the same two individuals who were left off the original voter list. (IE 8 and 10)

14. When interviewed, the [REDACTED] confirmed that she had the conversation with the Petitioner's representative and that it was not until that conversation that she realized the error in mailing the ballots. (IE 11)

15. On April 1, 2022, at 6:41 p.m., the [REDACTED] sent an e-mail message to the Petitioner's and Employer's representatives stating that she made an "inadvertent fumble" by using the wrong voter list to mail the ballots, and that she corrected the error by sending out ballots to those individuals who were added to the amended voter list. (IE 12)

16. The [REDACTED] e-mail message, to the Petitioner's and Employer's representatives, provided no information regarding any additional efforts by the Region to make ballots available to individuals at the Region's office. (IE 12)

17. The [REDACTED] did not scan the mail ballot mailing certification into the case file until April 1, 2022, at 8:19 p.m. (NxGen System servers record Eastern time). The [REDACTED] [REDACTED] dated that certification "March 16, 2022" and noted that 18 ballots were mailed. There are handwritten notes after the signature stating that there was an error in the original mailing and that, on April 1, 2022, the error was corrected. (IE 13)

18. According to the [REDACTED], she sent the e-mail message about the mistake with the ballots when she was working late, and she was the only one in the office; she also stated that no one in the Region reviewed the message before she sent it; and that she sent the message as soon she found out about the mistake. She copied the Field Examiner on the message, but she did not know why she did not copy the Supervisory Field Examiner. (IE 11)

19. On April 1, 2022, at 8:43 p.m., the [REDACTED] responded to a 7:22 p.m. e-mail message from the Petitioner's representative that duplicate ballots had been mailed to all three individuals and they prepared a second set of duplicate ballots for any individual who comes to the office. (IE 14)

20. On Monday, April 4, 2022, at 9:55 a.m., the Employer's representative sent an e-mail message to the [REDACTED] asking when the "additional" ballots were sent. (IE 15)

21. On April 4, 2022, at 7:02 p.m., the [REDACTED] responded to the Employer's representative that the duplicate ballots were mailed the "day of the email, April 1, 2022." The e-mail message did not contain any information that duplicate ballots were also being made available at the Regional Office or how the individuals were told that ballots were available at the Regional Office. (IE 15)

22. On April 5, 2022, at 8:41 a.m., the Employer's representative sent an e-mail message to Regional personnel and the Petitioner's representative expressing concern regarding the time available for the individuals to vote and requesting that the count be delayed. (IE 15)

23. On April 5, 2022, at 2:47 p.m., the Petitioner's representative sent an e-mail message stating that the Petitioner did not agree to an extension, that it was confident that those individuals who wished to vote would be able to do so, and that there was sufficient public interest that delaying the vote would be inappropriate. The e-mail message did not state any information regarding the fact that the Petitioner was aware that individuals could also obtain ballots at the Region's office to vote in time to be counted. (IE 16)

24. On April 5, 2022, at 4:53 p.m., the Supervisory Field Examiner denied the Employer's representative's request to delay the count in an e-mail response to the Employer's and Petitioner's representatives stating that "[w]hile we understand the concerns raised by the Employer, and noting the Union's opposition, we do not believe that there is any basis to postpone the count at this time." The e-mail message did not state any information regarding the fact that the Region made duplicate ballots available at the Regional Office to facilitate individuals voting in time to be counted. (IE 17)

25. When interviewed, the Supervisory Field Examiner stated the following: (IE 18)

a. She explained the representation election process and that the Region always acts as a neutral; (Pages 9-12)

b. She did not review the e-mail message from the [REDACTED] before it was sent, and she was not aware of the problem with the mailing of the ballots prior to that e-mail; (Pages 16 and 44)

c. Typically, the Region would not share information with the parties regarding who has or has not voted. When a party contacts the Region and asks for a duplicate ballot, the Region would normally tell the party to have the individual contact the Region's office; (Pages 19-20)

d. She recommended that the response to the Employer's representative's request for an extension include information regarding the fact that ballots were being made available at the Region's office to facilitate individuals being able to vote in time to be counted. She also stated she was instructed by the Regional Director not to include that information in the response. The e-mail message that she sent was based on direction that she received from the Regional Director; (Pages 25-28)

e. She documented her meeting with Regional Director in contemporaneous notes; (Pages 26-27)

f. While she did not think that the Region did anything wrong regarding providing ballots in the office and allowing individuals to vote, she did not feel completely comfortable with not disclosing all the information to the Employer's representative; and (Pages 41-42)

g. She cannot control what individuals do with ballots, and she uses internal case memorandums to document things such as what occurred in this matter. (Page 35)

26. Following the interview, the Supervisory Field Examiner provided a scanned copy of her notes made during the meeting with the Regional Director. The case file did not contain a copy of the notes. (IE 19)

27. When interviewed the Regional Director provided the following information: (IE 20)

a. As the Regional Director she is responsible for general oversight and making ultimate decisions in both representation and unfair labor practice matters; (Page 6)

b. Prior to being appointed as the Region 14 Director, she was a Field Attorney in Regions 15 and 16, and a Deputy Regional Attorney in Region 15. She was appointed the Region 14 Director in January 2022; (Pages 5-6)

c. She did not review the April 1, 2022, e-mail message from the [REDACTED] prior to the message being sent; (Page 7)

d. She was not aware of the error regarding mailing the ballots prior to the April 1, 2022, e-mail message being sent; (Page 7)

e. She was not aware of communication between Region 14 personnel and the Petitioner's representative on April 1, 2022, at the time that the arrangements were being made for individuals to be mailed duplicate ballots and that additional duplicate ballots would be available in the Regional Office; (Pages 7-9)

f. When asked if she saw the e-mail denying the Employer's request that the count be delayed, before it went out, she responded "I did not[;]" (Pages 9-10)

g. When asked if she had any conversations with the Supervisory Field Examiner before the e-mail was sent, she responded "I did not[;]" (Page 10)

h. When asked if the e-mail message caused her any concerns in that it was not complete, she responded "[a]gain, I was not aware of it at the time[;]" (Page 10)

i. When told that the Supervisory Field Examiner stated that there were contemporaneous notes that she told the Supervisory Field Examiner what to put in the e-mail responding to the Employer's request to extend the period of time for individuals to vote, she stated "I don't remember doing that, but I would have no basis – I really don't. Now I'm startled. I would have no basis to think she – her notes would be incorrect. So sorry[;]" (Page 10).

j. She acknowledged that she thought the notes were correct, but that she did not think she saw the e-mail message; (Pages 10-11)

k. When told that in addition to the notes, the Supervisory Field Examiner spoke to the Field Examiner and discussed the direction that she received from the Regional Director, she responded that she did not see the e-mail message and that with regard to the meeting, she responded "I – not specifically at that – at that time. I know I've talked with them about this generally. I can't put it in a time line[;]" (Page 11).

l. When asked why the Employer's representative was not provided the same information that, to the extent that individuals do not have sufficient time to mail the ballot, they can call the Region and make arrangements to pick up a ballot, she stated that she did not know if she could answer that question and that generally, at the time, the thought was that "any information we give them could disclose the identity of any voters, because they were the voters who were not included on the list . . ." and that the concern involved the secrecy of the ballot not being compromised; (Page 14)

m. When asked why the Petitioner was provided information that was not provided to the Employer, she explained that it was to protect the integrity of the ballots and avoid disclosing who had not voted; that the Employer's representative did not ask specific questions; by the time that they responded the omitted individuals had already voted so there was no need to extend the time but they could not explain that the Region had those ballots; and the timing was too tight; and (15-27)

n. With regard to creating an appearance that the Region was not neutral during the election, she stated if the Employer had called, they would have received the same information as the Petitioner, but the Employer's concern was only about two individuals involved in using the wrong list. That concern was "assuaged, but we just couldn't tell them exactly how because we would be letting them know that those people voted, and we really can't do that." As such, it was not a neutrality issue. (Pages 27-28)

28. Following the interviews, we reviewed the Regional Director's Outlook records and found an e-mail message and Teams Chat messages that were received or sent by the Regional Director regarding the response to the Employer on April 5, 2022. These records were not in the case file: (IE 21)

a. E-mail:

i. At 2:18 p.m., the Supervisory Field Examiner sent the Regional Director an e-mail message explaining that she found a Board case that stated it was not objectionable that an employee themselves pick up a mail ballot packet with proper identification; and

ii. At 3:23 p.m, the Regional Director responded – "Oh I am very happy – thank you so much!!!! Ahhh, phew....I don't suppose you can find me a case so quickly about the other part of the equation...???? Hey, maybe I can get lucky!"

b. Teams Chat:

i. At 4:44 p.m., from the Supervisory Field Examiner – "Did you want me to copy you on my email response to the parties regarding the request to delay the mail ballot count[:]"

ii. At 4:49 p.m., from the Regional Director – "[N]ot needed unless you want me to see it first[:]"

iii. At 4:50 p.m., from the Supervisory Field Examiner – “I was planning to just say, ‘While we understand the concerns raised by the Employer, we do not believe that there is any basis to postpone the count at this time.’ And leave it at that. Sound good[;]” and

iv. At 4:51 p.m., from the Regional Director – “[S]ounds good to me – may be useful to add [sic] and noting the U’s opposition...?”

29. In a follow-up interview, the Supervisory Field Examiner stated: (IE 22)

a. She could not recall when the meeting took place, but that on the April 4<sup>th</sup> and 5<sup>th</sup> she had discussions with the Regional Director regarding whether individuals could pick up ballots;

b. That as a result of the Regional Director’s concern regarding that practice, she contacted other Regions and was made aware of a case that seemed to support the practice; and

c. She provided the case to the Regional Director as an e-mail attachment in a message on April 5, 2022.

30. During a follow-up interview, the Regional Director provided the following information: (IE 23) (Note: The interview transcript begins at page 35, as the court reporting service considered this a continuation of the proceedings.)

a. From pages 36 to 53, the Regional Director read a statement into the record and provided additional information regarding her first interview;

b. She stated that the Supervisory Field Examiner’s notes of their meeting were not in the case file, and that she could not review the notes. She also stated her disapproval of a “shadow” file. Otherwise, she did not have concerns regarding the completeness of the case file; (Pages 38 and 53-55)

c. She stated that in response to the Employer’s e-mail message about whether to extend the election, she told the Supervisory Field Examiner, “that while we understood their concerns, we did not believe it was necessary to extend the date of the election.” The extension was not necessary because they knew the individuals voted, but it was not prudent to disclose that information because of the secrecy of the ballot; (Pages 43-44)

d. The Petitioner had been informed of the “in-person procedure,” but not whether the votes were received; (Page 44)

e. The fact that some individuals did not vote by mail would be apparent at the tally because of the absence of the postmark; (Page 45)

f. She had a long ranging conversation with the Supervisory Field Examiner about the election, about things that she did not know up to and including communicating with the Employer, but she never saw and has no recollection of seeing that specific e-mail that the Supervisory Field Examiner sent out; (Pages 56-57)

g. She probably “generally” told the Supervisory Field Examiner what to say in the e-mail. The Supervisory Field Examiner read to her what they asked which was “Can we extend it[,]” and she responded that “[w]e need to respond to what they’re asking and be very specific and say ‘No,’ because if we add anything, we’re in danger of disclosing who has voted, so, you know . . .;” (Page 57)

h. When asked if she reviewed the text of the e-mail and if she received a draft, she responded “[n]o, no, not that I remember. I mean, I clearly don’t remember that, if I did[;]” (Page 57)

i. When shown a message that was recovered from her Outlook files, with the draft text for the response to the Employer’s representative request to extend the time for the count, she responded “No. No. I didn’t – I don’t – I didn’t recall that e-mail – that e-mail, which is what you asked me about[;]” (Pages 69-70)

j. In response to pointing out that she was asked if she recalled reviewing the text of the e-mail, and she said that she did not – she responded “[w]ell, I thought you meant that actual e-mail, and I do not recall seeing that e-mail prior to it being sent out, or after[;]” (Page 70)

k. She did not recall responding to the Supervisory Field Examiner with additional text to be added to the response to the Employer’s request; (Page 70)

l. Her responses during the first interview were due to the way the questions were asked and she wanted to fix that by “talking . . . today.” She definitely remembers having the discussions, but they were wide-ranging – “[s]o it wasn’t just a finite, you know, conversation about this e-mail that I -- you know, that I had not seen. I didn’t see[;]” (Page 72)

m. When asked during the first interview, she did not realize that was the e-mail that was the result of this discussion, she did not put it into context because she honestly did not remember this e-mail or what specifically it referred to; (Pages 70-73)

n. She could not explain why the messages documenting her communication regarding the text of the Region’s response were not in the case file other than she assumed that her subordinate staff maintain the files, but she has no process in place to ensure that her records are included in the files; and (Pages 76 and 80-81)

o. When asked why, if the problem with the ballots was apparent due to the lack of a postmark, they did not disclose that, to the extent that individuals wanted to vote, the Region was allowing them to vote at the office, she responded again that the Employer did not ask that specific questions; they were responding to what was asked; and to provide additional information would have disclosed information about who voted. (Pages 81-83)

30. During the interview, the Regional Director was asked questions regarding deletions of messages. Based on her responses we followed up with the NLRB’s E-Litigation Branch and the Office of the Chief Information Officer. We then determined that the deleted messages between the Regional Director and the Supervisory Field Examiner were from the Teams “chat” application and were automatically deleted and archived in the email PST file. (IE 21 and 23 pages 75-76)

31. Based on information in the objections hearing transcript: (IE 24)

a. At the count, the Employer's representative made challenges to the ballots of the two individuals based upon their understanding of the situation involving the mailing of the ballots to the two individuals who were not on the first voter list; and

b. Regional personnel responded that per Board protocol they made arrangements to allow those individuals to vote, but the Employer's representative was not told specifics of the protocol or arrangements.

32. Except as noted above with regard to the Regional Director's messages, our review of e-mail messages and the case file found that case file appeared to be generally complete. We observed that there were appropriate case logs, but those logs did not document when duplicate ballots were mailed or telephone communication between the [REDACTED] and the Petitioner's representative that occurred on March 31, 2022. The conversation was documented in an e-mail between the Field Examiner and the [REDACTED]. Our review of the history of the NxGen system's logs found that no relevant documents were removed from the case file. Also, as noted above, we observed that the certification that the ballots were mailed was not uploaded to the case file until after the error was discovered. (IE 25)

## ANALYSIS

### *Gross Mismanagement*

Gross mismanagement must be more than mere inadvertence or negligence. See Ward v. Merit Sys. Protection Bd., 981 F.2d 521, 525 (Fed. Cir. 1992); see also Nafus v. Department of Army, 57 M.S.P.R. 386, 395 (1993) ("[G]ross mismanagement does not include management decisions which are merely debatable, nor does it mean action or inaction which constitutes simple negligence or wrongdoing.... Gross mismanagement means a management action or inaction which creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission."). See also, Czarkowski v. Department of the Navy, 87 M.S.P.R. 107, ¶ 12 (2000) (holding that gross mismanagement "is a decision that creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission."). Likewise, it is more than de minimis wrongdoing and does not include management decisions that are merely debatable. White v. Department of the Air Force, 95 M.S.P.R. 1, ¶ 29 (2003), *aff'd*, 391 F.3d 1377 (Fed. Cir. 2004). When reviewing a matter, however, the test is an objective standard – could a disinterested observer with knowledge of the essential facts reasonably conclude that the Government's action evidence gross mismanagement. See, Wood v. Department of Defense, 100 M.S.P.R. 133, ¶ 11 (2005)

The Agency has two statutory missions, one of which is to conduct neutral representation elections. The Agency assigns responsibility for those elections to Regional Directors who have jurisdiction for specific geographical locations. If a Director does not manage the Region's elections in an appropriate manner, the mission of the Agency could be adversely impacted. Not only would the specific individuals who are voting, the petitioner, and employer be affected by the mismanagement in that particular election, but depending on the circumstances, the entirety

of the Agency's election process could suffer negative reputational consequences – as in the case of a widely publicized election involving a nation-wide employer. If the neutrality of the Agency elections process is significantly and legitimately questioned, the Agency is at risk of not meeting its statutory mission.

For this matter, after the election agreement was signed, the remainder of the election process through to the count was mismanaged:

- On March 23, 2022, the *no later date* that individuals should request a duplicate ballot if needed, Regional personnel received information that caused them to believe that 7 of 18 individuals had not received ballots. Although, as discussed below, the Region should not send duplicate ballots at the request of the Petitioner or Employer, the information provided by the Petitioner's representative put the Region on notice that there was a problem with the mailing of ballots. In fact, the e-mail message from the Field Examiner to the ██████████ expressed some concern regarding the reported number of individuals who did not receive a ballot. Having received that information, the Casehandling Manual, at section 11336.4, seems to require some level of inquiry and taking action that is "warranted" – for example, do the "office records" show that a prospective voter was sent a ballot kit, did the voter move, or was the ballot spoiled. Despite the fact that the number of individuals who were reported as not receiving ballots was significant as compared to the number that they mistakenly understood at the time to be eligible voters, there is no record that Regional personnel attempted to identify what occurred with the ballots.

The Casehandling Manual, at section 11336.4, also states that "[i]f the prospective voter, from the office records, has never been sent a mail kit, a duplicate should be sent immediately, the name inserted on a supplemental list, and one of a series of 'key' numbers given." The ██████████ made the determination that two of the seven individuals did not receive a ballot because they were not on the voter list. The ██████████, however, did not address the issue by following the related Casehandling Manual provisions or alerting anyone in the Region. Also, as explained below, requests for duplicate ballots should come from the individual voter. Nevertheless, the Field Examiner informed the Petitioner's representative that duplicate ballots would be mailed. ██████████ did not send duplicate ballots to the two individuals that she believed were not on the voter list. The ██████████ also did not communicate that information to anyone in the Region. Doing nothing regarding those individuals was not appropriate.

It was not until March 31, 2022, while speaking to the Petitioner's representative, that the ██████████ appears to have conducted an adequate review of the "office records" and realized that the ballots should be mailed. This shows that, had an adequate inquiry or review of the "office records" been conducted on March 23, 2022, it would have quickly identified that two of the individuals reported as needing a duplicate ballots were not on the original voter list but were on the amended voter list. The review would have also identified that the certification that the ballots were mailed was also not in the file. With that information the Region would have realized that there was a problem. The

Region then would have needed to determine appropriate remedial action. None of this happened.

- The Region engaged in communication with the Petitioner regarding individuals who had not received ballots and told the Petitioner that the individuals would be sent duplicate ballots. The communication with the Petitioner’s representative confirmed the status of individual ballots – a situation that is normally avoided because it violates the secrecy of the election.

The Casehandling Manual, at section 11336.4, addresses who should contact the Region regarding not receiving a voter kit or needing a duplicate. That section states what to do regarding “[a]ny contacts from *prospective voters* who report they have not received a kit should be given the action warrant.” (Emphasis added.) The standard practice, as confirmed by the Supervisory Field Examiner, is that a Region does not send duplicate ballots at the request of a party, but rather the party is instructed to ask the individual to contact the Region. Also, both the election notice and agreement state that it is the voter who is to contact the Region and request a duplicate ballot. Our point is not that we determined that it was objectionable conduct, but rather had the Casehandling Manual guidance, the standard practice, the provision of the election notice, or the election agreement been followed, the Region would have been in communication with the individuals and would have been in a position to determine the likely cause of the problem - such as verifying the address and mailing a duplicate ballot or telling the individual that they were not on the list which, in turn, would have resulted in additional inquiry to resolve the problem such as realizing that they used or were reviewing the wrong voter list;

- The Region relied on the Petitioner’s representative to communicate with the affected individuals regarding the ability to pick up a duplicate ballot in person so that they could vote in time. The Petitioner’s representative should not be involved in the mechanics of conducting the election. By involving the Petitioner’s representative in the corrective actions, the Region created the situation in which the Petitioner was provided with information regarding the status of ballots. Overall, the Petitioner’s representative’s involvement in the election process appears to be more significant than would normally be appropriate. It was the Petitioner’s representative who was following up to make sure duplicate ballots were mailed; who assisted in the inquiry of why two individuals who were added to the amended list did not receive ballots; and who suggested the remedy in person voting because it was a practice used in Region 19. Those are all actions that we would expect to be completed by Regional supervisory and management personnel;
- The Region lacked candor when communicating with the Employer’s representative. A lack of candor is not only misstatements of factual information, but also includes knowingly incomplete statements. (See below.) The e-mail message notifying the Employer’s representative of the error with the ballot mailing did not state that individuals could pick up duplicate ballots. The email message stated that the error was “corrected” by sending ballots to the voters who were added to the list, but the e-mail message did not state that anyone who needed a ballot could also pick one up at the Region’s office. When asked by the Employer’s representative when the ballots were

mailed, the response was only that the ballots were mailed on the same day as the e-mail message notifying the parties of the mailing error. There was nothing in the reply regarding that duplicate ballots would also be made available to the individuals for pick up in the Region's office; therefore, there was no basis to trigger a question regarding that process. When the Petitioner's representative raised issues regarding the time remaining for the ballot return, they were told that the duplicate ballots would also be made available to the individuals at the Region's office, the same information could have been provided to Employer's representative without disclosing that the ballots had already been received;

- The Regional Director failed to correct the lack of candor:
  - The Regional Director stated that the Region addressed the question asked by the Employer's representative and that the Employer's representative did not ask about picking up ballots. That assertion fails to consider that the Employer was not provided all necessary information in the first instance. The obvious purpose of the Employer's representative's question was to determine whether the individuals would receive the ballots with sufficient time to vote. The complete response should have included information that the Region was affording the affected individuals the opportunity to pick up ballots to address the time concerns. Although the [REDACTED] did not include other Regional personnel on her response, the Employer's representative added the appropriate Regional personnel in her reply. So, the failure to provide the information was brought to the attention of the Regional Director. The Regional Director should have taken action to correct the omission;
  - Rather than correcting the lack of candor by her subordinate, the Regional Director instructed and approved a response to the request by the Employer's representative for additional time for the balloting that was deceptive and incomplete. The response failed to disclose that individuals were being provided the opportunity to pick up ballots at the Region's office to enable them to vote in time for the tally. The e-mail message also incorporated the Petitioner's basis for objecting to the request in the Region's denial. The Region's response, however, did not provide the same information that the Region provided to the Petitioner when similar concerns were raised. The Petitioner then used that information as the basis for their objection to delaying the count. Also, the Regional Director was fully aware that the response was incomplete, as a more complete response was recommended by the Supervisory Field Examiner. The Regional Director's basis for failing to provide a complete response is without merit as she could have done so without disclosing information regarding the status of the individual ballots; and
  - Regional Director could have, but did not, ensure that complete information regarding the voting process was provided to the Employer's representative at the count. Although the Field Examiner stated per "Board protocol" they made arrangements for the individuals to vote, no additional information was provided. We can speculate that a highly experienced labor law practitioner could have

figured out what occurred, but that is not an appropriate standard for an appropriately managed representation election process. The Regional Director should have ensured that full disclosures were made because doing so protected the integrity of the election. It is apparent that the Regional Director had concerns regarding the election. When provided with a Board decision that would support allowing individuals to pick up ballots, the Regional Director responded that she was very happy; thanked the Supervisory Field Examiner with multiple explanation points; and stated that maybe she could get “lucky” with the other part of the equation. Given the totality of the circumstances, the Regional Director should have ensured that there was full disclosure regarding how the ballots were received by the Region. It is up to the Employer to determine if there was a basis to make a challenge or file objections, not whether the Regional Director has to reach a certain level of comfort with the particular situation.

During the course of our oversight work, we observed that Regions may encounter a variety of situations that could reasonably call into question the validity of a particular election. When those situations arise, generally the practice is that Regional staff document the facts in the case file with a memorandum or case note and, often during the tally process, alert the petitioner and employer to the situation so that they may file an objection. The Supervisory Field Examiner also explained that it was normally her practice to document issues in the case file with internal case memorandums. Rather than following that practice, the Region withheld information from the Employer while being very concerned about the conduct of the election and knowing that the Petitioner was fully apprised of all of the actions taken by Regional personnel.

- Also, with regard to the count, if the Regional Director had a good faith belief that the basis for withholding information from the Employer was the integrity of the secrecy of the ballots, that basis dissipated by the time the count was conducted. Rather than making full disclosure, the response was that per “Board protocol” the Region made arrangements that allowed the individuals to vote. Again, a highly experienced labor law practitioner may have been able to figure out what occurred, but it would have been an educated guess. If the Regional Director had, in good faith, believed that the election followed “Board protocol” that protocol should have been explained at that time. The Agency’s election process is not in any manner subject to nondisclosure.
- Because the certification that the ballots were mailed was not documented in the case file until after the issue involving the ballots was apparent, there is no basis to rely on that document. Documentation that appears to predate an error but is actually created in the record after the error is identified, is inherently unreliable. Given all the issues in this matter, it is likely that the wrong voter list was used; however, it is equally possible that the correct list was used when the ballots were mailed, and then the wrong list was used to find addresses to mail the duplicate ballots. Regardless of which situation is correct, the [REDACTED], as discussed above, was apparently aware of a problem, or should have been aware of it, and took no action to resolve it. Also, despite the [REDACTED] [REDACTED] knowledge of the problem, by at least March 31, 2022, it was the Petitioner’s

representative that brought the problem with the ballots to the Field Examiner's attention the following day. The [REDACTED] does not work independently, and she should have been supervised. Had there been some level of appropriate supervision, it is reasonable to expect that the error would have been identified on or about March 23, 2022, by the Region and corrected.

Given all the information available to the Region and the provisions of the Casehandling Manual, the failure by the Region to recognize and timely remedy the problem involving the ballots was mismanagement. That Regional personnel worked closely with one party to remedy the situation, while withholding information from the other party, further exasperated the issues in the election and reasonably called into question the Region's neutrality in the process. Because the mismanagement was so closely related to one of the primary statutory missions of the Agency, it created the risk of great reputational harm that could negatively impact the ability of the Agency to carry out that mission. As such, a disinterested observer with knowledge of the essential facts could reasonably conclude that the Region's actions in the election evidence gross mismanagement.

We are mindful that the Regional Director was only recently appointed to that position prior to the election; that the Region was operating without an Assistant to the Regional Director, and that the pandemic was not yet over. While those issues may be mitigating and may explain, in part, why the gross mismanagement occurred, they do not excuse or otherwise overcome the determination that gross mismanagement occurred. As described above, there simply was an absence of supervision and management during the election process and then a failure to take reasonable steps to address the issues as they arose. Also, at the count, when the Region had one last opportunity to correct the situation, they did not. Any mitigating or extenuating circumstances do not outweigh the repeated failures by the Region to follow the Agency's election processes, to properly supervise and manage its employees, and to act with appropriate candor to all the parties.

We recommend that the General Counsel determine what action would be appropriate to remediate the conduct of the Regional personnel to ensure that Region fulfills the Agency's statutory mission with respect to representation elections.

### ***Lack of Candor During OIG Interview***

Lack of candor "is a broader and more flexible concept" than falsification. Ludlum v. Department of Justice, 278 F.3d 1280, 1284 (Fed. Cir. 2002). Lack of candor does not require an "affirmative misrepresentation;" it does, however, involve an element of deception. *Id.* at 1284-85. An agency alleging lack of candor must prove the following elements: (1) that the employee gave incorrect or incomplete information; and (2) that the employee did so knowingly. Fagnoli v. Department of Commerce, 123 M.S.P.R. 330, ¶ 17 (2016). Also, the NLRB has a regulation that requires all employee to cooperate fully with an OIG investigation. 29 CFR 100.201.

During the first interview, when asked if she "saw" the e-mail message that the Supervisory Field Examiner sent to the Employer before it went out, the Regional Director responded, "I did not." When asked if she had any conversations with the Supervisory Field

Examiner before the e-mail message was sent, she responded “I did not.” During the second interview, the Regional Director made a lengthy statement regarding the conversation that she had with the Supervisory Field Examiner. The Regional Director was able to recall the conversations that she engaged in with the Supervisory Field Examiner and described it as a long ranging conversation that included the communications with the Employer. The Regional Director also acknowledged that she generally told the Supervisory Field Examiner how to respond to the Employer’s representative’s request to extend the time for the count. However, when asked if she reviewed the text of the e-mail message and if she received a draft, she responded “No” and that she did not remember that. When shown the messages that she received and her response, she then responded again “No” and that she thought she was asked about the actual e-mail message before it was sent out.

The Regional Director lacked the appropriate candor during the interview process. The Regional Director had a regulatory requirement to cooperate with the OIG investigation. It is clear from the entirety of both interviews that the Regional Director does, in fact, recall the specific meeting, actions, and conversations between herself and the Supervisory Field Examiner. Nevertheless, the Regional Director was only willing to provide information related to participation in the drafting of the response to the extent that the OIG could prove that action through documentation. Given the recall of the facts by the Regional Director in her lengthy statement at the beginning of the second interview, her inability to recall information until provided documentation is not credible. Unfortunately, to determine the Regional Director’s actions in the election we had to rely on the candor of her subordinates and the ability to retrieve documentary evidence from the Agency’s systems. As such, the Regional Director’s candor was far below that expected of a senior Federal executive and calls into question her character for truthfulness.

We recommend that the General Counsel consider whether the Regional Director’s candor during the OIG investigative process warrants administrative action.

### *Case File*

In general, the Casehandling Manual, sections 11850 through 11860, state that the case file should reflect the action taken in the case and be sufficiently complete and up to date to permit supervisory review on an ongoing basis. While the case file in this matter was generally complete, it was not maintained in manner that would permit supervisory review on an ongoing basis. There was no documentation of when duplicate ballots were mailed, in response to March 23, 2022, request. There was also no documentation of communication between the [REDACTED] and the Petitioner’s representative until it was incorporated in the case log notes and e-mail messages by the Field Examiner. While the information ultimately was documented, it was not available for supervisory review on an ongoing basis. Likewise, the certification of ballot mailing was uploaded into the case file after the issue with the ballots was identified.

More problematic, however, is the communication between the Regional Director and the Supervisory Field Examiner. The case file should contain a complete history. In this matter, the Regional Director acted in the case by directing a response to the Employer’s representative request for additional time. The documentation of that action is not in the case file, and without that documentation the file does not reflect a “complete” history. The Regional Director asserted

that the problem with the files was that the Supervisory Field Examiner's meeting notes were not in the case file. Those notes, however, do not completely "fill the gap" in the history. The messages show the approval and edits by the Regional Director to the Region's response. What the notes show is that the Regional Director wanted to avoid other issues in the response and to do more research. We agree with the Regional Director that some memorialization of the meeting should be in the case file, we disagree that her notes would have to be in the file. What we would expect to find is a case memorandum and a copy of the messages. The fact that we were able to recover the messages is immaterial to the issue of whether the case file was complete.

It is difficult to understand the Regional Director's position with regard to the completeness of the case file. The Regional Director has taken no action to ensure that the case files in her Region are properly maintained. Her method of only relying on subordinate staff is not an effective management process. Given her lack of effort or evidence of prior concern, she should accept some level of responsibility rather than pointing to disapproval of what she describes as a "shadow" file.

We recommend that all personnel in Region 14 receive remedial training on the proper maintenance of case files. We also recommend that the Regional Director receive specific training on record keeping management.

Starbucks Corporation  
 NLRB Case 14-RC-289926  
 Voter Eligibility List

8.	Hall, Josh	10209 W 75th St, Overland Park, KS 66204	barista	variable
9.	Jimenez, Matthew	10210 W 75th St, Overland Park, KS 66204	barista	variable
10.	Kreutzjans, Katie	10211 W 75th St, Overland Park, KS 66204	barista	variable
11.	Mccown, Hannah	10212 W 75th St, Overland Park, KS 66204	shift supervisor	variable
12.	Mccoy, Ally	10213 W 75th St, Overland Park, KS 66204	barista	variable
13.	Melendez, Lorena	10214 W 75th St, Overland Park, KS 66204	barista	variable
14.	Stefanik, Kyle	10215 W 75th St, Overland Park, KS 66204	barista	variable
15.	Stoermann, Kelsey	10216 W 75th St, Overland Park, KS 66204	barista	variable
16.	Stoermann, Carlee	10217 W 75th St, Overland Park, KS 66204	barista	variable
17.	Twaddell, Delia	10218 W 75th St, Overland Park, KS 66204	barista	variable

**CERTIFICATE OF SERVICE**

I certify that the *Voter List* in Case No. 14-RC-289926 was electronically filed on March 1, 2022 through the Board's website in Microsoft Word format, is available for viewing and downloading from the Board's website, and was also served via email to the following:

<p>Andrea J. Wilkes, Regional Director  National Labor Relations Board, Region 14  1222 Spruce Street, Room 8.302  St. Louis, MO 63103-2829  andrea.wilkes@nlrb.gov</p>
<p>[REDACTED]  Field Examiner  National Labor Relations Board, Region 14  8600 Farley St., Ste. 100  Overland Park, KS 66212-4677  [REDACTED]</p>
<p>Robert S. Cervone, Esq.  8 S. Michigan Ave., 1900  Chicago, IL 60603  rcervone@laboradvocates.com</p>
<p>Dmitri Iglitzin, Esq.  18 W Mercer St Ste 400  Seattle, WA 98119-3971  iglitzin@workerlaw.com</p>
<p>Gabe Frumkin, Esq.  18 W Mercer St Ste 400  Seattle, WA 98119-3971  frumkin@workerlaw.com</p>

*/s/ Kimberly J. Doud*  


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Kimberly J. Doud

Starbucks Corporation  
NLRB Case 14-RC-289926  
Voter Eligibility List

	Full Employee Name (Last, First) <sup>1</sup>	Work Location	Job Classification	Shift <sup>2</sup>	Home Address	Phone Number <sup>3</sup>	Personal Email
1.	Baldrige, Emma	10201 W 75th St, Overland Park, KS 66204	barista	variable			
2.	Charbonneau, Bailey	10202 W 75th St, Overland Park, KS 66204	barista	variable			
3.	Culey, Calvin	10204 W 75th St, Overland Park, KS 66204	shift supervisor	variable			
4.	Debey, Lisa	10205 W 75th St, Overland Park, KS 66204	barista	variable			
5.	Doran, Maddie	10206 W 75th St, Overland Park, KS 66204	shift supervisor	variable			
6.	Edwards, Hannah	10207 W 75th St, Overland Park, KS 66204	shift supervisor	variable			
7.	Gregg, Hope	10208 W 75th St, Overland Park, KS 66204	barista	variable			

<sup>1</sup> The Employer is providing the preferred names of eligible partners to ensure the ballots are addressed to names consistent with each partner's gender identity.

<sup>2</sup> Schedules vary depending on Store hours.

<sup>3</sup> The phone numbers provided here are the phone numbers in the Employer's possession for the partners on this voter list. The Employer believes these phone numbers to be a mix of home phone numbers and cell phone numbers.

Starbucks Corporation  
NLRB Case 14-RC-289926  
Voter Eligibility List

18.	Vestigo, Michael	10219 W 75th St, Overland Park, KS 66204	barista	variable	
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**From:** [Gabe Frumkin](#)  
**To:** [Carter, Elizabeth B.](#); [Wilkes, Andrea J.](#); [REDACTED]; [rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com); [Rebecca Breault](#); [valenzuela@workerlaw.com](mailto:valenzuela@workerlaw.com); [Dmitri Iglitzin](#)  
**Cc:** [Doud, Kimberly](#)  
**Subject:** RE: Voter List and Certificate of Service Documents for 14-RC-289926  
**Date:** Tuesday, March 1, 2022 6:42:25 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Good afternoon Elizabeth:

I am writing to advise you that the recent voter list you sent excludes the name of at least two employees and bargaining unit members currently employed at store 20346. They are:

Claypool, Aldyia  
Quigley, Sage

You will note that both appeared on Attachment B of the Employer's Statement of Position.

Please supplement the voter list you provided earlier today with their contact information.

Sincerely,

Gabe Frumkin

---

**From:** Gabe Frumkin  
**Sent:** Tuesday, March 1, 2022 11:02 AM  
**To:** 'Carter, Elizabeth B.'; [andrea.wilkes@nlrb.gov](mailto:andrea.wilkes@nlrb.gov); [REDACTED]@nlrb.gov; [rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com); [Rebecca Breault](#); [Esmeralda Valenzuela](#); [Dmitri Iglitzin](#)  
**Cc:** [Doud, Kimberly](#)  
**Subject:** RE: Voter List and Certificate of Service Documents for 14-RC-289926

Thank you.

Sincerely,

Gabe Frumkin

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**From:** [Carter, Elizabeth B. \[mailto:ECarter@littler.com\]](mailto:ECarter@littler.com)  
**Sent:** Tuesday, March 1, 2022 10:34 AM  
**To:** [andrea.wilkes@nlrb.gov](mailto:andrea.wilkes@nlrb.gov); [REDACTED]@nlrb.gov; [rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com); [Gabe Frumkin](#); [Rebecca Breault](#); [Esmeralda Valenzuela](#); [Dmitri Iglitzin](#)  
**Cc:** [Doud, Kimberly](#)  
**Subject:** Voter List and Certificate of Service Documents for 14-RC-289926

**SENT ON BEHALF OF KIMBERLY DOUD**

Attached for Starbucks are the following documents separately e-filed with the Region for the above-referenced matter:

- **Voter List:** Starbucks - Voter List - 14-RC-289926.docx
- **Service Documents:** COS for Voter List 14-RC-289926.docx

**Elizabeth B. Carter**

Attorney at Law

407.393.2944 direct, 216.293.0354 mobile

ECarter@littler.com



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This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message.

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**CERTIFICATE OF SERVICE**

I certify that the *Amended Voter List* in Case No. 14-RC-289926 was electronically filed on March 2, 2022 through the Board's website in Microsoft Word format, is available for viewing and downloading from the Board's website, and was also served via email to the following:

<p>Andrea J. Wilkes, Regional Director National Labor Relations Board, Region 14 1222 Spruce Street, Room 8.302 St. Louis, MO 63103-2829 andrea.wilkes@nlrb.gov</p>
<p>[REDACTED] Field Examiner National Labor Relations Board, Region 14 8600 Farley St., Ste. 100 Overland Park, KS 66212-4677 [REDACTED]</p>
<p>Robert S. Cervone, Esq. 8 S. Michigan Ave., 1900 Chicago, IL 60603 rcervone@laboradvocates.com</p>
<p>Dmitri Iglitzin, Esq. 18 W Mercer St Ste 400 Seattle, WA 98119-3971 iglitzin@workerlaw.com</p>
<p>Gabe Frumkin, Esq. 18 W Mercer St Ste 400 Seattle, WA 98119-3971 frumkin@workerlaw.com</p>

*/s/ Kimberly J. Doud*  
\_\_\_\_\_  
Kimberly J. Doud

Starbucks Corporation  
 NLRB Case 14-RC-289926  
 Voter Eligibility List

	Full Employee Name (Last, First) <sup>1</sup>	Work Location	Job Classification	Shift <sup>2</sup>	Home Address	Phone Number <sup>3</sup>	Personal Email
1.	Baldrige, Emma	10201 W 75th St, Overland Park, KS 66204	barista	variable			
2.	Charbonneau, Bailey	10201 W 75th St, Overland Park, KS 66204	barista	variable			
3.	Claypool, Alydia	10201 W 75th St, Overland Park, KS 66204	shift supervisor	variable			
4.	Culey, Calvin	10201 W 75th St, Overland Park, KS 66204	shift supervisor	variable			
5.	Debey, Lisa	10201 W 75th St, Overland Park, KS 66204	barista	variable			
6.	Doran, Maddie	10201 W 75th St, Overland Park, KS 66204	shift supervisor	variable			
7.	Edwards, Hannah	10201 W 75th St, Overland Park, KS 66204	shift supervisor	variable			

<sup>1</sup> The Employer is providing the preferred names of eligible partners to ensure the ballots are addressed to names consistent with each partner's gender identity.

<sup>2</sup> Schedules vary depending on Store hours.

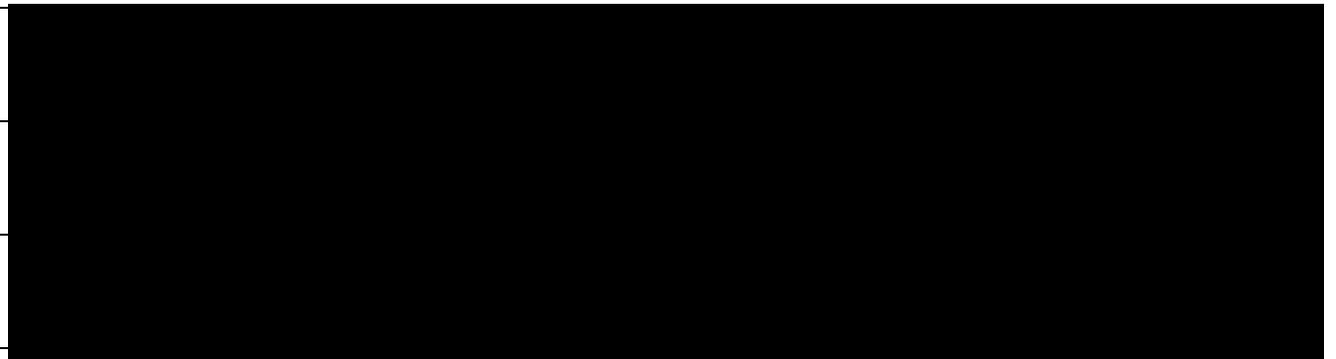
<sup>3</sup> The phone numbers provided here are the phone numbers in the Employer's possession for the partners on this voter list. The Employer believes these phone numbers to be a mix of home phone numbers and cell phone numbers.

Starbucks Corporation  
 NLRB Case 14-RC-289926  
 Voter Eligibility List

8.	Gregg, Hope	10201 W 75th St, Overland Park, KS 66204	barista	variable
9.	Hall, Josh	10201 W 75th St, Overland Park, KS 66204	barista	variable
10.	Jimenez, Matthew	10201 W 75th St, Overland Park, KS 66204	barista	variable
11.	Kreutzjans, Katie	10201 W 75th St, Overland Park, KS 66204	barista	variable
12.	Mccown, Hannah	10201 W 75th St, Overland Park, KS 66204	shift supervisor	variable
13.	Mccoy, Ally	10201 W 75th St, Overland Park, KS 66204	barista	variable
14.	Melendez, Lorena	10201 W 75th St, Overland Park, KS 66204	barista	variable
15.	Quigley, Sage	10201 W 75th St, Overland Park, KS 66204	barista	variable
16.	Stefanik, Kyle	10201 W 75th St, Overland Park, KS 66204	barista	variable
17.	Stoermann, Kelsey	10201 W 75th St, Overland Park, KS 66204	barista	variable

Starbucks Corporation  
NLRB Case 14-RC-289926  
Voter Eligibility List

18.	Stoermann, Carlee	10201 W 75th St, Overland Park, KS 66204	barista	variable
19.	Twaddell, Delia	10201 W 75th St, Overland Park, KS 66204	barista	variable
20.	Vestigo, Michael	10201 W 75th St, Overland Park, KS 66204	barista	variable



### Investigative Summary

Counsel to the Inspector General reviewed the email pst files for Regional Director Andrea Wilkes and Field Examiner [REDACTED] who were both served with the Employer's voter list. There were no messages in either file documenting that the original or corrected voter lists were forwarded to [REDACTED] [REDACTED].

Counsel also reviewed the email pst file for the [REDACTED]. There were no messages showing that she received the voter lists as an attachment to any email. There were four messages generated by the NxGen system notifying her that both the original voter list and Certificate of Service, as well as the corrected voter list and Certificate of Service, were E-filed in the NxGen system.

The email PST files were provided to the OIG by the NLRB E-Litigation Branch and included email messages from February 2, 2022 through August 12, 2022.

**From:** [nxgen@nrb.gov](mailto:nxgen@nrb.gov)  
**To:** [ML-14STL-Efile](#)  
**Cc:** [ML-NxGenWorkFlow](#)  
**Subject:** PROD: Action Required - NxGen E-Filed Document Received for 14-RC-289926, Starbucks Corporation  
**Date:** Tuesday, March 1, 2022 1:28:15 PM

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This is to notify you that a new E-Filed Document has been received by your office for 14-RC-289926, Starbucks Corporation. The E-Filing type is VTL and the associated Action is General.

**From:** [nxgen@nrb.gov](mailto:nxgen@nrb.gov)  
**To:** [ML-14STL-Efile](#)  
**Cc:** [ML-NxGenWorkFlow](#)  
**Subject:** PROD: Action Required - NxGen E-Filed Document Received for 14-RC-289926, Starbucks Corporation  
**Date:** Tuesday, March 1, 2022 1:29:48 PM

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This is to notify you that a new E-Filed Document has been received by your office for 14-RC-289926, Starbucks Corporation. The E-Filing type is SVC and the associated Action is General.

**From:** [nxgen@nrb.gov](mailto:nxgen@nrb.gov)  
**To:** [ML-14STL-Efile](#)  
**Cc:** [ML-NxGenWorkFlow](#)  
**Subject:** PROD: Action Required - NxGen E-Filed Document Received for 14-RC-289926, Starbucks Corporation  
**Date:** Wednesday, March 2, 2022 12:52:39 PM

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This is to notify you that a new E-Filed Document has been received by your office for 14-RC-289926, Starbucks Corporation. The E-Filing type is VTL and the associated Action is General.

**From:** [nxgen@nrb.gov](mailto:nxgen@nrb.gov)  
**To:** [ML-14STL-Efile](#)  
**Cc:** [ML-NxGenWorkFlow](#)  
**Subject:** PROD: Action Required - NxGen E-Filed Document Received for 14-RC-289926, Starbucks Corporation  
**Date:** Wednesday, March 2, 2022 12:53:36 PM

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This is to notify you that a new E-Filed Document has been received by your office for 14-RC-289926, Starbucks Corporation. The E-Filing type is SVC and the associated Action is General.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

**Starbucks Corporation**

**Case 14-RC-289926**

The parties **AGREE AS FOLLOWS:**

**1. PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**2. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Starbucks Corporation, a Washington corporation with headquarters located in Seattle, Washington, and facilities located throughout the United States, including a facility located at 10201 W 75<sup>th</sup> St., Overland Park, KS 66204, is engaged in retail operation of restaurants. During the past twelve months, a representative period of time, the Employer derived gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the State of Kansas.

**3. LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

**4. ELECTION.** The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, SubRegion 17, by close of business 4:45 p.m. on **Wednesday, March 16, 2022.** Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region office by close of business 4:45 p.m. on **Wednesday, April 6, 2022.** The mail ballots will be counted at the SubRegional office located at 8600 S Farley St., Overland Park, KS at 2:00 p.m. on **Friday, April 8, 2022.** A meeting invitation for the videoconference will be sent to counsel for the parties prior to the count. No party may make a video or audio recording or save any image of the count.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region office by no later than 4:45 p.m. on **Wednesday, March 23, 2022,** in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

Initials: DI KD

**5. UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time hourly Baristas and Shift Supervisors employed at 10201 W 75th St, Overland Park, KS 66204 (Store 20346 - often referred to as "75th and I35").

**Excluded:** All Store Managers, office clerical employees, professional employees, guards, and supervisors as defined by the Act, and all other employees.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending February 20, 2022**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the above unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

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

**6. VOTER LIST.** Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

**7. THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

Initials: DI KD

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Chicago & Midwest Regional Joint Board - Workers United/SEIU?" The choices on the ballot will be "Yes" or "No".

**8. NOTICE OF ELECTION.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**9. NOTICE OF ELECTION ONSITE REPRESENTATIVE.** The following individual will serve as the Employer's designated Notice of Election onsite representative: Sara Jenkins, District Manager Phone: 913-229-0159; e-mail: sjenkins@starbucks.com

**10. ACCOMMODATIONS REQUIRED.** All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

**11. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

**12. TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

**13. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**14.** The details set forth in this stipulated election agreement do not create precedent, are only applicable to this case and therefore neither Starbucks nor Workers United/SEIU (or any affiliations) will attempt to reference or use this stipulated election agreement in any proceeding other than in Case 14-RC-289926, and no party waives any rights to litigate issues in any other proceeding.

Initials: DI KD

**Starbucks**

(Employer)

**Chicago & Midwest Regional Joint Board -  
Workers United/SEIU**

(Petitioner)

**By:**     */s/ Kimberly Doud*         2/24/22      
(Signature) (Date)

**By:**     */s/ Dmitri Iglitzin*         2/24/22      
(Signature) (Date)

**Print Name:**     Kimberly Doud    

**Print Name:**     Dmitri Iglitzin         2/24/22    

**Recommended:**      2/24/22      
Field Examiner (Date)

**Date approved:**     2/25/22    

    *Andrea J. Wilkes*      
**Regional Director, Region 14**  
**National Labor Relations Board**



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**PURPOSE OF ELECTION:** This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

**SECRET BALLOT:** The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

**ELIGIBILITY RULES:** Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. In a mail ballot election, employees are eligible if they are in the VOTING UNIT during both the designated payroll period and on the date they mail in their ballots. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election, or, in a mail ballot election, before the date they mail in their ballots, are not eligible to vote.

**CHALLENGE OF VOTERS:** An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

**AUTHORIZED OBSERVERS:** Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

**METHOD AND DATE OF ELECTION**

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. By 4:45 pm. on Wednesday, March 16, 2022, ballots will be mailed to voters from the National Labor Relations Board, Subregion 17. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, SubRegion 17 office by close of business 4:45 p.m. on Wednesday, April 6, 2022.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday, March 23, 2022, should communicate immediately with the National Labor Relations Board by calling 913-275-6525.



**United States of America  
National Labor Relations Board  
NOTICE OF ELECTION**



**All ballots will be commingled and counted at the Subregion 17 Office on Friday, April 8, 2022 at 2:00 p.m. via videoconference. In order to be valid and counted, the returned ballots must be received in the Subregion 17 Office prior to the counting of the ballots.**

**VOTING UNIT**

**EMPLOYEES ELIGIBLE TO VOTE:**

**Those eligible to vote are: All full-time and regular part-time hourly Baristas and Shift Supervisors employed at 10201 W. 75th St., Overland Park, KS 66204 (Store 20346 - often referred to as "75th and I35"), who were employed by the Employer during the payroll period ending February 20, 2022.**

**EMPLOYEES NOT ELIGIBLE TO VOTE:**

**Those not eligible to vote are: All Store Managers, office clerical employees, professional employees, guards, and supervisors as defined by the Act, and all other employees.**



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**UNITED STATES OF AMERICA**  
National Labor Relations Board

14-RC-289926



**OFFICIAL SECRET BALLOT**

For certain employees of  
**STARBUCKS CORPORATION**

Do you wish to be represented for purposes of collective bargaining by  
**CHICAGO & MIDWEST REGIONAL JOINT BOARD -  
WORKERS UNITED/SEIU?**

**MARK AN "X" IN THE SQUARE OF YOUR CHOICE**

**YES**

**NO**

**Do not sign or write your name or include other markings that would reveal your identity.  
Mark an "x" in the square of your choice only.**

If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

**It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.**

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

**The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:**

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

**The National Labor Relations Board protects your right to a free choice.**

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (913)967-3000 or visit the NLRB website [www.nlrb.gov](http://www.nlrb.gov) for assistance.

**From:** [Gabe Frumkin](#)  
**To:** [REDACTED]  
**Subject:** RE: OP BALLOT REQUESTS  
**Date:** Wednesday, March 23, 2022 4:45:17 PM  
**Attachments:** [image002.png](#)  
[image003.jpg](#)

---

Thank you, [REDACTED].

Gabe Frumkin



**GABE FRUMKIN** | Associate Attorney (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

This communication is intended for a specific recipient and may be protected by the attorney-client and work-product privilege. If you receive this message in error, please permanently delete it and notify the sender.

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**From:** [REDACTED] [mailto:[REDACTED]@nrlb.gov]  
**Sent:** Wednesday, March 23, 2022 1:33 PM  
**To:** Gabe Frumkin  
**Subject:** RE: OP BALLOT REQUESTS

Gabe,

I have forwarded the request to the [REDACTED] that sends out the ballots.



[REDACTED]  
Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103  
[REDACTED] – Phone  
[REDACTED] - Mobile  
918-581-7970 – Fax  
Pronouns: [REDACTED]  
[REDACTED]@nrlb.gov

NLRB: <https://www.nrlb.gov>  
NLRB en Español: <https://www.nrlb.gov/es>

Follow us on Facebook: <https://www.facebook.com/NLRBGC/> /  
<https://www.facebook.com/NLRBpage>  
Follow us on Twitter: [@NLRBGC](#)/[@NLRB](#)  
En español: [@NLRBGCes](#)/[@NLRBes](#)

Parties must electronically file documents. E-filing link: <https://www.nlr.gov/cases-decisions/filing>

---

**From:** Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)>

**Sent:** Wednesday, March 23, 2022 3:27 PM

**To:** [REDACTED] <[REDACTED]@nlrb.gov>

**Subject:** Re: OP BALLOT REQUESTS

Hi [REDACTED] -

The case number is 14-CA-289926.

Sincerely,

Gabe Frumkin

On Mar 23, 2022, at 1:24 PM, Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)> wrote:

[REDACTED]:

Please see the request for new ballots for bargaining unit members in the Overland Park, KS Starbucks store. Please let me know if you need any more information.

Gabe Frumkin

Begin forwarded message:

**From:** Mariana Orrego <[morrego@cmrjb.org](mailto:morrego@cmrjb.org)>

**Date:** March 23, 2022 at 1:11:21 PM PDT

**To:** Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)>

**Subject:** OP BALLOT REQUESTS

Hey Gabe!

It's been a challenge trying to get to people and ask if they need a new ballot.

Here's the list so far:

- Alydia Claypool-[REDACTED]

- [REDACTED]

- [REDACTED]

- Sage Quigley- [REDACTED]

We're waiting on 4 more replies, but I thought I'd send these to you for right now.

Hope we're not too late!

Mari O.

**From:** [Gabe Frumkin](#)  
**To:** [REDACTED]  
**Subject:** RE: OP BALLOT REQUESTS  
**Date:** Wednesday, March 23, 2022 4:36:29 PM  
**Attachments:** [image001.png](#)

---

[REDACTED]:

Three more voters have not received ballots:

- Michael Vestigo- [REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED] have not received her ballot yet, so we'd like to request a new ballot for both of them.

Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | *Associate Attorney (he/him)*  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

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---

**From:** Gabe Frumkin  
**Sent:** Wednesday, March 23, 2022 1:27 PM  
**To:** [REDACTED]@nlrb.gov  
**Subject:** Re: OP BALLOT REQUESTS

Hi [REDACTED] -

The case number is 14-CA-289926.

Sincerely,

Gabe Frumkin

On Mar 23, 2022, at 1:24 PM, Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)> wrote:

[REDACTED]:

Please see the request for new ballots for bargaining unit members in the Overland Park, KS Starbucks store. Please let me know if you need any more information.

Gabe Frumkin

Begin forwarded message:

**From:** Mariana Orrego <morrego@cmrjb.org>  
**Date:** March 23, 2022 at 1:11:21 PM PDT  
**To:** Gabe Frumkin <frumkin@workerlaw.com>  
**Subject: OP BALLOT REQUESTS**

Hey Gabe!

It's been a challenge trying to get to people and ask if they need a new ballot.

Here's the list so far:

- Alydia Claypool- [REDACTED]
- [REDACTED]
- [REDACTED]
- Sage Quigley- [REDACTED]

We're waiting on 4 more replies, but I thought I'd send these to you for right now.

Hope we're not too late!

Mari O.

**From:** [Gabe Frumkin](#)  
**To:** [REDACTED]  
**Subject:** Voter information - 14-RC-289926  
**Date:** Thursday, March 31, 2022 5:16:54 PM  
**Attachments:** [image001.png](#)

---

[REDACTED],

I am writing to provide you with Michael Vestigo's address.

His address is:

[REDACTED]  
[REDACTED]

It appears that the list that the Employer provided did not include his address number.

Can you please confirm when you have sent Mr. Vestigo, Ms. Claypool, and Ms. Quigley their ballots?

Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | *Associate Attorney* (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

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**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** Starbucks 14-RC-289926  
**Date:** Wednesday, March 23, 2022 4:45:00 PM  
**Attachments:** [image001.png](#)  
**Importance:** High

---

[REDACTED],

Here is 3 more that have not received their ballots and need duplicates sent. The Union was concerned that there was 7 of the 18 voters that had not received their ballots yet. I didn't think that we normally had issues locally with the OP mail so hopefully its just a fluke that the mail is running slow this week.

---

**From:** Gabe Frumkin <frumkin@workerlaw.com>  
**Sent:** Wednesday, March 23, 2022 3:40 PM  
**To:** [REDACTED] <[REDACTED]@nrlb.gov>  
**Subject:** RE: OP BALLOT REQUESTS

[REDACTED]:

Three more voters have not received ballots:

- Michael Vestigo- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED] have not received her ballot yet, so we'd like to request a new ballot for both of them.

Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | Associate Attorney (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
 18 West Mercer Street, Suite 400, Seattle, WA 98119

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---

**From:** Gabe Frumkin  
**Sent:** Wednesday, March 23, 2022 1:27 PM  
**To:** [REDACTED] <[REDACTED]@nrlb.gov>  
**Subject:** Re: OP BALLOT REQUESTS

Hi [REDACTED] -

The case number is 14-CA-289926.

Sincerely,

Gabe Frumkin

On Mar 23, 2022, at 1:24 PM, Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)> wrote:

█:

Please see the request for new ballots for bargaining unit members in the Overland Park, KS Starbucks store. Please let me know if you need any more information.

Gabe Frumkin

Begin forwarded message:

**From:** Mariana Orrego <[morrego@cmrjb.org](mailto:morrego@cmrjb.org)>  
**Date:** March 23, 2022 at 1:11:21 PM PDT  
**To:** Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)>  
**Subject: OP BALLOT REQUESTS**

Hey Gabe!

It's been a challenge trying to get to people and ask if they need a new ballot.

Here's the list so far:

- Alydia Claypool- █  
█
- █
- █
- Sage Quigley- █

We're waiting on 4 more replies, but I thought I'd send these to you for right now.

Hope we're not too late!

Mari O.





**From:** [Gabe Frumkin](#)  
**To:** [REDACTED]  
**Cc:** "[Mariana Orrego](#)"  
**Subject:** RE: Starbucks 14-RC-289926  
**Date:** Friday, April 1, 2022 3:17:52 PM  
**Attachments:** [image001.jpg](#)

---

Thank you, [REDACTED]. I've passed the information onto the on-the-ground organizer.

Gabe Frumkin

---

**From:** [REDACTED] [mailto:[REDACTED]@nlr.gov]  
**Sent:** Friday, April 1, 2022 12:15 PM  
**To:** Gabe Frumkin  
**Subject:** Starbucks 14-RC-289926

Gabe,

Just to confirm with you, please have the individuals that have not yet received ballots call me directly ([REDACTED]) and I will assist them in scheduling a time to visit the Overland Park office to pick up a ballot.



[REDACTED]  
Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103  
[REDACTED] – Phone  
[REDACTED] – Mobile  
918-581-7970 – Fax  
Pronouns: [REDACTED]  
[REDACTED]@nlr.gov

NLRB: <https://www.nlr.gov>

NLRB en Español: <https://www.nlr.gov/es>

Follow us on Facebook: <https://www.facebook.com/NLRBGC/> /  
<https://www.facebook.com/NLRBpage>

Follow us on Twitter: [@NLRBGC](#)/[@NLRB](#)

En español: [@NLRBGCes](#)/[@NLRBes](#)

Parties must electronically file documents. E-filing link: <https://www.nlr.gov/cases-decisions/filing>

Investigative Summary

Counsel to the Inspector General reviewed the NxGen case file for 14-RC-289926. As part of his review, Counsel found an email message sent on April 1, 2022, from Field Examiner [REDACTED] to [REDACTED] [REDACTED]. In the email, the Field Examiner described [REDACTED] efforts working with Petitioner's representative to ensure that three individuals received their ballots in time to participate in the election. The Field Examiner requested that the [REDACTED], in addition to mailing the employees duplicate ballots, prepare another set of duplicate ballots to be left at the Regional office so the employees can schedule an appointment to vote in person.

Counsel to the Inspector General reviewed the NxGen case file for 14-RC-289926. Counsel did not locate any memorandum or case log entry documenting that the Supervisory Field Examiner approved allowing individuals to pick up ballots at the Regional office.

A copy of the above-referenced email message is attached to this Investigative Summary.

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [Coffman, Carla K.](#)  
**Subject:** Starbucks 14-RC-289926  
**Date:** Friday, April 1, 2022 3:03:00 PM  
**Attachments:** [image001.jpg](#)

---

[REDACTED],

I have been working with the Union's attorney, Gabe Frumkin, on three individuals that have not yet received their ballots. I understand that you also had a conversation with him yesterday afternoon and that you are mailing out those 3 duplicate ballots today. The Union is concerned that there is not enough time for them to receive and return those ballots before the count. I've talked with Carla, and we've agreed that they can call me and schedule an appointment for next week to stop by the OP office to pick up a duplicate ballot and return it. Go ahead and place the duplicate for these individuals in the mail today and then prepare a 2<sup>nd</sup> duplicate ballot to leave at the Regional office so that either you or Carla can meet with the voter next week at their scheduled appointment time.

I'm going to tell them that they can either come in on Monday or Wednesday because both you and Carla will be in the office that day. To confirm, the 3 individuals are:

Alydia Claypool  
Sage Quigley  
Michael Vestigo



[REDACTED]

Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103

[REDACTED] – Phone

[REDACTED] - Mobile

918-581-7970 – Fax

Pronouns: [REDACTED]

[REDACTED]@nrlb.gov

NLRB: <https://www.nlr.gov>

NLRB en Español: <https://www.nlr.gov/es>

Follow us on Facebook: <https://www.facebook.com/NLRBGC/> /

<https://www.facebook.com/NLRBpage>

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En español: [@NLRBGCes](#)/[@NLRBes](#)

Parties must electronically file documents. E-filing link: <https://www.nlr.gov/cases-decisions/filing>

I, [REDACTED], am an [REDACTED] in the National Labor Relations Board's Region 14, Overland Park, Kansas, Subregional office.

During my interview with Inspector General Dave Berry, I was asked about an email that I sent on April 1, 2022, regarding the Starbucks representation election, Case 14-RC-289926.

The email was about a mistake I made regarding an incorrect voter list I used to mail ballots for the upcoming election. I was working late that day and was the only one in the Overland Park office. I did not speak with anyone in Region 14 before I sent the email. No one from Region 14 reviewed the email before I sent it. Instead, as soon as I found out about my mistake, I sent the email to the involved parties.

I copied [REDACTED] on the email because [REDACTED] was officially attached to the case. I do not know why I did not also copy Carla Coffman on the email.

I recall having a conversation with either [REDACTED] or Carla, but I am not sure which one. Either [REDACTED] or Carla told me about the possibility of two Starbucks employees coming into the Overland Park office to pick up a ballot for the Starbucks election. I do not recall whether this conversation occurred before or after my email went out on April 1, 2022.

I have been an [REDACTED] for 30 years. It has been our procedure to allow in-person voting in mail-in ballot elections. This occurs when the employee contacts the office and says that they do not think they can mail their ballot for it to be received in time. If that happens, the employee is told they can come to the office, show a photo ID to make sure the person is allowed to cast a vote, and get a ballot.

/s/ [REDACTED]  
[REDACTED]

3-23-23  
Date

**From:** [REDACTED]  
**To:** [Tatum, James](mailto:James.Tatum@nlrb.gov)  
**Subject:** RE: Interview  
**Date:** Wednesday, June 28, 2023 2:37:48 PM

---

This is accurate

---

**From:** Tatum, James <James.Tatum@nlrb.gov>  
**Sent:** Wednesday, June 28, 2023 12:02 PM  
**To:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Subject:** Interview

[REDACTED],

Please review the below summary and let me know if it is accurate or if you need to add anything.

Sincerely,

James Tatum, Jr.  
Counsel to the Inspector General and  
Assistant Inspector General for Investigations  
National Labor Relations Board  
Office of Inspector General  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-1961  
[james.tatum@nlrb.gov](mailto:james.tatum@nlrb.gov)

\*\*\*\*\*

In a follow-up interview, [REDACTED], [REDACTED], Region 14 provided the following information:

[REDACTED] recalled that [REDACTED] did have a telephone conversation with the Petitioner's representative on March 31, 2022. During the conversation, [REDACTED] did state that [REDACTED] did not mail two duplicate ballots to the two individual who were not on the original voter list. During that conversation, [REDACTED] realized that [REDACTED] had made an error. Because [REDACTED] was working at home on that day, and [REDACTED] could not correct the error until following day when [REDACTED] was in the office. [REDACTED] explained that [REDACTED] could not mail a duplicate because [REDACTED] had not mailed an original ballot.

[REDACTED] was not told by anyone in the Region how to respond to the Employer's questions regarding when the ballots were mailed.

[REDACTED] did not upload the mailing of ballots certification because [REDACTED] was very busy with all the

elections that were going on in the Region. ■ stated that was completed on the March 16 , and ■ intended to upload it as part of the documents uploaded with the count/tally.

**From:** [REDACTED]  
**To:** [ecarter@littler.com](mailto:ecarter@littler.com); [kdoud@littler.com](mailto:kdoud@littler.com); [us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); [Robert Cervone](#)  
**Cc:** [REDACTED]  
**Subject:** Starbucks Corporation; Case 14-RC-289926  
**Date:** Friday, April 1, 2022 7:41:01 PM  
**Attachments:** [first vt plus extra.pdf](#)

---

Due to a inadvertent fumble on my part, I used the first voter list when I was sending out the ballots, rather than the revised list. I have since corrected the error, sending out ballots to those voters who were added in the revised list. But, because I used the original numbering, the “new” voters had to be added to the bottom of the original list and given numbers 19 and 20. I have attached a copy of this list with the addition, which will be used at the count. I apologize for any confusion this may have caused.

Investigative Summary

We found that the Mailing of Ballots certification was uploaded into the NxGen system case file. A review of the data related to the case file document found that it was uploaded to the case file by the [REDACTED] on April 1, 2022, at 8:19 p.m. The NxGen system uses the local server time which is the Eastern time zone. The certification and the NxGen system file data are included as attachments.

Attachments (2)

MAILING OF BALLOTS

To: The File  
Re: Starbucks Corporation  
14-RC-289926

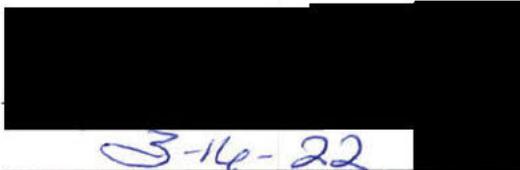
I have checked the ballots in the above case and find them to be correct.



3-14-22

Date

18 I certify that on this date ballots in connection with the above case were placed by me in the United States Mail to persons, as shown on the ELIGIBILITY LIST, which is a part of the file.



3-14-22

Date

4-1-22, 19 + 20, inadvertently left out of first mailing  
100 + 180, didn't receive 

nlrbsubtype	title	nlrbsource	nlrbsmodifier	username	eventdescription	string1	string2	timestamp	versionlabel
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dmadmin	Save Object	Save		4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dmadmin	Save Object	Save		4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dmadmin	Link To	14	ICM.14-RC-289	4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dmadmin	Unlink From	Case Document Incoming	ICM.14-RC-289	4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dmadmin	Save Object	Save		4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dctm_integration_write	Link To	Case Document Incoming	ICM.14-RC-289	4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dctm_integration_write	Save Object	Create		4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dctm_integration_write	Set Content	setcontent		4/1/22 20:19	1
Internal Case Memo	ICM.14-RC-289926.mailing of ballots	Scan		dctm_integration_write	Save Object	Save		4/1/22 20:19	1

**From:** [REDACTED]  
**To:** [Gabe Frumkin](mailto:Gabe.Frumkin)  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926  
**Date:** Friday, April 1, 2022 8:43:00 PM

---

[REDACTED] is handling appointments for voters to come in and vote. I will be in the office on Monday and Friday. I have mailed either original or duplicate ballots to all three, and have prepared duplicate ballots of those for any voters who come into the office to vote. I believe [REDACTED] discussed having voters come in on either Monday or Wednesday (when Carla Coffman will be in the office) if they make an appointment, either directly with [REDACTED], or indirectly with [REDACTED] through you. This is my understanding. Hope it's not too confusing.

---

**From:** Gabe Frumkin <frumkin@workerlaw.com>  
**Sent:** Friday, April 1, 2022 7:22 PM  
**To:** [REDACTED] <[REDACTED]@nlrb.gov>; Dmitri Iglitzin <iglitzin@workerlaw.com>; Robert Cervone <rcervone@laboradvocates.com>  
**Cc:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

[REDACTED]:

Thank you for your email. I spoke with [REDACTED], who is CC'd, earlier today about the fact that three bargaining unit members still haven't received ballots. Of those, two were never sent ballots due to the oversight of using the first voter list instead of the amended voter list.

[REDACTED] assured me that the workers could come into the subregional office next week to vote. Can one or both of you please advise me about how many voters have reached out to you, and where things stand regarding when they'll be permitted to vote?

Gabe

---

**From:** [REDACTED] [[mailto:\[REDACTED\]@nlrb.gov](mailto:[REDACTED]@nlrb.gov)]  
**Sent:** Friday, April 1, 2022 4:41 PM  
**To:** [ecarter@littler.com](mailto:ecarter@littler.com); [kdoud@littler.com](mailto:kdoud@littler.com); [us2935803@starbucks.com](mailto:us2935803@starbucks.com); Gabe Frumkin; Dmitri Iglitzin; Robert Cervone  
**Cc:** [REDACTED]  
**Subject:** Starbucks Corporation; Case 14-RC-289926

Due to a inadvertent fumble on my part, I used the first voter list when I was sending out the ballots, rather than the revised list. I have since corrected the error, sending out ballots to those voters who were added in the revised list. But, because I used the original numbering, the "new" voters had to be added to the bottom of the original list and given numbers 19 and 20. I have attached a copy of this list with the addition, which will be used at the count. I apologize for any confusion this may have caused.

**From:** [Doud, Kimberly](#)  
**To:** [REDACTED]; [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); [Robert Cervone](#)  
**Cc:** [Carter, Elizabeth B.](#); [REDACTED]; [Wilkes, Andrea J.](#)  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926  
**Date:** Tuesday, April 5, 2022 11:41:44 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

Thank you for your response, [REDACTED]. We have not had a chance to discuss with Union counsel. The ballot return date is tomorrow Wednesday April 6 (three business days after mailing). It seems unlikely the partners you identified in your email below will receive their ballots in time to fill them out and mail them back. The ballot count is currently scheduled for this Friday April 8. We are concerned about disenfranchising these partners. We want to ensure they have a reasonable amount of time to receive and mail back their ballots. We request the ballot count be rescheduled to an agreeable future date to allow this to occur. The ballots were mailed to the rest of the partners at this store on March 16. Those partners were provided 3 weeks to return their ballots (April 6). Therefore, we propose these partners be provided the same amount of time by extending the ballot return date to Friday April 22 and holding the ballot count on Monday April 25. I am unaware of this coming up in any other Starbucks campaigns and am open to your thoughts. Please advise if you need a formal filing in this regard. Look forward to hearing from you. Thank you.

### Kimberly Doud

Office Managing Shareholder  
 407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax  
[KDoud@littler.com](mailto:KDoud@littler.com)

Pronouns: She/Her



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 111 N Orange Ave, Suite 1750, Orlando, FL 32801

**From:** [REDACTED] <[REDACTED]@nrlb.gov>  
**Sent:** Monday, April 4, 2022 7:02 PM  
**To:** Doud, Kimberly <[KDoud@littler.com](mailto:KDoud@littler.com)>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

The day of the email, April 1, 2022.

**From:** Doud, Kimberly <[KDoud@littler.com](mailto:KDoud@littler.com)>  
**Sent:** Monday, April 4, 2022 9:55 AM  
**To:** [REDACTED] <[REDACTED]@nrlb.gov>; Carter, Elizabeth B. <[ECarter@littler.com](mailto:ECarter@littler.com)>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
 <[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>

**Cc:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Hi [REDACTED]. Please advise when the additional ballots were mailed. Thank you.

**Kimberly Doud**  
Office Managing Shareholder  
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax  
[KDoud@littler.com](mailto:KDoud@littler.com)

Pronouns: She/Her



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111 N Orange Ave, Suite 1750, Orlando, FL 32801

---

**From:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Sent:** Friday, April 1, 2022 7:41 PM  
**To:** Carter, Elizabeth B. <[ECarter@littler.com](mailto:ECarter@littler.com)>; Doud, Kimberly <[KDoud@littler.com](mailto:KDoud@littler.com)>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Subject:** Starbucks Corporation; Case 14-RC-289926

**[EXTERNAL E-MAIL]**

Due to a inadvertent fumble on my part, I used the first voter list when I was sending out the ballots, rather than the revised list. I have since corrected the error, sending out ballots to those voters who were added in the revised list. But, because I used the original numbering, the “new” voters had to be added to the bottom of the original list and given numbers 19 and 20. I have attached a copy of this list with the addition, which will be used at the count. I apologize for any confusion this may have caused.

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**From:** [Gabe Frumkin](#)  
**To:** [Doud, Kimberly](#); [REDACTED]; [Dmitri Iglitzin](#); [Robert Cervone](#)  
**Cc:** [Carter, Elizabeth B.](#); [REDACTED]; [Wilkes, Andrea J.](#)  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926  
**Date:** Tuesday, April 5, 2022 2:47:11 PM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)

---

Good morning all:

The Union does not agree to extend the ballot return date. The election has generated a substantial amount of engagement amongst bargaining unit members, and the Union is confident that those bargaining unit members who wish to vote will be able to do so. Moreover, the election has generated sufficient public interest that delaying the vote count would be inappropriate.

If after the vote count the Employer believes that those voters who were not originally sent ballots a) were not able to vote and b) that their votes could be determinative in the outcome of the election, the Employer may have cause to file an objection.

Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | *Associate Attorney* (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
 18 West Mercer Street, Suite 400, Seattle, WA 98119

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**From:** Doud, Kimberly [mailto:KDoud@littler.com]  
**Sent:** Tuesday, April 5, 2022 8:41 AM  
**To:** [REDACTED]; Gabe Frumkin; Dmitri Iglitzin; Robert Cervone  
**Cc:** Carter, Elizabeth B.; [REDACTED]; Wilkes, Andrea J.  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Thank you for your response, [REDACTED]. We have not had a chance to discuss with Union counsel. The ballot return date is tomorrow Wednesday April 6 (three business days after mailing). It seems unlikely the partners you identified in your email below will receive their ballots in time to fill them out and mail them back. The ballot count is currently scheduled for this Friday April 8. We are concerned about disenfranchising these partners. We want to ensure they have a reasonable amount of time to receive and mail back their ballots. We request the ballot count be rescheduled to an agreeable future date to allow this to occur. The ballots were mailed to the rest of the partners at this store on March 16. Those partners were provided 3 weeks to return their ballots (April 6). Therefore, we propose these partners be provided the same amount of time by extending the ballot return date to Friday April 22 and holding the ballot count on Monday April 25. I am unaware of this coming up in any other Starbucks campaigns and am open to your thoughts. Please advise if you need a formal filing in this regard. Look forward to hearing from you. Thank you.

**Kimberly Doud**

Office Managing Shareholder  
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax  
KDoud@littler.com

Pronouns: She/Her



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---

**From:** [REDACTED]@nlrb.gov>  
**Sent:** Monday, April 4, 2022 7:02 PM  
**To:** Doud, Kimberly <KDoud@littler.com>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

The day of the email, April 1, 2022.

---

**From:** Doud, Kimberly <KDoud@littler.com>  
**Sent:** Monday, April 4, 2022 9:55 AM  
**To:** [REDACTED] <[REDACTED]@nlrb.gov>; Carter, Elizabeth B. <ECarter@littler.com>;  
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<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED]@nlrb.gov>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Hi [REDACTED]. Please advise when the additional ballots were mailed. Thank you.

**Kimberly Doud**

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Pronouns: She/Her



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**From:** [REDACTED] <[REDACTED]@nlrb.gov>

**Sent:** Friday, April 1, 2022 7:41 PM

**To:** Carter, Elizabeth B. <[ECarter@littler.com](mailto:ECarter@littler.com)>; Doud, Kimberly <[KDoud@littler.com](mailto:KDoud@littler.com)>; [us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone <[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>

**Cc:** [REDACTED] <[REDACTED]@nlrb.gov>

**Subject:** Starbucks Corporation; Case 14-RC-289926

**[EXTERNAL E-MAIL]**

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**From:** [Coffman, Carla K.](#)  
**To:** [kdoud@littler.com](mailto:kdoud@littler.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); [rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com); [ecarter@littler.com](mailto:ecarter@littler.com)  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926  
**Date:** Tuesday, April 5, 2022 4:53:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image006.jpg](#)

---

Good afternoon,

While we understand the concerns raised by the Employer, and noting the Union's opposition, we do not believe that there is any basis to postpone the count at this time.

Thank you,

Carla



Carla K. Coffman  
 Supervisory Field Examiner  
 NLRB, Subregion 17  
 8600 Farley Street, Suite 100  
 Overland Park, Kansas 66212  
 913.275.6536 - Phone  
 202.674.5225 - Cell  
 913.967.3010 - Fax  
[carla.coffman@nlrb.gov](mailto:carla.coffman@nlrb.gov)

---

**From:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Sent:** Tuesday, April 5, 2022 1:48 PM  
**To:** Coffman, Carla K. <Carla.Coffman@nlrb.gov>  
**Subject:** FW: Starbucks Corporation; Case 14-RC-289926

---

**From:** Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)>  
**Sent:** Tuesday, April 5, 2022 1:51 PM  
**To:** Doud, Kimberly <[KDoud@littler.com](mailto:KDoud@littler.com)>; [REDACTED] <[REDACTED]@nlrb.gov>; Dmitri Iglitzin <[iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com)>; Robert Cervone <[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** Carter, Elizabeth B. <[ECarter@littler.com](mailto:ECarter@littler.com)>; [REDACTED] <[REDACTED]@nlrb.gov>; Wilkes, Andrea J. <[Andrea.Wilkes@nlrb.gov](mailto:Andrea.Wilkes@nlrb.gov)>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Good morning all:

The Union does not agree to extend the ballot return date. The election has generated a substantial amount of engagement amongst bargaining unit members, and the Union is confident that those

bargaining unit members who wish to vote will be able to do so. Moreover, the election has generated sufficient public interest that delaying the vote count would be inappropriate.

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Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | Associate Attorney (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

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---

**From:** Doud, Kimberly [<mailto:KDoud@littler.com>]  
**Sent:** Tuesday, April 5, 2022 8:41 AM  
**To:** [REDACTED]; Gabe Frumkin; Dmitri Iglitzin; Robert Cervone  
**Cc:** Carter, Elizabeth B.; [REDACTED]; Wilkes, Andrea J.  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

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**Kimberly Doud**

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[KDoud@littler.com](mailto:KDoud@littler.com)

Pronouns: She/Her



Labor & Employment Law Solutions | Local Everywhere  
111 N Orange Ave, Suite 1750, Orlando, FL 32801

---

**From:** [REDACTED] <[REDACTED]@nrb.gov>  
**Sent:** Monday, April 4, 2022 7:02 PM  
**To:** Doud, Kimberly <KDoud@littler.com>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

The day of the email, April 1, 2022.

---

**From:** Doud, Kimberly <KDoud@littler.com>  
**Sent:** Monday, April 4, 2022 9:55 AM  
**To:** [REDACTED] <[REDACTED]@nrb.gov>; Carter, Elizabeth B. <ECarter@littler.com>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED] <[REDACTED]@nrb.gov>  
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**Kimberly Doud**

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Pronouns: She/Her



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**From:** [REDACTED] <[REDACTED]@nrb.gov>  
**Sent:** Friday, April 1, 2022 7:41 PM  
**To:** Carter, Elizabeth B. <ECarter@littler.com>; Doud, Kimberly <KDoud@littler.com>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED] <[REDACTED]@nrb.gov>  
**Subject:** Starbucks Corporation; Case 14-RC-289926

**[EXTERNAL E-MAIL]**

Due to a inadvertent fumble on my part, I used the first voter list when I was sending out the ballots, rather than the revised list. I have since corrected the error, sending out ballots to those voters who were added in the revised list. But, because I used the original numbering, the “new” voters had to be added to the bottom of the original list and given numbers 19 and 20. I have attached a copy of this list with the addition, which will be used at the count. I apologize for any confusion this may have caused.

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**OFFICIAL REPORT OF INVESTIGATIVE INTERVIEW  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

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**In the Matter of:**

**Case No.:     OIG – I - 569**

**CARLA COFFMAN**

**Place:           Via Teleconference**

**Date:           03/22/23**

**Pages:          1-47**

**Interview of:  Carla Coffman**

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**OFFICIAL REPORTERS**

**Veritext  
Mid-Atlantic Region  
1801 Market Street, Suite 1800  
Philadelphia, PA 19103  
215-241-1000**

1 UNITED STATES OF AMERICA  
2 NATIONAL LABOR RELATIONS BOARD

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6 In the Matter of: |  
7 CARLA COFFMAN | Case No. OIG-I-569

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11 \_\_\_\_\_  
12 Investigative Interview of:  
13 CARLA COFFMAN  
14 was held, via zoom, from the National Labor Relations Board,  
15 1015 Half Street, S.E., 5th Floor, Washington, D.C., on  
16 Wednesday, March 22, 2023 at 9:38 a.m.

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18 \*\* HIGHLY CONFIDENTIAL \*\*  
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A P P E A R A N C E S

On Behalf of the National Labor Relations Board:

DAVID P. BERRY, Inspector General  
National Labor Relations Board  
1015 Half Street, S.E., 5th Floor  
Washington, D.C. 20570  
(202) 238-3000  
david.berry@nlrb.gov

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I N D E X

WITNESS:	EXAMINATION	PAGE
Carla Coffman	By Mr. Berry	4

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 4	7:41 E-Mail .....	16
Exhibit 1	12:15 E-Mail .....	17
Exhibit 2	E-Mail .....	17

(All exhibits were retained by Mr. Berry and were marked prior to the start of the interview. Page numbers noted above indicate when the exhibit was first mentioned during the interview.)

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P R O C E E D I N G S

(Time Noted: 9:38 a.m.)

CARLA COFFMAN,

was called as a witness on behalf of the National Labor Relations Board, and after having been duly sworn, was examined and testified as follows:

EXAMINATION

QUESTIONS BY MR. BERRY:

Q. Okay. So the court reporter, could you please state your name and spell your last name.

A. Carla Coffman, C-O-F-F-M-A-N.

Q. So, Carla, for purposes of your interview, we are going to be talking about the Starbucks case election. Now, there's lots of Starbucks cases, but this one is the one that was held in the case 14-RC-289926. Are you familiar with that matter?

A. I am aware of it, yes.

Q. So before we get started and actually talking about the case, in every IG interview we do, we like to get the background about the person we're interviewing. So if you could just sort of give us kind of a high-level summary of your career at the NLRB, sort of when you came, what your first position was, and how you got to the position you're in now.

A. Okay. I was hired July 14, 1991 as a Clerk

1 Stenographer GS-4. I went up a few months later to a  
2 GS-5. I served as a docket clerk, receptionist  
3 trained on all the open positions, and after the first  
4 year, I became the regional attorney's secretary,  
5 where I served the next four years as the regional  
6 attorney's secretary.

7           And in 1996, I believe, June of '96, I  
8 entered the Bridge Program to become a field examiner,  
9 and I matriculated from that program in June, I  
10 believe, of 1999. And then I progressed through as a  
11 field examiner until November 2019. I became a  
12 supervisory field examiner. And then June or July of  
13 last year, I think it was effective in July, I became  
14 the assistant to the regional director, all served in  
15 the Overland Park, first Region 17 and then Subregion  
16 17, when we were consolidated under Region 14, which  
17 is St. Louis, and the Tulsa resident office is under  
18 us as well.

19           Q. Okay. And so what is your position now?

20           A. Assistant to the Regional Director.

21           Q. When did you get that position?

22           A. It was effective July 17th, I believe, of  
23 last year.

24           Q. Okay. So most of the questions I'm going to  
25 have will relate to the period about April 2022. At

1 that time, you were a supervisory field examiner?

2 A. Yes.

3 Q. Were you also the acting RD, or, I'm sorry,  
4 acting ARD?

5 A. Yes. I was given those duties --

6 Q. Okay.

7 A. -- as soon as I became a supervisor.

8 Q. When you're -- when you're a supervisory  
9 field examiner, what are your duties with regard to  
10 that position?

11 A. A supervisory field examiner has frontline  
12 supervision over bargaining unit professional  
13 employees, either examiners and/or attorneys, and  
14 they're responsible for the day-to-day review and  
15 oversight of the case handling process and assignment  
16 on their team and serves basically as a liaison  
17 between the Bargaining Unit employee and the regional  
18 managers, if any.

19 Q. Okay. So in April, you were both -- you  
20 both -- you both have like the direct supervisory  
21 responsibilities for a group of employees as well as  
22 the managerial responsibilities for the entire region,  
23 which included St. Louis, Overland Park, and then  
24 Tulsa?

25 A. That is correct. At that time, I was direct

1 lead, supervising all the field examiners in the  
2 region, which, at that time, there was one in Tulsa  
3 and two in St. Louis. I had direct supervision over  
4 the representation [REDACTED], who is here in  
5 Overland Park, and then I had direct supervision of  
6 two field attorneys that were also located here in  
7 Overland Park --

8 Q. Okay.

9 A. -- in addition to oversight of the regional  
10 R case processing.

11 Q. Okay. So back then, what were your  
12 responsibilities with regard to the oversight of the  
13 R case? And when we say, "R case," just in case  
14 someone is reading this and maybe they don't  
15 understand what "R case" means, R cases are  
16 representation cases involving petitions for  
17 organizing a unit or perhaps decertifying a unit, but  
18 basically more likely than not, it's organizing  
19 employees of a particular employer, correct?

20 A. That's correct.

21 Q. So --

22 A. Oh, sorry. Go ahead.

23 Q. No, no. With regard to that process, what  
24 were your duties?

25 A. My responsibilities with regard to that were

1 I was responsible for assigning all incoming petitions  
2 that were filed with the Region. I also communicated  
3 with the court reporter, oversaw the -- made sure that  
4 hearings were scheduled, formal papers were prepared.  
5 I didn't do them myself. Sometimes I did because  
6 sometimes we're short-staffed.

7 But I made sure that all the ballots and  
8 election papers were prepared for mail ballots, that  
9 they went out timely; or if they were manual ballots,  
10 that they got to the proper Board agent. Just kind of  
11 monitored the time processing to make sure all the  
12 time limits were met, the hearings were held in a  
13 certain amount of time, the court reporter was timely  
14 canceled. I reviewed stipulated election agreements  
15 for accuracy and made sure the elections were within  
16 the guideline, timelines, commerce is proper. I  
17 reviewed decisions, worked with the decision-writers  
18 that -- usually from the decision-writing units. Is  
19 that -- are you wanting all that detail?

20 Q. Fine, yeah. It's fine. I am listening. I  
21 was -- I wrote something down, and then I crossed it  
22 out, but that's what is -- yeah. I'm sorry. People  
23 can't see this on the record, but I was looking at my  
24 notes while you were talking, so I'm sorry.

25 A. I mean, there's -- no, that's fine. It's

1 just I wasn't sure how much detail you wanted. I  
2 mean, I review --

3 Q. Well, people --

4 A. -- Notices of Elections before they go out.  
5 I review certifications before they're issued. Any  
6 letter, any order, any document really that is issued  
7 with regard to the R case, like an order withdrawing  
8 an order, something like that, I will review before it  
9 goes to the regional director for signature.

10 Q. So it sounds like, based on what you said,  
11 you have very direct supervision in every step of the  
12 R case process?

13 A. That is correct, because I'm the only -- I  
14 was and am the only supervisory examiner in the  
15 Region. All the other supervisors were attorneys and  
16 did not have the representation case experience that I  
17 had -- have.

18 Q. So for this question, I want you to pretend  
19 like I don't know anything, which may not be hard for  
20 you to pretend. If you were to explain to me what the  
21 role of the Agency is in an R case, how would you  
22 explain that to me, a person who doesn't know?

23 A. Yes. The Agency's role in a representation  
24 case is to essentially be the neutral entity that  
25 comes in to provide the employees with an opportunity

1 to exercise their choice in representation, and  
2 whether that's to get representation in or get  
3 representation out, that's the role we play is to  
4 provide them the opportunity to do so.

5 Q. What does that mean to be "the neutral"?  
6 I'm going to ask you about C cases next, so we're  
7 going to compare C cases and R cases. So in an R  
8 case, what -- how was the Agency neutral?

9 A. Well, the Agency's not an advocate in that  
10 situation. Like a pre-election hearing is simply a  
11 fact-finding mission to determine who's eligible or  
12 the scope of the unit. We're not there to take a side  
13 or to put forth a position of either side. What we're  
14 there -- is to provide the employees an opportunity  
15 free of coercion to make their choice, whatever that  
16 choice may be.

17 Q. So just sort of like maybe, again, if  
18 someone is reading the transcript and has no idea what  
19 we're talking about, when doing an R case, you're kind  
20 of acting like the county election clerk or something  
21 like that?

22 A. Right. We're providing a service rather  
23 than an advocacy, I guess is what I'm trying to say.

24 Q. I use the term "C case," which is -- stands  
25 for like a shorthand way of saying an unfair labor

1 practice case with unfair labor proceedings to stand  
2 kind of like for a charge. So when dealing with a  
3 charge, an unfair labor practice charge, how does that  
4 differ from a representation matter?

5 A. The unfair labor practice -- well, there's  
6 kind of two sections to that. I always look at it as  
7 the investigation section, where you're invest- --  
8 again, you're neutral at that point because all you're  
9 doing is fact-gathering. You're receiving the  
10 evidence, giving both parties, or however many parties  
11 there are, the opportunity to present either evidence  
12 in support of their claim or evidence in defense of  
13 the claims made against them. And at that point,  
14 you're just gathering and trying to get the story.

15 Once, then, the evidence has been obtained  
16 and a reasonable determination is made, at that point,  
17 if there's merit, then, in my mind, it kind of  
18 switches over to then you're becoming rather the  
19 investigator, then the Region and/or Agency becomes  
20 the prosecutor, because then it's, okay, we found  
21 merit. Now we're going to settle or go to trial.  
22 Obviously, examiners don't do that, but -- so I look  
23 at those as two different situations, where -- one  
24 where you're neutral, and then you become the  
25 prosecutor.

1 Q. So in an R case, you're never supposed to  
2 lose that neutrality, correct?

3 A. Correct.

4 Q. You've always got the entirety of the  
5 process; you remain a neutral party. And in the  
6 C case situation, at some point if there's merit to a  
7 charge, the Region that prosecutes that charge and  
8 takes a position as to whether or not the charge --  
9 and you wouldn't approve a settlement to do all kinds  
10 of stuff. That would never happen in an R case or a  
11 representation matter?

12 A. Correct.

13 Q. Okay. I just wanted to make sure. I didn't  
14 want to ask everyone to explain this difference during  
15 the interviews, but you seem like the perfect witness  
16 to take care of that, so I appreciate your indulgence  
17 of me just for getting that laid out for us.

18 So with regard to this case that I  
19 mentioned, I'm just going to call it the Starbucks  
20 case or the Starbucks representation matter. I'm not  
21 going to keep listing those numbers. It's kind of  
22 meaningless for purposes of the interview.

23 I think it is also important just to sort of  
24 check in, because -- and we mentioned before the  
25 interview, I had a little summary of how we do an

1 interview. One thing that I mentioned was there's  
2 been a hearing with regard to some objections, and so  
3 the purpose of our interview is not to sort of  
4 relitigate that question, okay, because that's not  
5 really appropriate for the IG. It's not my job to  
6 determine whether or not an objection is substantiated  
7 or not. The RRD will determine whether or not to  
8 follow those recommendations, and they can actually go  
9 to the Board, and so those are the people who can  
10 relitigate that. I have no interest in doing that.

11 So as you answer my questions, please  
12 understand that's not my purpose in asking about them.  
13 But I'm just going to -- or for purposes of our  
14 interview, we're going to -- as the IG, I'm assuming  
15 that for right now, that is the determination with  
16 regard to the objections involving whether or not to  
17 extend the period of time for the mail ballots to be  
18 returned.

19 And I also have a question about this  
20 process of having people come in and vote. I think  
21 the Hearing Officer said that really wasn't a problem.  
22 Again, I am not relitigating that, but I have a few  
23 questions about that, that process.

24 So now with regard to this Starbucks, not  
25 just this case, but overall, did your Region, back in

1 April, did it -- based upon the transcripts and the  
2 Hearing Officer's case, it appears there's some sort  
3 of C case also going on involving Starbucks. And it  
4 appears that some of the witnesses in the R case  
5 hearing may have been witnesses in another C case  
6 matter. Is that correct, to your memory?

7 A. That is my understanding, but I was not  
8 really involved in the ULP case.

9 Q. Okay. I'm not going to ask you about those.  
10 I just wanted to confirm that there's both an R case  
11 matter that was going on as well as a C case matter  
12 that was going on. Now, what was -- maybe you can  
13 kind of answer this question. What was your  
14 involvement with that C case, if any?

15 A. I don't recall having any involvement. I  
16 did not sit in on any agendas or the determination in  
17 the ULPs.

18 Q. So with regard to this particular election,  
19 you're only involved with the Starbucks cases on the  
20 election side of the region's processing of these  
21 matters?

22 A. I believe so. Actually, let me check that.  
23 I apologize. There's been so many, I'm confused.

24 Q. It's not a trick question.

25 (Simultaneous speaking.)

1           A.    Well, I know at some point I started sitting  
2 in on agendas, but I believe that after I became the  
3 assistant to the regional director and not before, but  
4 I could be mistaken on that. I just don't remember.

5           Q.    Okay.

6           A.    I don't recall being involved in those  
7 particular cases.

8           Q.    So in this matter in the R Case -- going  
9 forward, we're only going to be talking about the R  
10 case now. In the R case, it looked like on April 1st,  
11 I think -- I get the names all mixed up, but it's  
12 [REDACTED], or do you call [REDACTED] [REDACTED]?

13          A.    [REDACTED] goes by [REDACTED], yes.

14          Q.    [REDACTED], [REDACTED] was the election clerk, is that  
15 right, or the [REDACTED]?

16          A.    I think [REDACTED] title is a [REDACTED]  
17 [REDACTED].

18          Q.    Okay. So [REDACTED] sent an e-mail out saying that  
19 there had been an inadvertent fumble. Do you recall  
20 that e-mail?

21          A.    I do, yes.

22          Q.    Okay. So that e-mail went out. Let me  
23 just -- bear with me for a second. Rather than have a  
24 bunch of e-mails, because there's like this trail of  
25 e-mails, I can have each individual e-mail. I'm going

1 to start at the bottom of the trail.

2 So I'm going to share with you real quick  
3 what I've marked as Exhibit 4. Okay. So we're just  
4 looking at the bottom of that exhibit. There's this  
5 e-mail that went out at 7:41 p.m. on Friday, which is  
6 significantly after the Region probably normally  
7 closes on a Friday. I know people work -- their  
8 normal hours are 4:30, 5-ish sometimes?

9 A. Yes, 8:15 to 4:45, yes.

10 Q. Okay. So this is well after your normal  
11 workday. And in this e-mail, [REDACTED] describes an  
12 inadvertent fumble, basically that [REDACTED] used the wrong  
13 voter list and that not everyone got the ballot,  
14 right? Is that a fair way to describe it?

15 A. Yes. Obviously, I wasn't copied on that. I  
16 don't even remember how I became aware, but at some  
17 point I was made aware that the wrong list was used.  
18 The first list was filed on the time that it was  
19 supposed to have been filed, and then the very next  
20 day apparently a corrected list was e-filed, and [REDACTED]  
21 must have not used -- [REDACTED] just used the first one.

22 Q. Right. So you're saying before this e-mail  
23 went out, you weren't aware of the problem?

24 A. I don't believe I was. I think I learned of  
25 it after the fact, but, honestly, I don't recall

1 the -- how or when I learned of it, but I was made  
2 aware of it after the fact.

3 Q. Okay. I'm showing you Exhibit 1. Earlier  
4 in the day at 12:15 p.m., the Union had connected the  
5 Region by e-mail, stating that individuals had not  
6 received their ballots. Actually, this is going  
7 out -- hold on. This is going out from [REDACTED],  
8 who is the field examiner, saying that, you know, that  
9 they're aware on April 1 that individuals had not  
10 received the ballots and that [REDACTED] will assist in  
11 scheduling a time to visit Overland Park to pick a  
12 ballot up.

13 A. Uh-huh.

14 Q. Were you aware of that e-mail?

15 A. I don't remember seeing this e-mail. It's  
16 possible [REDACTED] could have called me or IM'd me on  
17 Friday.

18 Q. Okay. But that's at 12:15.

19 A. Yeah. I just don't remember when or how I  
20 learned of it.

21 Q. On this e-mail -- okay. Now I'm showing you  
22 Exhibit 2.

23 A. Yes.

24 Q. So this is the same Friday, but now it's  
25 3:03, so this is -- it was 7 something, so this is

1 like four hours earlier.

2 A. Right.

3 Q. The Union or [REDACTED], the field examiner, sent  
4 an e-mail to [REDACTED], the [REDACTED], copying you  
5 and saying that they're working -- this may be when  
6 you first started.

7 A. That's what I'm wondering now. That's  
8 probably --

9 Q. There's three individuals, and that they're  
10 working with the Union to just get the ballots to  
11 them.

12 A. Yes.

13 Q. Basically, that's what the e-mail says. I  
14 mean, the e-mail will speak for itself. But in this  
15 case, you have the -- the field examiner is stating  
16 the Union is concerned that there's not enough time  
17 for them to receive and return the ballots before the  
18 count.

19 [REDACTED] talked with you, and you guys have  
20 agreed to call them and schedule an appointment for  
21 next week to stop by the office and pick up a  
22 duplicate ballot. And then you're basically, I guess,  
23 instructing [REDACTED] to create them.

24 So my question, then, if we go back to 4,  
25 this e-mail on 4, which is from [REDACTED], the [REDACTED]

1 [REDACTED], to the Union and the parties, you're not  
2 copied, but [REDACTED] is.

3 A. Uh-huh.

4 Q. The e-mail doesn't mention that the Region  
5 has made accommodations for some or has to work to get  
6 the ballots to them in a more timely manner than the  
7 mail. Do you know why that information was not  
8 included in this e-mail?

9 A. I don't know why, I mean, because I don't  
10 remember having a conversation with [REDACTED], but  
11 typically we don't share information with the parties  
12 as to who has or has not voted.

13 Many times one or both parties will contact  
14 us and say, "Hey, this person hasn't got their  
15 ballot," or "They need a duplicate." And we will  
16 instruct them, "Well, the employee needs to call us."  
17 All the employees got the same instruction sheet that  
18 have our number and to call us if they need a  
19 duplicate, and that's what we do. We tell the party,  
20 "The employee needs to contact us." I think that's  
21 what the Case Handling Manual says too. The employee  
22 needs to make the request.

23 Now, often the party will -- that flagged it  
24 to us will go, "Hey, have you made those arrangements  
25 or whatever?"

1           And we will say, "It's being handled."

2           But we don't ever call the other party and  
3 say, "Hey, these people didn't get their ballots.  
4 We're making arrangements." So that's not typically  
5 -- because you want to protect the employee's privacy.

6           Q.    Right, but in this case, you actually did  
7 what you said you typically -- not you. The Region  
8 did what you guys are saying you typically don't do.

9           In this case, the petition for organizing  
10 the Union, like the attorneys for the union were  
11 contacting the Region directly, telling them who had  
12 not received the ballot, and then the Agency was  
13 communicating -- the Region was communicating with the  
14 Union about how that person could come in and get  
15 another ballot?

16          A.    Was that [REDACTED] e-mail or [REDACTED]?

17          Q.    I believe it's [REDACTED] e-mail, but I guess my  
18 point is --

19          A.    To the Union, or was that [REDACTED] e-mail to me?

20          Q.    We'll come back to that. But my point is --

21          A.    Okay.

22          Q.    -- and here, it says, "We're sending out  
23 ballots," right? It's right here, "Sending out  
24 ballots to those voters who were added to the revised  
25 list." Now everyone knows who was added to the

1 revised list. Again, those voters, it's not a secret,  
2 right, because you can look at the first list, look at  
3 the second list, compare the two and figure out who  
4 those two employees are. My concern --

5 A. Go ahead.

6 Q. Okay. My concern is that earlier, before  
7 that 7:00 e-mail went out to the Union's attorney, to  
8 Gabe from [REDACTED], stating, "Please have the individuals  
9 that have not received the ballots call me directly,  
10 and I will assist them in scheduling a time to visit  
11 the Overland Park office."

12 And if you go back and look at the super --  
13 that's in -- sorry. That was in Exhibit 1. If you go  
14 back in Exhibit 4, Exhibit 4 doesn't provide that  
15 information, that we will provide an opportunity for  
16 these employees to come to the office?

17 A. Uh-huh.

18 Q. Right. I'm not talking about -- we have  
19 told the Union to do this. Right? I mean, that's not  
20 in this e-mail. So this e-mail --

21 A. Yeah, it's -- go ahead.

22 Q. And I think the Hearing Officer also stated  
23 this e-mail is missing information, and I don't know,  
24 and I want to get an understanding of the why it's  
25 missing the information.

1           A.     What I believe, and my understanding of our  
2 process is [REDACTED] e-mail here was advising them that  
3 two names were left off because we used the wrong  
4 ballot. [REDACTED] mailed out those two ballots on  
5 April 1st, and [REDACTED] was notifying everyone that [REDACTED]  
6 mailed them out. What [REDACTED] e-mail was, it had to do  
7 with the duplicates, not the original ballots.

8           Q.     Yes, but, again, this is after 7:00 in the  
9 evening, and [REDACTED] e-mail is well before 7:00. That's  
10 my concern.

11          A.     Yes, [REDACTED] is very late.

12          Q.     Yeah. Well, not only late, but there's  
13 information that's not in here that was relevant to  
14 what the Region was doing and would not seem to be  
15 one-sided information. Or is it -- if the agency is  
16 supposed to be neutral -- or not supposed to be  
17 neutral. The Agency is required to act neutrally in  
18 the action. It seems to me that that information  
19 should have been in this e-mail. Not only have they  
20 mailed them out, but we have asked the Union to  
21 provide information to the employee, that they can  
22 also come in. So this also -- there's another issue  
23 here, but this also seems to indicate two people, when  
24 in actuality the Region was allowing multiple people  
25 to come in and pick up the ballot.

1           It wasn't just the two people who were  
2 inadvertently left off the mailing because of the  
3 issues with the list, but there were other people who  
4 had not received the ballot, and they were also  
5 allowed to come in. So do you know if the employer or  
6 the employer's representative was ever provided  
7 information regarding that accommodation for people  
8 who did not receive mail ballots?

9           A. I don't think they were. Like I said, we  
10 typically -- we don't contact the other party. And,  
11 again, the Union contacted us. They raised it with  
12 us, and they were told the employee needed to contact  
13 us, which is what they did. And just -- I know the  
14 timing of this.

15          Q. So if we go --

16          A. I don't know how to explain why ■■■ sent it  
17 so late, other than ■■■ does work a later schedule.

18          Q. You responded the same thing on Exhibit 4.

19          A. Uh-huh.

20          Q. After the -- just bear with me while I go  
21 down. I hate it when people do this, because my eyes  
22 don't focus. But the Employer's attorney became  
23 concerned, and then they responded on Monday --  
24 Monday, first wanting to know when the ballots were  
25 mailed.

1           So, again, at that point, this would seem to  
2 be an opportunity for the Region, again, acting  
3 neutrally, to put in there, "We mailed them, and we  
4 also told the unit that they could come in and pick  
5 them up."

6           So we've got two ways to try to get these  
7 ballots to these people, but that's not in there.  
8 Again, but that's [REDACTED] e-mail, not yours. But  
9 this hasn't included that in this thing. That was  
10 that the Union -- or I'm sorry, the Employer's  
11 attorney then made a request that on Tuesday at 8:41  
12 p.m., in this chain, that the time be extended, and  
13 that they basically said they can ensure these ballots  
14 can get back in. They can be re- --

15           So back up. On April 5th at 8:41, the  
16 Employer's representative requests that additional  
17 time be allowed for these individuals to mail their  
18 ballots back in. So the Union objected to that. They  
19 basically said they don't agree. They object to it.

20           And then you -- this is then forwarded to  
21 you. Their objection was received at 1:51. There  
22 must be some small time difference because the time  
23 stamps are getting a little off here, but this was  
24 forwarded to you, and then you responded about 5:00,  
25 4:53, saying, "Noting the Union's opposition, we do

1 not believe there's any basis to postpone the  
2 account."

3 Your e-mail does not explain that you made  
4 alternative means for the people -- employees to  
5 receive the ballot. Why didn't you include that  
6 information in your response?

7 A. Because my regional director did not want me  
8 to.

9 Q. Okay.

10 A. I had a conversation with Andrea either  
11 that -- probably this day or the day before about when  
12 we got -- whenever we got the request, and we  
13 discussed it. And, personally, I wanted to because I  
14 thought even though we normally don't, in this  
15 situation I thought explaining what happened and why  
16 it happened would go a long way to help resolve an  
17 issue, than why we weren't postponing it, because we  
18 knew they had an opportunity to return their duplicate  
19 ballots, and we had them in hand. There were no other  
20 reasons to extend it. I wanted to share that  
21 information, but she did not want me to. She said  
22 there was no need to tell them, and so this is what I  
23 had permission to send.

24 Q. Did you draft a different response?

25 A. I don't recall if I drafted a different

1 response or if this was just a conversation.

2 Q. Okay.

3 A. But I had -- I had -- I went through my  
4 handwritten notes, and I have my note of my  
5 conversation with her, but I didn't notate what I had  
6 wanted to do, just what I was told to tell them.

7 Q. I just want to make sure I understand  
8 correctly. You had a meeting with the regional  
9 director --

10 A. Yes.

11 Q. -- on Tuesday, April 5th to discuss --

12 A. Possibly April 4th.

13 Q. I think it would have to be...

14 A. No, you're right, the 5th.

15 Q. Yeah, I'm sorry. It just has to be the 5th,  
16 because that's when the Employer made the request.

17 A. Yes.

18 Q. So you had the meeting on April 5th, and at  
19 that time, you, your recommendation to the regional  
20 director was that you disclosed to the Employer that  
21 you're allowing people to come in to pick up the  
22 ballots to ensure that they have sufficient time to  
23 vote?

24 A. Yes.

25 Q. And you have no notes, contemporaneous notes

1 of that conversation for that meeting?

2 A. Yes.

3 Q. Okay. I need those notes.

4 A. Okay.

5 Q. I need you to copy them, scan them, and  
6 provide them to me.

7 Did you have any discussions with any other  
8 people regarding your meeting with the regional  
9 director?

10 A. I don't recall if I did or not.

11 Q. And was this meeting -- because you're in  
12 Overland Park, right? Correct?

13 A. Correct.

14 Q. And the regional director is in St. Louis.  
15 So was this meeting like a telephone meeting like  
16 we're having, or was it an in-person meeting?

17 A. It was by phone.

18 Q. And since that meeting, have you had any  
19 discussions with the regional director regarding that  
20 decision?

21 A. I don't believe so, no.

22 Q. Do you know, based upon -- was it -- on the  
23 phone, was it a video? If you recall, was it a  
24 videoconference or just a regular non-video phone  
25 call?

1           A.    To the best of my recollection, I think it  
2 was just a phone call.

3           Q.    I only asked that question because I wanted  
4 to know if you could tell whether or not she was  
5 making notes. Do you know? Is it her practice to  
6 make notes?

7           A.    I -- I would say no, but honestly I don't  
8 know. I'm guessing.

9           Q.    Okay.

10          A.    I don't know.

11          Q.    So before you got -- it appears, and I just  
12 want to sort of clarify this. It's not clear to me at  
13 what point you got involved in this decision to let  
14 people, employees, come in and pick up ballots. So  
15 what -- did you get involved in that sort of, as this  
16 e-mail Exhibit 4 kind of would seem to indicate, sort  
17 of midway in that process, or were you involved in the  
18 initial problem and then meeting with someone and  
19 saying, yeah, let's have them come in?

20          A.    I believe I got involved when [REDACTED] -- because  
21 that was our first week back in the office, even  
22 partially. Prior to that, we were still on pandemic.  
23 So I was one of the few people that was coming into  
24 the office regularly.

25                    So I believe my main involvement was I was

1 the only one here that could have received or provided  
2 the duplicate with people who came to the office. I  
3 believe [REDACTED] communicated with me to make arrangements,  
4 or when [REDACTED] made arrangements with the employee, [REDACTED]  
5 would notify me what day to expect them to come in.

6 Q. Now, maybe my question wasn't clear. It  
7 probably wasn't clear.

8 If we go back to Exhibit 1, this is earlier.  
9 This is before [REDACTED] sends [REDACTED] e-mail. So this is  
10 where [REDACTED] is going, and [REDACTED] a field examiner who's  
11 assigned this matter.

12 A. Correct.

13 Q. So [REDACTED] going out, and [REDACTED] telling  
14 Mr. Frumkin, "Hey, if individuals haven't received the  
15 ballots, have them call me directly, and I will assist  
16 in scheduling time to visit the Overland Park office  
17 to pick up the ballots."

18 Now, [REDACTED] can't do that, because [REDACTED] not in  
19 Overland Park. [REDACTED] in Tulsa. So [REDACTED] not going to  
20 drive to Overland Park every time someone wants to  
21 pick up a ballot?

22 A. Correct.

23 Q. And he says, "Thank you. I passed this on  
24 to the ground organizer." Okay. So hold on. Now,  
25 you're on this e-mail. So at 3:03, there's an e-mail

1 from [REDACTED] to [REDACTED], and you're copied on it, and here  
2 [REDACTED] explaining there's three individuals, that this  
3 is an individual in addition to the two that were left  
4 off the list.

5 And so here it says -- [REDACTED] speaking to  
6 [REDACTED], [REDACTED] says, "I understand that you," meaning  
7 [REDACTED], "also had a conversation with him yesterday  
8 afternoon, and that you are mailing out the three  
9 duplicate ballots today."

10 "So the Union is concerned there's not  
11 enough time. [REDACTED] talked with Carla too, and we've  
12 agreed that they could call me and schedule an  
13 appointment for next week to stop in Overland Park, OP  
14 office, and pick up the duplicate ballots and return  
15 them," this section here.

16 So in this e-mail, it's obviously before [REDACTED]  
17 sent this to [REDACTED]. So at some point, you were  
18 brought into this solution, to the problem discussion.  
19 And I'm just wondering at what point did you get  
20 involved in the solution to the problem?

21 A. I don't recall if I -- I mean, I obviously  
22 got that e-mail on Friday, and I was made aware at  
23 some point, probably by [REDACTED], that the two had been  
24 left off, and if I recall, the third was -- he had  
25 already been sent two duplicates or something like

1 that and hadn't gotten either, so he hadn't gotten his  
2 original. He hadn't gotten the duplicate, and I  
3 believe a second duplicate he still had not received,  
4 which was mailed out on the 1st.

5 Q. So this is deviating from your process  
6 where -- or the process that you explained earlier  
7 that if the Union, the organizing entity, or the  
8 Employer said, "Someone hasn't received a ballot," you  
9 tell them to "have that person contact us."

10 But in this case, you're initiating sending  
11 out the ballots based upon the Union telling you that  
12 they need a ballot. And, also, you're depending on  
13 the Union to tell the people to call up and make the  
14 appointment to come in and vote.

15 I'm sorry. I misstated that. You're not  
16 saying that at all here. That's a different question.  
17 But you're telling the Union to have the contact with  
18 the people. This just seems to be a little different  
19 from what you describe. Why don't I give you an  
20 opportunity maybe to address that?

21 A. I mean, I would have to see [REDACTED] call logs  
22 or call notes to see if we sent out this duplicate for  
23 the third party, or if [REDACTED] had contacted -- if any of  
24 these people had contacted [REDACTED] directly, because,  
25 typically, we want the employee to call because we

1 want to confirm do we have the right address.

2           Once we confirm the address, then we will  
3 send the duplicate. We also want to confirm that they  
4 haven't received the duplicate. But not knowing what  
5 the extent of [REDACTED] communications are, I don't know.  
6 I know this e-mail makes it appear that way. It's  
7 possible. I don't know.

8           Q. Okay. That's very helpful, because we can  
9 figure out the call log. We can see the call log. We  
10 can talk to [REDACTED] about who we're interviewing today,  
11 but, yes, that's a good point, and that's why we do  
12 these interviews. You may feel like I'm putting you  
13 on the spot. Honestly, sometimes we just don't know,  
14 because we don't do representation, so we don't know  
15 this stuff, which is why we ask the questions.

16           Okay. So there's two things now. Again,  
17 I'm asking the questions from a position of a person  
18 not having done an election. But how did it go from  
19 they can come in and pick up the ballots to they can  
20 come in and vote in the regional office? And I know  
21 the Hearing Officer has no issues with that. I'm not  
22 opening up those issues either.

23           I just want to know how you went from what I  
24 see in the e-mail, which is, "Hey, come in and pick  
25 them up" to they're going to come in and vote. Do you

1 know how that happened?

2       A. I think it's just who they put -- they [sic]  
3 coming in and vote. They don't vote. What we do is  
4 we provide them a duplicate packet, which is the  
5 external pass, yellow/brown envelope that we would  
6 mail it out in. And inside that is the inner blue  
7 envelope, the outer yellow return envelope that has a  
8 case number, and the key voter number that corresponds  
9 to the voter list. They've got the instruction sheet  
10 for mail ballots, and then it has the ballot.

11           When they come in to pick up the duplicate  
12 and it's marked, you know, the appropriate number with  
13 the appropriate D -- it's 1D, 2D, 3D. It depends on  
14 how many duplicates they've had previously, because I  
15 think one of these voters, it was like a DDD, because  
16 he had not gotten any of the prior ones that were  
17 mailed. When they come, they pick it up.

18           Now, if they want to leave, go out to their  
19 car, go home, fill it out, whatever, they can, but we  
20 also had an IO room that was right there that they  
21 could use if they wanted to, and we allowed them to  
22 use it. And they went in, and they shut the door. So  
23 it wasn't like voting. So it's not like a manual vote  
24 that they -- you know, I handed them a ballot, and  
25 they marked it, and they folded it, and they handed it

1 back to me.

2 I gave them the packet. They went into a  
3 closed room by themselves and did whatever they needed  
4 to do. And when they came back out, they handed me  
5 the sealed, signed -- the same thing they would have  
6 mailed back. And the stip itself doesn't say it has  
7 to be mailed. It just has to be received by us by a  
8 certain time.

9 Q. Again, I'm not disputing the Hearing  
10 Officer's findings with regard to those objections. I  
11 don't -- to me, it doesn't really matter, but people  
12 seem to, depending on what their viewpoint is -- seem  
13 to have an issue with this, and to me, I'm just  
14 wondering how is it -- and I talked to many regional  
15 directors as we surveyed all the regions, and this  
16 does not seem to be a standard practice. So this is a  
17 highly unusual practice. So I just am trying to  
18 figure out --

19 A. And they're not admitting that they're doing  
20 it, because at least half of the ARDs said that they  
21 do it, and we've done it for years. It's not  
22 frequent. It shouldn't be frequent, and the only  
23 reason it became more frequent is because we went from  
24 having one, maybe two mail ballots in three years, to  
25 having, I don't know, 40 to 60 in less than a year, so

1 the frequency of it has increased when we were doing  
2 it.

3 Q. Have you --

4 A. Infrequent -- sorry. Go ahead.

5 Q. Sorry. I think I interrupted you. No, I  
6 understand what you're saying. You give a person a  
7 ballot. You can't control what they do with the  
8 ballot. They could walk outside, stand outside the  
9 door, vote and either go drop it in the mailbox or  
10 bring it right back into the regional office.

11 I mean, you have no control over what they  
12 do. You're the one handing them the ballot, right,  
13 because they're all coming into your office, and it  
14 looks -- based on the -- there's a memo?

15 A. Yes, I did an internal case memo to document  
16 it, which is my standard practice.

17 Q. Right. So there's a memo documenting all  
18 this. So did you, like, point and say, "If you want  
19 to vote, you can go there"? Or did the people ask,  
20 "Can I vote here?" Just how did that happen?

21 It's just a very honest sort of question,  
22 because I think, like you said before, if you have the  
23 opportunity -- if -- when you were talking to the  
24 regional director, your recommendation was that you  
25 disclose information, and the basis for disclosing

1 that information was that it will avoid confusion and  
2 maybe problems in the future so everyone will have an  
3 understanding. Okay? I'm trying to get to that same  
4 thing.

5 I'm not saying that it was wrong, but I  
6 think some people have questions about why people are  
7 voting in a regional office. And I understand you're  
8 saying, well, they are not voting. They are not  
9 voting with a box, but to the layman person, that's  
10 not an important factor. The voting is not putting it  
11 in the box. The voting is marking the sheet, right,  
12 so different people have different ideas on what  
13 voting means. So my question to you, with the  
14 understanding of no one's saying it was improper.  
15 Just to have a better understanding of what happened,  
16 because this did not -- we have a very one-sided  
17 understanding of what happened, because you did not  
18 testify at the hearing, right?

19 A. Correct.

20 Q. And so we're limited. The information we  
21 have is based upon the memories of the people who  
22 actually came in and got the ballots. Now, perhaps  
23 what they said is absolutely correct and true, and  
24 that's fine, but I would like to know what your memory  
25 is about sort of how that happened. So they come in,

1 and they identify themselves, right?

2 A. Check their ID, yes.

3 Q. Making sure they are who they purport to be?

4 A. Yeah. Yes.

5 Q. And you hand them the ballot, and then what  
6 happens?

7 A. I handed them the packet, and, honestly, I  
8 don't recall, but I have a vague recollection that the  
9 first person started to just do it right there in the  
10 window, and I didn't want them marking it in front of  
11 where people could see, because it should be a secret  
12 ballot, and our IO room is literally right there.

13 I think I just offered, "If you would like  
14 to step in there and shut the door so you can mark it  
15 and do it in privacy," and they did. So I think from  
16 then on, I may have offered when they came in. "You  
17 can take it out to your car, if you'd like to go over  
18 it here and do it in private." I believe that is what  
19 happened, but, honestly, I don't have a clear  
20 recollection of the conversation.

21 Q. Is it fair to then say -- based upon your  
22 lack of clear recollection, is it fair to say at that  
23 particular moment in time that what they were doing  
24 did not seem to be a significant event? In other  
25 words, the voting is significant, but the manner in

1 which they were voting did not seem to be significant?

2 A. Correct.

3 Q. Okay. And again, I want to make sure I  
4 heard you right. There will be a transcript, and I  
5 can go back and read it, I guess. You believe that  
6 this is not as uncommon as perhaps people have led me  
7 to believe?

8 A. Based on my conversations with other ARDs,  
9 because honestly, after it happened, I thought, "Gosh,  
10 have we been doing this wrong for all of these years?"  
11 So I wanted to know, and I had asked other ARDs, and  
12 at least six of them said, "Yeah, we do this  
13 regularly" -- not regularly. I shouldn't say  
14 regularly. It's uncommon, but it's an option for  
15 those voters who just, for whatever reason, can't get  
16 the ballot.

17 For example, we had a case in St. Louis  
18 where a voter was homeless, and so all attempts to  
19 mail it to them -- they were couch-surfing, basically.  
20 So we prepared a duplicate, and we overnighted it to  
21 St. Louis, and they came in and picked it up there,  
22 because our goal is to, you know, allow everybody to  
23 vote, as many people or whatever.

24 Q. I don't disagree that there's -- I'm not  
25 talking about coming in and picking up the ballot. I

1 do think several regions have said, "Yes, we have  
2 allowed people to come in and pick up a ballot."

3 I think what I'm asking is the vote -- is  
4 executing the ballot in the office, that seems to be  
5 not so routine in nature?

6 A. I don't know.

7 Q. When you say other regions do it, you mean  
8 other regions allow voters to come in and pick them  
9 up?

10 A. Yes. And I know some have gone in an IO  
11 room, and some go down to the cafeteria. Some go out  
12 to their car. I guess I just viewed it as the IO room  
13 was -- I knew nobody else was in there. It was behind  
14 a closed door, and I knew they were alone. Where, if  
15 they're in the cafeteria or in their car, I don't know  
16 that they're alone or they're the ones -- you know,  
17 not that I'm monitoring it, but I guess that was my  
18 thought process, but I know they're the ones that are  
19 marking that ballot and returning with it.

20 Q. I have a follow-up question to your meeting  
21 with the regional director about responding to the  
22 Union's request. Do you have the notes --

23 A. I do. Do you want me to e-mail that to you?

24 Q. Yes. They're not in NXGEN, correct?

25 A. No.

1 Q. So how normal -- every time you meet with  
2 the regional director about questions, about, say,  
3 responding to requests and stuff, how normal is it for  
4 you to memorialize those meetings and notes?

5 A. I think it depends on the topic. Sometimes  
6 I don't make notes at all, depending on what it is.  
7 But if it's something that I knew I was going to be  
8 sending this e-mail, so I wanted to write down what I  
9 was supposed to send, or if it's information that I  
10 need to disseminate to other supervisors or other  
11 employees, then I will definitely take notes.

12 Q. Was part of the reason for taking notes  
13 because you thought the directions from the regional  
14 director were sort of improper, with like a small "i,"  
15 like not the right way to handle it?

16 A. Possibly, and I also wanted to make sure I  
17 didn't get the e-mail wrong, because it wasn't  
18 necessarily my words, if that makes sense.

19 Q. What was your comfort level in doing that,  
20 not taking the notes, but in sending the e-mail?

21 A. I really wish we could have provided more  
22 information, because I think if we had and they know  
23 that -- it could have gone either way. We tell them,  
24 and they're like, "Oh, my gosh, that's horrible. You  
25 should never have done that." Or do we tell them, and

1 it's more visible. I think there was a lack of  
2 communication, a lack of visibility, maybe.

3 Q. Transparency?

4 A. Transparency, yes. Yes.

5 Q. But my question is at the time. Sometimes  
6 when -- like, sometimes, I don't know. I'll just  
7 speak for myself. Sometimes when I do something and  
8 I'm at work, and I know it's not quite right, I'll get  
9 that "I shouldn't do this" kind of feeling, like maybe  
10 I'm spending money on something my wife doesn't want  
11 me to spend money on. I shouldn't do this. And you  
12 sort of get that gnawing feeling that this is not  
13 right. Did you have that gnawing feeling that it  
14 wasn't right?

15 A. I wouldn't say that it was -- wasn't right.  
16 I don't feel like we did anything wrong. I just  
17 didn't -- I kind of felt like if we had explained it,  
18 what we had done and why we didn't need to postpone,  
19 then I don't know if it would have made a difference,  
20 but I just felt like we needed to explain more why we  
21 weren't postponing, because to me, this e-mail that I  
22 had sent just felt very no, and no reason. Yeah. I  
23 felt like we should have given a reason.

24 Q. Right. I'm not questioning -- I'm not  
25 saying that you felt it was wrong to institute the

1 process that you did to make sure people could vote,  
2 right?

3 A. Uh-huh.

4 Q. And, clearly, I'm not saying that's wrong.  
5 The Hearing Officer said that wasn't wrong. You guys  
6 didn't think that was wrong. My question is, did you  
7 get the gnawing feeling about not disclosing the  
8 information? In other words, it's the failure to  
9 disclose the information. Did you feel that that was  
10 -- like, did that cause you a pause? Like, we really  
11 should do this. The right way to handle this is to  
12 tell them what we did?

13 A. I think in this situation, yes, that is how  
14 I felt --

15 Q. Okay.

16 A. -- based on their request to postpone.

17 Q. So do you -- I have gone over by ten  
18 minutes, because I think -- I know I had an hour and a  
19 half for you, but my goal was one hour. One hour is a  
20 lot to talk to an IG. I don't have any additional  
21 questions for you, but do you have anything that you  
22 want to add?

23 A. I really -- I don't know. I really can't  
24 think of anything other than, you know, I know this is  
25 being looked at in isolation, and at the time, this

1 obviously wasn't the only case. It was our first week  
2 back. We had, I think, probably 13 to 15 elections  
3 going on at that same time, and it was just the three  
4 of us. So the timing of the communications and things  
5 like that might have been affected, but I don't know.

6 Q. We care about that information too in the  
7 IG's office. We're not saying -- you know, again, we  
8 collect the information. We haven't made our  
9 determination yet, but to the extent that there are  
10 other factors that would help explain why something  
11 happened, those factors are also important, so I  
12 don't --

13 A. Then I would say that -- I mean, definitely  
14 the timing, particularly of [REDACTED] e-mail, we could  
15 choose -- let's just say, we have no examiner here in  
16 Overland Park, and so [REDACTED] is the only R case person  
17 here, so [REDACTED] was not only doing all the administrative  
18 work, preparing all the ballots, mailing all the  
19 ballots. [REDACTED] was also counting every single one of  
20 these mail ballots along with other administrative  
21 tasks, so [REDACTED] was probably working expanded hours that  
22 I wasn't even aware of, so that would, to me, explain  
23 the lateness of [REDACTED] e-mail, because [REDACTED] was working.

24 Q. I don't have an issue with the time of [REDACTED]  
25 e-mail. I mean, to me, the timing just shows [REDACTED] was

1 working very late in the day.

2 A. Right.

3 Q. The timing of [REDACTED] e-mail is only relevant  
4 because of the other e-mails that occurred beforehand.  
5 So it's not that they were -- it's that there were all  
6 these other communications with the Union and that  
7 those communications aren't in [REDACTED] e-mail. So now it  
8 doesn't sound to me -- I ask you this directly, but it  
9 doesn't sound to me like you reviewed [REDACTED] e-mail  
10 before [REDACTED] sent it.

11 A. No, I did not.

12 Q. Okay. So did you -- going back to your  
13 conversation with the regional director, did you  
14 discuss with [REDACTED], the field examiner, the regional  
15 director's instructions to you?

16 A. I don't remember. I don't recall if I did  
17 or not.

18 Q. So I tell people this. Again, no one likes  
19 talking to the IG's office, and so we understand that.  
20 And sometimes when you're in -- when someone's in the  
21 situation and they're all nervous, and then when the  
22 interview is over, they feel better, because like it's  
23 something they didn't want to do. It's like when you  
24 go to the dentist, you feel better after your --

25 A. I love going to the dentist.

1 Q. Maybe --

2 A. My dad was a dentist.

3 MR. BERRY: Something else you do when you

4 do -- yeah. Sometimes you remember things later.

5 "Man, I wish I had said this during the interview."

6 It's fine to send us an e-mail or something or call us

7 and tell us that information that you think you wish

8 you had told us during the interview because, again,

9 our desire is to collect up the information and to get

10 all of it.

11 So if after this, when we're all done here

12 in a minute and at some point later you say, "Hey, I

13 wish I said this," let us know either by e-mail or

14 call us, and we can have another interview. You know,

15 we can talk again, but we want to be able to document

16 that information, because, again, we want to collect

17 up all the information, not just some of the

18 information. Okay?

19 I don't have any additional questions for

20 you. I certainly do appreciate your candor and your

21 assistance today. And if I do have a follow-up

22 question, we usually do them in e-mail and writing.

23 THE WITNESS: Okay.

24 MR. BERRY: So you'll have an opportunity to

25 think about the response. But at this point, I don't

1 have any additional questions for you. Okay. We are  
2 off the record.

3 (Whereupon, at 10:44 a.m., the interview in  
4 the above-entitled matter was concluded.)

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CERTIFICATION

1  
2 This is to certify that the attached  
3 proceedings before the National Labor Relations Board  
4 (NLRB), in the matter of Carla Coffman, Case No.  
5 OIG-I-569, via Zoom, on March 22, 2023, was  
6 held according to the record, and that this is the  
7 original, complete, and true and accurate transcript  
8 that has been compared to the recording.

9  
10 Brenda J. Orsborn

11 Brenda Orsborn  
12 Certified Court Reporter  
13 Registered Professional Reporter  
14  
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25

**From:** [Gabe Frumkin](#)  
**To:** [REDACTED]  
**Cc:** "[Mariana Orrego](#)"  
**Subject:** RE: Starbucks 14-RC-289926  
**Date:** Friday, April 1, 2022 3:17:52 PM  
**Attachments:** [image001.jpg](#)

---

Thank you, [REDACTED]. I've passed the information onto the on-the-ground organizer.

Gabe Frumkin

---

**From:** [REDACTED] [mailto:[REDACTED]@nrlb.gov]  
**Sent:** Friday, April 1, 2022 12:15 PM  
**To:** Gabe Frumkin  
**Subject:** Starbucks 14-RC-289926

Gabe,

Just to confirm with you, please have the individuals that have not yet received ballots call me directly ([REDACTED]) and I will assist them in scheduling a time to visit the Overland Park office to pick up a ballot.



[REDACTED]  
Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103  
[REDACTED] – Phone  
[REDACTED] – Mobile  
918-581-7970 – Fax  
Pronouns: [REDACTED]  
[REDACTED]@nrlb.gov

NLRB: <https://www.nrlb.gov>

NLRB en Español: <https://www.nrlb.gov/es>

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<https://www.facebook.com/NLRBpage>

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En español: [@NLRBGCes](#)/[@NLRBes](#)

Parties must electronically file documents. E-filing link: <https://www.nrlb.gov/cases-decisions/filing>

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [Coffman, Carla K.](#)  
**Subject:** Starbucks 14-RC-289926  
**Date:** Friday, April 1, 2022 3:03:00 PM  
**Attachments:** [image001.jpg](#)

---

[REDACTED],

I have been working with the Union's attorney, Gabe Frumkin, on three individuals that have not yet received their ballots. I understand that you also had a conversation with him yesterday afternoon and that you are mailing out those 3 duplicate ballots today. The Union is concerned that there is not enough time for them to receive and return those ballots before the count. I've talked with Carla, and we've agreed that they can call me and schedule an appointment for next week to stop by the OP office to pick up a duplicate ballot and return it. Go ahead and place the duplicate for these individuals in the mail today and then prepare a 2<sup>nd</sup> duplicate ballot to leave at the Regional office so that either you or Carla can meet with the voter next week at their scheduled appointment time.

I'm going to tell them that they can either come in on Monday or Wednesday because both you and Carla will be in the office that day. To confirm, the 3 individuals are:

Alydia Claypool  
Sage Quigley  
Michael Vestigo



[REDACTED]  
Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103

[REDACTED] – Phone

[REDACTED] - Mobile

918-581-7970 – Fax

Pronouns: [REDACTED]

[REDACTED]@nlrb.gov

NLRB: <https://www.nlrb.gov>

NLRB en Español: <https://www.nlrb.gov/es>

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En español: [@NLRBGCes](#)/[@NLRBes](#)

Parties must electronically file documents. E-filing link: <https://www.nlr.gov/cases-decisions/filing>

**From:** [Coffman, Carla K.](mailto:Coffman,Carla.K)  
**To:** [kdoud@littler.com](mailto:kdoud@littler.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); [rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com); [ecarter@littler.com](mailto:ecarter@littler.com)  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926  
**Date:** Tuesday, April 5, 2022 4:53:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image006.jpg](#)

---

Good afternoon,

While we understand the concerns raised by the Employer, and noting the Union's opposition, we do not believe that there is any basis to postpone the count at this time.

Thank you,

Carla



Carla K. Coffman  
Supervisory Field Examiner  
NLRB, Subregion 17  
8600 Farley Street, Suite 100  
Overland Park, Kansas 66212  
913.275.6536 - Phone  
202.674.5225 - Cell  
913.967.3010 - Fax  
[carla.coffman@nlrb.gov](mailto:carla.coffman@nlrb.gov)

---

**From:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Sent:** Tuesday, April 5, 2022 1:48 PM  
**To:** Coffman, Carla K. <Carla.Coffman@nlrb.gov>  
**Subject:** FW: Starbucks Corporation; Case 14-RC-289926

---

**From:** Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)>  
**Sent:** Tuesday, April 5, 2022 1:51 PM  
**To:** Doud, Kimberly <[KDoud@littler.com](mailto:KDoud@littler.com)>; [REDACTED] <[REDACTED]@nlrb.gov>; Dmitri Iglitzin <[iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com)>; Robert Cervone <[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** Carter, Elizabeth B. <[ECarter@littler.com](mailto:ECarter@littler.com)>; [REDACTED] <[REDACTED]@nlrb.gov>; Wilkes, Andrea J. <[Andrea.Wilkes@nlrb.gov](mailto:Andrea.Wilkes@nlrb.gov)>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Good morning all:

The Union does not agree to extend the ballot return date. The election has generated a substantial amount of engagement amongst bargaining unit members, and the Union is confident that those

bargaining unit members who wish to vote will be able to do so. Moreover, the election has generated sufficient public interest that delaying the vote count would be inappropriate.

If after the vote count the Employer believes that those voters who were not originally sent ballots a) were not able to vote and b) that their votes could be determinative in the outcome of the election, the Employer may have cause to file an objection.

Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | Associate Attorney (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

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---

**From:** Doud, Kimberly [<mailto:KDoud@littler.com>]  
**Sent:** Tuesday, April 5, 2022 8:41 AM  
**To:** [REDACTED]; Gabe Frumkin; Dmitri Iglitzin; Robert Cervone  
**Cc:** Carter, Elizabeth B.; [REDACTED]; Wilkes, Andrea J.  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Thank you for your response, [REDACTED]. We have not had a chance to discuss with Union counsel. The ballot return date is tomorrow Wednesday April 6 (three business days after mailing). It seems unlikely the partners you identified in your email below will receive their ballots in time to fill them out and mail them back. The ballot count is currently scheduled for this Friday April 8. We are concerned about disenfranchising these partners. We want to ensure they have a reasonable amount of time to receive and mail back their ballots. We request the ballot count be rescheduled to an agreeable future date to allow this to occur. The ballots were mailed to the rest of the partners at this store on March 16. Those partners were provided 3 weeks to return their ballots (April 6). Therefore, we propose these partners be provided the same amount of time by extending the ballot return date to Friday April 22 and holding the ballot count on Monday April 25. I am unaware of this coming up in any other Starbucks campaigns and am open to your thoughts. Please advise if you need a formal filing in this regard. Look forward to hearing from you. Thank you.

**Kimberly Doud**

Office Managing Shareholder  
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax  
[KDoud@littler.com](mailto:KDoud@littler.com)

Pronouns: She/Her



Labor & Employment Law Solutions | Local Everywhere  
111 N Orange Ave, Suite 1750, Orlando, FL 32801

---

**From:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Sent:** Monday, April 4, 2022 7:02 PM  
**To:** Doud, Kimberly <KDoud@littler.com>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

The day of the email, April 1, 2022.

---

**From:** Doud, Kimberly <KDoud@littler.com>  
**Sent:** Monday, April 4, 2022 9:55 AM  
**To:** [REDACTED] <[REDACTED]@nlrb.gov>; Carter, Elizabeth B. <ECarter@littler.com>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Hi [REDACTED]. Please advise when the additional ballots were mailed. Thank you.

**Kimberly Doud**

Office Managing Shareholder  
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax  
[KDoud@littler.com](mailto:KDoud@littler.com)

Pronouns: She/Her



Labor & Employment Law Solutions | Local Everywhere  
111 N Orange Ave, Suite 1750, Orlando, FL 32801

---

**From:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Sent:** Friday, April 1, 2022 7:41 PM  
**To:** Carter, Elizabeth B. <ECarter@littler.com>; Doud, Kimberly <KDoud@littler.com>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Subject:** Starbucks Corporation; Case 14-RC-289926

**[EXTERNAL E-MAIL]**

Due to a inadvertent fumble on my part, I used the first voter list when I was sending out the ballots, rather than the revised list. I have since corrected the error, sending out ballots to those voters who were added in the revised list. But, because I used the original numbering, the “new” voters had to be added to the bottom of the original list and given numbers 19 and 20. I have attached a copy of this list with the addition, which will be used at the count. I apologize for any confusion this may have caused.

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4/5/22

Andrea spoke to Liz Kerwin  
 ▽ she made her feeling.

Communiate that we hear  
 but don't think it is necessary  
 to postpone the election ~~at~~<sup>at</sup>  
 this time.

In terms of other issues,  
 it's all good because these are  
 all steps to enfranchise the  
 votes, but it should be  
 avoided.

Lets do some more research

do not  
 believe  
 there's  
 any  
 need  
 to  
 postpone  
 the  
 count.

**OFFICIAL REPORT OF INVESTIGATIVE INTERVIEW  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

---

**In the Matter of:**

**Case No.:     OIG – I - 569**

**ANDREA WILKES**

**Place:           Via Teleconference**

**Date:           03/22/23**

**Pages:          1-31**

**Interview of: Andrea Wilkes**

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**OFFICIAL REPORTERS**

**Veritext  
Mid-Atlantic Region  
1801 Market Street, Suite 1800  
Philadelphia, PA 19103  
215-241-1000**

1 UNITED STATES OF AMERICA  
2 NATIONAL LABOR RELATIONS BOARD

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4 \_\_\_\_\_  
5 |  
6 In the Matter of: |  
7 ANDREA WILKES | Case No. OIG-I-569

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10 |  
11 \_\_\_\_\_  
12 Investigative Interview of:  
13 ANDREA WILKES,  
14 was held, via zoom, from the National Labor Relations Board,  
15 1015 Half Street, S.E., 5th Floor, Washington, D.C., on  
16 Wednesday, March 22, 2023 at 1:15 p.m.

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18 \*\* HIGHLY CONFIDENTIAL \*\*  
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A P P E A R A N C E S

On Behalf of the National Labor Relations Board:

DAVID P. BERRY, Inspector General  
National Labor Relations Board  
1015 Half Street, S.E., 5th Floor  
Washington, D.C. 20570  
(202) 238-3000  
david.berry@nlrb.gov

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I N D E X

WITNESS:	EXAMINATION	PAGE
Andrea Wilkes	By Mr. Berry	4

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	3:17 E-Mail .....	7
Exhibit 2	Group of E-Mails .....	8
Exhibit 4	E-Mail .....	9
Exhibit 5	E-Mail .....	21

(All exhibits were marked prior to the start of the interview. Page numbers noted above indicate where the exhibit was first mentioned during the interview. All exhibits were retained by Mr. Berry.)

1 P R O C E E D I N G S

2 (Time Noted: 1:15 p.m.)

3 P R O C E E D I N G S

4 MR. BERRY: I am Dave Berry. I am an  
5 Inspector General, and this is an investigatory  
6 interview with Andrea Wilke -- wait. Wilkes?  
7 W-I-L-K-E-S. Did I spell that right?

8 THE WITNESS: Yes.

9 MR. BERRY: Sorry. Okay. So this matter  
10 involves Case 14-RC-289926. So if you could raise  
11 your right hand, please.

12 ANDREA WILKES,  
13 was called as a witness on behalf of the National  
14 Labor Relations Board, and after having been duly  
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 QUESTIONS BY MR. BERRY:

18 Q. For the court reporter, can you state your  
19 name and spell your last name, please?

20 A. Andrea Wilkes, W-I-L-K-E-S.

21 Q. So before the interview, I kind of -- or  
22 before I got on the record, I kind of explained to you  
23 the nature of the investigation. We're not  
24 reinvestigating or making new decisions or questioning  
25 the decisions that were made by the Hearing Officer

1 regarding the objections, followed by Starbucks, but  
2 that hearing did not cover everything, and I'm just  
3 sort of filling the gap on one particular issue. And  
4 these involve the allegations related to the  
5 Objections 4, 5, and 6.

6 But the Hearing Officer made her  
7 determinations, and whether or not those  
8 determinations are correct or will be filed are up to  
9 the regional director and the Board, not the IG's  
10 office. So what I'm going to focus on really is the  
11 communication between the regional office and the  
12 Union and the Employer and how some of that  
13 communication came into being.

14 But before we get into that, if you could  
15 just explain or describe your background before  
16 becoming the regional director for the Region 14.

17 A. Sure. I have worked for the National Labor  
18 Relations Board on and off for approximately 23 years.  
19 I started as a field attorney in Region 15, based out  
20 of New Orleans. I also worked as a field attorney in  
21 Region 16, in Fort Worth, before taking a hiatus and  
22 then returning to the Agency, to Region 15, in New  
23 Orleans, where I was again a field attorney, then a  
24 deputy regional attorney. I began my duties as  
25 regional director of Region 14, based here in

1 St. Louis, in January of 2022, and I have been in  
2 this -- in that position -- in this position ever  
3 since.

4 Q. Okay. And as a regional director, just, you  
5 know, sort of at a high level, what is it that you do?

6 A. As regional director, I'm ultimately  
7 responsible for the operation of the regional office.  
8 Our regional office in Region 14 encompasses three  
9 different offices based in St. Louis, and then also  
10 with the subregional office in Overland Park, Kansas,  
11 and a resident and regional office in Tulsa, Oklahoma.

12 As regional director, I am responsible for  
13 personnel. I'm responsible for general oversight and  
14 making ultimate decisions on cases that are  
15 investigated within my region in both representation  
16 and unfair labor practice areas.

17 Q. So when -- just sort of, we're going to come  
18 in the middle, but there was an e-mail. I'm going to  
19 share the e-mail with you. This is an e-mail that --  
20 this is the bottom of a chain. We're going to go up  
21 to the later e-mails, but this is an e-mail that  
22 [REDACTED] or [REDACTED] sent first on April 1st to the  
23 Employer and the Union's representative involving the  
24 election at Starbucks.

25 A. I'll just scroll down. [REDACTED] talks in this

1 e-mail that there was an inadvertent fumble involving  
2 the election list and how -- and that a certain two  
3 voters had not received their ballot due to this error  
4 on [REDACTED] part. So did you -- this is a very vague  
5 question. Did you review or see this e-mail before it  
6 went out?

7 A. No, I did not.

8 Q. And before it went out, were you aware of  
9 this error that -- I think people call [REDACTED] [REDACTED] --  
10 that -- that [REDACTED] had made?

11 A. No, I was not.

12 Q. So there -- before this e-mail went out --  
13 this e-mail went out at 7:41 p.m. This is from the  
14 NXGEN case file, so this is a PDF copy of the e-mail,  
15 so we're assuming, because it's a PDF and was printed  
16 out locally in your region, that these time stamps are  
17 correct.

18 So this was -- this was sort of late in the  
19 day. That's not important, but what is important is  
20 that there were other things that were happening  
21 earlier in the day. So now I'm showing you Exhibit 1.  
22 This is at 3:17, at the top of the e-mail. Again,  
23 this is a chain. I'm just going down to the bottom  
24 there.

25 So [REDACTED], who was the field examiner

1 assigned the case, [REDACTED] now instructing the Union or  
2 providing information to the Union, telling them to  
3 tell the employees who haven't received a ballot to  
4 call [REDACTED] to schedule a time to visit to pick up the  
5 ballot. And then Gabe Frumkin, who is the  
6 representative of the Union, says he's passed this on,  
7 that e-mail. So this is occurring at 12:15 in the  
8 same day, April 1st, and then this is at 3:17.

9 And then Exhibit 2 is another group of  
10 e-mails. Another -- just one. So this is where the  
11 Union is then coming back at 3:03 to [REDACTED] and [REDACTED].  
12 [REDACTED] is saying, "Here are these three people. They  
13 are concerned that there's not enough time for them to  
14 receive the ballots before the count." So, again,  
15 they're making some arrangements to make sure these  
16 individuals have enough time.

17 So my concern -- here's another one. This  
18 is the same day. These are -- they've made these  
19 arrangements for people who still haven't received it,  
20 so there's all this conversation going on with the  
21 Union.

22 However, when you look at [REDACTED] e-mail --  
23 I'm sorry, not [REDACTED], but [REDACTED] e-mail, [REDACTED]  
24 doesn't include that information in [REDACTED] e-mail. [REDACTED]  
25 says they are sending the ballots out. So this e-mail

1 does not seem be correct or complete. So as the  
2 regional director, does that cause you any concerns?

3 A. I was not aware of this at that time.

4 Q. Okay. So after that e-mail went out --  
5 again, this is -- the time's only for chronology, but  
6 the time itself is not a determining factor. So this  
7 goes out after normal business hours. And although  
8 there's two days, those are two weekend days.

9 And then Starbucks' representative comes  
10 back in the next e-mail on April 4th, and this is  
11 still Exhibit 4. And they say, "Can you tell us when  
12 you mailed these ballots?" Because the actual count  
13 is coming up in a period of time, so they're  
14 concerned. And then [REDACTED] goes back to the date of  
15 the e-mail, April 1st, and [REDACTED] responding. The  
16 question was asked at 9:55, but [REDACTED] does not  
17 respond until, again, after the normal business hours.

18 And then at this point, the Employer says,  
19 you know, "We would like to give these individuals  
20 additional time to vote." Basically this is a request  
21 for more time to vote. This came in the next day,  
22 again, in the morning, April 5th at 8:41.

23 The Union objects to that at 1:55 on  
24 April 5th, and then Carla responds on April 5th at  
25 4:53, and she says, "No. Basically, we understand

1 your concerns," noting the Union's opposition. "We do  
2 not believe that there's any basis to postpone the  
3 count." Again, this e-mail is missing information.  
4 So did you see this e-mail before it went out?

5 A. I did not.

6 Q. So did you have any conversations with Carla  
7 about the contents of this e-mail, how she would  
8 respond?

9 A. I did not.

10 Q. Okay. Does this e-mail cause you any  
11 concerns that it's not complete?

12 A. Again, I was not aware of it at the time.

13 Q. We've already interviewed Carla. Carla has  
14 contemporaneous notes of her conversation with you,  
15 and she says, based on those notes, this e-mail was  
16 basically what you told her to send.

17 A. Oh, I don't remember doing that, but I would  
18 have no basis -- I really don't. Now I'm startled. I  
19 would have no basis to think she -- her notes would be  
20 incorrect. So sorry. So what's the question?

21 Q. Well, the question is you say you didn't see  
22 the e-mail and that you didn't recall this, but we  
23 have the contemporaneous notes. Is there any reason  
24 to doubt her notes?

25 A. No. I would think her notes would be

1 correct, but I did not see the e-mail, I do not think.

2 Q. So specifically, and we also know that  
3 the -- your direction to her, she discussed that with  
4 the field examiner, [REDACTED], so there's her notes as well  
5 as her discussion at the time with [REDACTED] and [REDACTED]  
6 recollections. We're fairly certain that that meeting  
7 was a phone meeting that actually took place. I don't  
8 know if that helps refresh your memory that it would  
9 have been a phone call.

10 A. That would make sense. We're not physically  
11 in the same location.

12 Q. Okay. So do you -- do you still have no  
13 recollection?

14 A. Of this e-mail, no. I don't think I saw the  
15 e-mail. I mean, I don't think I saw the e-mail. If  
16 you're asking me --

17 Q. Or the meeting, the phone meeting?

18 A. I -- not specifically at that -- at that  
19 time. I know I've talked with them about this  
20 generally. I can't put it in a time line.

21 Q. So it seems because the Agency, the Region,  
22 is supposed to be neutral in elections, it seems to me  
23 that this response should have been -- should have  
24 included information that the individuals who have not  
25 voted can pick up their ballots at the regional office

1 and vote before the time. I mean, that's actually why  
2 the request is being denied, because arrangements are  
3 being made by the Union to have people come in and  
4 vote. Right?

5 The Union set up a situation with the field  
6 examiner to allow people to request ballots and then  
7 come in and vote. But the Employer doesn't know that  
8 those accommodations are being made, so...

9 A. Well, I guess I would dispute some of that  
10 characterization, because my understanding is that the  
11 voters made arrangements to come in and vote with the  
12 Region. The Union made -- alerted and talked to  
13 the -- again, based on the same -- the same e-mails  
14 and so forth that you've seen, that they -- that  
15 that -- and that was done before I had any knowledge  
16 of what was going on, that they had been given -- they  
17 had contact -- the individual voters had contacted the  
18 Region and made arrangements to vote on that basis.

19 Q. That's not -- you can describe it that way  
20 also. I mean, the individual voters did call the  
21 regional office to set up the time to vote. However,  
22 they did that because the Union had acted on their  
23 behalf to set up that alternate process.

24 In other words, it was the Union's  
25 representative, Gabe Frumkin, who had coordinated this

1 alternate means to vote with the regional staff, but  
2 primarily the field examiner, and that the Union was  
3 then communicating with the employees, telling them  
4 that they could then do this.

5 So it's not that the Union isn't involved.  
6 While they're not making the individual appointments,  
7 they are the one in the background acting to sort of  
8 facilitate that process.

9 A. Again, I don't think that they got  
10 information which they conveyed to voters. I guess I  
11 don't know about the facilitation aspect. I'm not  
12 sure that that accurately describes it.

13 Q. I think it probably does, because I think  
14 there's some e-mails where, you know, it says, "We  
15 communicated to the employees, and they should be  
16 calling you. And there's another e-mail following up  
17 to see whether or not employees had called.

18 Now, on that e-mail, I believe it was Carla  
19 who said, "We can't tell you that," which is of course  
20 the correct answer. But it's definitely that the  
21 Union is the one -- it doesn't appear that the Region  
22 is reaching out to the employee to tell them there's  
23 an alternate means, but the Union is the one doing  
24 that.

25 And I guess given those circumstances, why

1 wouldn't -- why didn't this e-mail denying this  
2 request include information that to the extent that  
3 people don't have sufficient time to mail it, they can  
4 call us, and we will make arrangements for them to  
5 vote -- you know, to receive a ballot in time to  
6 submit it back to the regional office?

7       A.    I -- I don't know that I can answer that  
8 fully about why what is and isn't included.  I think  
9 that, generally, at the time, the thought was that any  
10 information we give them could disclose the identity  
11 of any voters, because they were the voters who were  
12 not included on the list, so I know there was a  
13 concern about if we disclose that, then we're  
14 giving -- then the secrecy of the ballot is  
15 compromised.  So the --

16       Q.    That's not really true, because the Employer  
17 gave you both lists, and they could compare the list  
18 and see which voters were not on the first list, but  
19 were on the second list.  So the identity of the two  
20 voters who were not on the original list were  
21 certainly known to the Employer, because they're the  
22 ones who gave you the list and told you that two  
23 people weren't on it.  So you're not disclosing  
24 information to them.  They already know it.

25       A.    Well, wouldn't it -- I mean, I guess the

1 concern that I think we had at the time was that if we  
2 said those folks have come, you know, we don't need to  
3 worry about it. If we tell them, then they'll know  
4 that those two people were -- have voted.

5 Q. No, not necessarily. I'm not suggesting you  
6 tell them who has and who hasn't voted. What I'm  
7 suggesting is that -- this -- this is incomplete,  
8 because there's many, many e-mails between your staff  
9 and the Union discussing who hasn't voted. Not that  
10 your staff is confirming, but the Union is saying that  
11 these individuals do not have a ballot.

12 And your staff is saying, "Well, you go  
13 ahead and you tell them to contact us, and we can make  
14 arrangements for them to get a ballot." You are  
15 confirming you don't have the ballot from those  
16 people, right? I mean, in one sense.

17 So while you have this concern with regard  
18 to the Employer, the staff does not seem to have the  
19 same concern with regard to the Union. That's one  
20 issue. But that's not actually the issue I'm  
21 questioning you about right now.

22 The issue I'm questioning about right now is  
23 on April 1st, you guys tell the Employer that these  
24 people -- that two people are left off the list. Now,  
25 you had other -- your staff has had other

1 communications with the Union before that notice, so  
2 the Union knew that information. Okay. The Employer  
3 knew it, because they are the ones who gave you the  
4 list.

5 What people don't know is that [REDACTED]  
6 misused -- used the wrong list, right? But once you  
7 know the wrong list was used, you know who didn't  
8 receive the ballot.

9 Okay. Alternative methods were made for  
10 people to pick up a ballot. So the Employer or the  
11 Union spent -- there's a significant number of e-mails  
12 going back and forth between the Union and Regional  
13 staff involving that issue. And yet -- and,  
14 basically, the Union had the same concern, only they  
15 had it earlier because they knew what was going on,  
16 and they said, "Hey, people haven't got their ballot,  
17 and we need to make arrangements for them to be able  
18 to vote."

19 And there's all kinds of e-mails with them,  
20 but when the Employer raises the exact same concern  
21 that was raised by the Union earlier, the Employer is  
22 treated differently. And based on my interviews with  
23 the other staff, they're treated differently at your  
24 direction because Carla's notes indicate that the  
25 e-mail she wanted to send, and also her testimony that

1 the e-mails she -- that the response she wanted to  
2 send would have explained to the Union -- or to the  
3 Employer that anyone that hasn't voted or doesn't have  
4 a ballot can come in and pick one up, and your  
5 direction to her is, "No, don't say that. Say these  
6 words instead." And these words are on her notes.

7 A. Okay. I don't --

8 Q. It's a long question, but that's what I want  
9 you to respond to.

10 A. Okay. All right. I don't remember it  
11 specifically, and I don't have notes, so I can't refer  
12 to them. My memory of this was that we knew that the  
13 ballot would be protected because we knew that the  
14 people had voted, and that if we disclosed more, we  
15 would be in danger of giving information about who had  
16 and had not voted. And so when we discussed it at  
17 that time about how we were going to conduct it is  
18 that we thought the -- we felt that the election was  
19 protected, and so we could go forward, and so that was  
20 the gist of it rather than the specifics.

21 Q. I guess partly in response to that is not  
22 everyone had voted by the time this e-mail went out.  
23 There's still -- there still was another person who  
24 voted after the e-mail went out, who came in and  
25 picked up a ballot and voted after the e-mail went

1 out, according to the notes.

2 Also, there was only seven people who voted,  
3 and there were many, many more people who could have  
4 voted, right? I mean, the turnout for the election  
5 was not like a hundred percent. I don't even know if  
6 it was 50 percent.

7 We could look somewhere and probably see it,  
8 but I think the number of ballots cast were only  
9 seven, and who knows how many other people weren't  
10 able to vote because they didn't get the ballot  
11 because they didn't know about this opportunity,  
12 because only the Union knew. Theoretically, someone  
13 could argue that.

14 I don't know, but I guess back to -- well,  
15 the words you're saying seem to make sense when looked  
16 at. With regard to the factual situation we're  
17 dealing with, it doesn't seem to hold true.

18 In other words, you wouldn't be disclosing  
19 the identity to tell the Employer that any -- that you  
20 have already told the Union that anyone who had voted  
21 could request a ballot and come and pick it up. You  
22 wouldn't be disclosing anything if you had included  
23 that phrase, which is what your subordinate staff had  
24 recommended to you. I don't know how you respond to  
25 that.

1 A. I'm not sure that I followed the question.

2 Q. The question is you say you limited your  
3 disclosure information to protect the identity of the  
4 people who had voted, and, I guess, theoretically, the  
5 people who hadn't voted. My question to you is what  
6 was being recommended would not have disclosed the  
7 identity, but would have just disclosed information to  
8 the Employer that the Union already had?

9 A. Again, I don't remember what was proposed,  
10 so I can't -- I can't -- I can't answer that question.

11 Q. Okay.

12 A. Those were the -- those were the concerns  
13 that was driving my communication with my staff, is  
14 that the Employer had not asked about any voters. The  
15 Union had the communications with the -- my  
16 understanding was that the staff was dealing directly  
17 with voters, and so that if we conveyed who was or  
18 wasn't coming in to get ballots, it would convey which  
19 voters had reached out to us, as opposed to contacts  
20 with the Union.

21 Q. I think you already were disclosing that  
22 information to the Union, though.

23 A. It was clearly not my understanding.

24 Q. Because when dealing with the Union, the  
25 individual names were being given to the field

1 examiner and the [REDACTED], and then they  
2 were saying, "Well, yes. Well, have them call us, and  
3 we'll set up arrangements to get the ballot." They  
4 were dealing with specific people and specific names.

5 A. Well, only because the Union said they  
6 didn't admit or deny that those people had or had not  
7 voted. I'm not sure how else they could have  
8 responded at that point. If the Union says,  
9 "So-and-so didn't get a ballot," you know, they didn't  
10 acknowledge that or say yes or nay, is my -- is my  
11 understanding.

12 Q. I think they did implicitly acknowledge it  
13 because they said, "We'll send another ballot."

14 A. Well, that's what happens in every case. If  
15 somebody -- if there's a report that somebody didn't  
16 get a ballot, if they convey that, then they get a  
17 ballot. That's how the process works.

18 Q. If the Employee conveys it, but it looks to  
19 me -- I'll go back and look at the case record, but it  
20 looks to me like the Region was sending out new  
21 ballots and based upon the information they were  
22 receiving from the Union.

23 A. That -- that I -- that I -- that, I don't  
24 know. That, I don't know, but I thought that the gist  
25 of it was that they were trying to deal with

1 individuals particularly. I thought that was the  
2 whole, you know -- the Union kept calling and saying,  
3 "Okay. We've got so-and-so and so-and-so." And my  
4 understanding was that the staff consistently was  
5 saying, "Okay. That's fine, but they need to contact  
6 us directly if there's a problem." So that was my  
7 understanding of what was going down.

8 Q. I think that's partly accurate and partly  
9 not accurate, but we'll look at the record again and  
10 make sure. But my -- I've looked at a zillion  
11 e-mails. It seems to me -- hold on. This e-mail is  
12 Exhibit 5. This e-mail is where he specifically asked  
13 if somebody gave him -- he being Dave Frumkin. On the  
14 e-mail on April 4, wants to know whether a particular  
15 employee came in to schedule time to vote. And here's  
16 an example where Carla Coffman or ■■■ said, you know,  
17 "I can't tell you." So that's the situation you're  
18 talking about?

19 A. Yes.

20 Q. Compared to these other situations, so  
21 you're saying, "Please have the individuals who've not  
22 yet received a ballot call. I'll assist them in  
23 scheduling time to visit Overland Park"?

24 A. Right. So in other words, they have to  
25 contact us directly.

1 Q. But if you told this to the Union, why  
2 couldn't you have told this to the Employer in  
3 response?

4 A. Because the Employer didn't ask about this  
5 -- that specifically. They didn't raise --

6 Q. But they asked -- they have this exact same  
7 concern once they realize all the -- all the things  
8 have -- all the ballots had not been mailed, they  
9 expressed the exact same concern as the Union did.

10 (Simultaneous speaking.)

11 A. See, I don't --

12 Q. In response to that concern, the Union has  
13 all this other conversation with the regional staff,  
14 but the Employer gets a two-line denial, basically  
15 saying, you know, because we agree with the Union that  
16 we shouldn't extend this time, which just seems  
17 bizarre.

18 A. Because we knew at that point that there was  
19 no -- there was no basis to, because the folks that  
20 were omitted had voted, so it would have been foolish  
21 to extend the time for no reason, but we didn't want  
22 to convey that because then it would indicate -- we'd  
23 have to tell them, "Hey, we got their votes." And  
24 that would destroy their secrecy.

25 Q. I don't -- yeah. But I don't know. I think

1 there's a problem, because you could have disclosed.  
2 Anyone who hasn't received a ballot can make  
3 arrangements to come in and vote. You don't have to  
4 disclose their identity.

5 A. But I don't think that's what they were  
6 asking. They were saying, as I remember it, "We want  
7 to make sure that they have enough time to vote."  
8 Well, we already knew they had because we had their  
9 votes, so we couldn't --

10 Q. Why couldn't you have said this? This is  
11 what you told the Union, not you, the Region. "I  
12 talked with Carla, and we have agreed they can call me  
13 to schedule a time next week to stop and pick up a  
14 duplicate ballot. We've told anyone that we're aware  
15 of that hasn't received a ballot and is being mailed a  
16 second ballot that they can contact us."

17 A. But my understanding was that the Employer  
18 was worried about the list discrepancy, not voters in  
19 general, but it was the folks on the list. And we  
20 knew we had those votes already, so if we had said  
21 that --

22 Q. Sorry.

23 A. Sorry.

24 Q. You knew that they -- that's because you had  
25 this arrangement. We're talking in circles.

1 A. Okay.

2 Q. You had provided -- your Region had provided  
3 this sentence in this e-mail, Exhibit 2, April 1st, at  
4 3:03 p.m., that "the Union is concerned. I talked  
5 with Carla, and we've agreed they can call me and  
6 schedule an appointment for next week to stop by the  
7 OP," which is the Overland Park office, "to pick up a  
8 duplicate ballot." This information could have been  
9 conveyed in response to the Employer's request that  
10 anyone who --

11 A. But the timing wouldn't have worked. In  
12 response to that later e-mail, if we waited in the  
13 following week, again, we had them already. It would  
14 have made no sense, right?

15 Q. No.

16 A. I thought the Employer contacted us after we  
17 already had the arrangements in place, so we would  
18 have to say either extend it after we already had the  
19 ballots, so in other words, we're pushing it out even  
20 farther, or we have to say we let them -- you know, we  
21 already have their votes, so then they would know who  
22 it was. In my mind, it was sort of a catch 22.  
23 Either you tell them you've got the votes from the  
24 people who are omitted from the list, because that was  
25 their concern, was the omissions from the voter list,

1 which was actually their -- as I remember it, it was  
2 their omission. They gave us a wrong list.

3 Q. They gave you an incorrect list, but then  
4 they corrected it?

5 A. They did. They did.

6 Q. But the [REDACTED] used the wrong  
7 list, so [REDACTED] went and used the wrong list. Had you  
8 gotten the right list in the first place -- but,  
9 again, my problem is, and the issue I'm concerned  
10 about and why I am taking the time to talk to you, is  
11 there's all of this communication with the Union about  
12 making arrangements, and when the Employer has exactly  
13 the same concerns, you know, the Employer does not  
14 receive the same information.

15 And the Employer could have received the  
16 same information without disclosing whether or not  
17 anyone came in to vote. You could just say, "We  
18 mailed them, and anyone who has not received a ballot  
19 can make arrangements and come and vote well before  
20 the end of the election."

21 A. See, as I recall, the timing was too tight,  
22 and so it would be one of those deals, and it was  
23 unnecessary because the voters that they were  
24 concerned about had already come in and voted.

25 So the decision tree was either we tell them

1 we have the votes and then -- I'm repeating myself,  
2 and I realize that. I'm sorry. I'm just trying to  
3 get it straight, that -- either we tell them, "You  
4 don't have to worry, Employer, because we have their  
5 votes," so that that was the problem that we were  
6 encountering in terms of trying to disclose  
7 information, because there was no point to extending  
8 the ballot, because those people had already come in.

9           So we could have -- so it just was sort of  
10 we were trying to deal with the reality of the  
11 situation, which was, "You don't need to worry about  
12 the list, because we've got those people. Those  
13 people have voted."

14           But we can't really tell them that, but we  
15 can -- and all we can say is we really didn't have any  
16 concerns about the election process based on the use  
17 of the wrong list initially, because those people had  
18 had the opportunity to vote.

19           Q. Well, one of the problems, as I see it --  
20 what you're telling me is one of the reasons that  
21 these people missed is because of the delay in  
22 responding to Employer's e-mails. I mean, there's six  
23 significant delays in responding.

24           But, also, there's a case memorandum, dated  
25 April 4th, which states that at least one of the

1 individuals who was coming in to vote or picking up a  
2 ballot had a -- came in after you responded to the  
3 request. So while two of them came in apparently  
4 before, on April 4, one of them came in, according to  
5 the note, on April 6?

6 A. I thought that was the person who was not on  
7 the list. I thought that was an outlier.

8 Q. Maybe, but I'm just saying that I guess I  
9 mean we'll discuss it. We'll take into consideration  
10 what you're telling us here, but I think there was a  
11 way to disclose information to the Employer that would  
12 have put them in a neutral position in regard to the  
13 Union without disclosing that information, and that  
14 Carla had that method, and you opted not to follow,  
15 which is fine. You're the regional director. You  
16 need to make that decision.

17 But it just seems to me that if it didn't  
18 cause an actual neutrality issue with the election, it  
19 creates the appearance of a neutrality issue with the  
20 election. I don't know how you respond to that.

21 A. I'm sorry. I wasn't sure if that was a  
22 question.

23 Q. Yeah, to get your response to that. If it's  
24 not an actual -- the Hearing Officer made a  
25 determination, so let's just sort of say, okay, we're

1 just going to take that and sort of set it aside. But  
2 let's look at it like from an objective point of view.

3           Given all these circumstances, if it doesn't  
4 create an actual neutrality question, a reasonable  
5 person, from the outside, looking in, could believe  
6 there is the appearance of a neutrality question. The  
7 Region wasn't acting as a neutral party in this  
8 election, given these facts.

9           A. I guess I disagree, because I think if the  
10 Employer had called in, it would have been given the  
11 -- and said, "We have voters who didn't vote," they  
12 would have been told the same information, but they  
13 didn't. That wasn't their concern. Their concern was  
14 about -- as I can remember it, their concern was about  
15 the list and about the voters who -- you know, the use  
16 of the wrong list.

17           And so that -- that concern was assuaged,  
18 but we just couldn't tell them exactly how because we  
19 would be letting them know that those people voted,  
20 and we really can't do that. So yeah, not ideal by  
21 any stretch of the imagination, but I don't -- I don't  
22 see it as a neutrality issue. I see it as who's got  
23 voters that they're worried about? Who's trying to  
24 communicate to their voters? The Union was. The  
25 Employer didn't appear to have the same concerns.

1 Q. Okay. So I don't know, do you have anything  
2 else you want to add?

3 A. The only thing I have to add is that I think  
4 that there could be -- well, maybe it's a moot point  
5 now since we are out of pandemic, but mail ballot  
6 procedures are and were fraught, given the  
7 difficulties associated with the Postal Service and  
8 attendant problems of conducting mail ballots. I  
9 think that's really where the difficulty with this  
10 lies is the administration of mail ballots during a  
11 pandemic, and that I don't think there is any -- and I  
12 think that handling this to try and protect the voters  
13 and to maintain a good election, I think is what  
14 happened, and that's really the goal. Trying to  
15 communicate with parties about voters is difficult at  
16 best, and there may be some -- we had a duty to  
17 respond to a party who says, "Hey, I've got people. I  
18 know people who can't vote. Let me know how to take  
19 care of that." I think that we were acting properly  
20 in that regard and would have done the same to any  
21 party who asked the same question.

22 MR. BERRY: Okay. I don't have any  
23 additional questions. If you think of anything or you  
24 want to add anything after the interview, because  
25 sometimes people -- things come to your mind after

1 you're not being interviewed. You know, like "I wish  
2 I would have said that," you're welcome to tell us.  
3 We usually document those things in writing, though.  
4 So if you want say something, just let me know, and we  
5 won't have a court reporter, but we will chat about it  
6 and I'll either summarize it in an e-mail and send it  
7 to you for you to confirm, or you can send it in an  
8 e-mail to me, and I'll say thank you.

9 THE WITNESS: All right. Thanks so much.

10 (Whereupon, at 1:57 p.m., the interview in the  
11 above-entitled matter was concluded.)

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CERTIFICATION

1  
2 This is to certify that the attached  
3 proceedings before the National Labor Relations Board  
4 (NLRB), in the matter of Andrea Wilkes, Case No.  
5 OIG-I-569, via zoom, on March 22, 2023, was  
6 held according to the record, and that this is the  
7 original, complete, and true and accurate transcript  
8 that has been compared to the recording.

9  
10 Brenda J. Orsborn

11 Brenda Orsborn  
12 Certified Court Reporter  
13 Registered Professional Reporter  
14  
15  
16  
17  
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21  
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23  
24  
25

**From:** [Gabe Frumkin](#)  
**To:** [REDACTED]  
**Cc:** "[Mariana Orrego](#)"  
**Subject:** RE: Starbucks 14-RC-289926  
**Date:** Friday, April 1, 2022 3:17:52 PM  
**Attachments:** [image001.jpg](#)

---

Thank you, [REDACTED]. I've passed the information onto the on-the-ground organizer.

Gabe Frumkin

---

**From:** [REDACTED] [mailto:[REDACTED]@nlrb.gov]  
**Sent:** Friday, April 1, 2022 12:15 PM  
**To:** Gabe Frumkin  
**Subject:** Starbucks 14-RC-289926

Gabe,

Just to confirm with you, please have the individuals that have not yet received ballots call me directly ([REDACTED]) and I will assist them in scheduling a time to visit the Overland Park office to pick up a ballot.



[REDACTED]  
Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103  
[REDACTED] – Phone  
[REDACTED] – Mobile  
918-581-7970 – Fax  
Pronouns: [REDACTED]  
[REDACTED]@nlrb.gov

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Parties must electronically file documents. E-filing link: <https://www.nlrb.gov/cases-decisions/filing>

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [Coffman, Carla K.](#)  
**Subject:** Starbucks 14-RC-289926  
**Date:** Friday, April 1, 2022 3:03:00 PM  
**Attachments:** [image001.jpg](#)

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[REDACTED],

I have been working with the Union's attorney, Gabe Frumkin, on three individuals that have not yet received their ballots. I understand that you also had a conversation with him yesterday afternoon and that you are mailing out those 3 duplicate ballots today. The Union is concerned that there is not enough time for them to receive and return those ballots before the count. I've talked with Carla, and we've agreed that they can call me and schedule an appointment for next week to stop by the OP office to pick up a duplicate ballot and return it. Go ahead and place the duplicate for these individuals in the mail today and then prepare a 2<sup>nd</sup> duplicate ballot to leave at the Regional office so that either you or Carla can meet with the voter next week at their scheduled appointment time.

I'm going to tell them that they can either come in on Monday or Wednesday because both you and Carla will be in the office that day. To confirm, the 3 individuals are:

Alydia Claypool  
Sage Quigley  
Michael Vestigo



[REDACTED]  
Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103

[REDACTED] – Phone

[REDACTED] - Mobile

918-581-7970 – Fax

Pronouns: [REDACTED]

[REDACTED]@nrlb.gov

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**From:** [Coffman, Carla K.](#)  
**To:** [kdoud@littler.com](mailto:kdoud@littler.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); [rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com); [ecarter@littler.com](mailto:ecarter@littler.com)  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926  
**Date:** Tuesday, April 5, 2022 4:53:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image006.jpg](#)

---

Good afternoon,

While we understand the concerns raised by the Employer, and noting the Union's opposition, we do not believe that there is any basis to postpone the count at this time.

Thank you,

Carla



Carla K. Coffman  
 Supervisory Field Examiner  
 NLRB, Subregion 17  
 8600 Farley Street, Suite 100  
 Overland Park, Kansas 66212  
 913.275.6536 - Phone  
 202.674.5225 - Cell  
 913.967.3010 - Fax  
[carla.coffman@nlrb.gov](mailto:carla.coffman@nlrb.gov)

---

**From:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Sent:** Tuesday, April 5, 2022 1:48 PM  
**To:** Coffman, Carla K. <Carla.Coffman@nlrb.gov>  
**Subject:** FW: Starbucks Corporation; Case 14-RC-289926

---

**From:** Gabe Frumkin <[frumkin@workerlaw.com](mailto:frumkin@workerlaw.com)>  
**Sent:** Tuesday, April 5, 2022 1:51 PM  
**To:** Doud, Kimberly <[KDoud@littler.com](mailto:KDoud@littler.com)>; [REDACTED] <[REDACTED]@nlrb.gov>; Dmitri Iglitzin <[iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com)>; Robert Cervone <[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** Carter, Elizabeth B. <[ECarter@littler.com](mailto:ECarter@littler.com)>; [REDACTED] <[REDACTED]@nlrb.gov>; Wilkes, Andrea J. <[Andrea.Wilkes@nlrb.gov](mailto:Andrea.Wilkes@nlrb.gov)>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Good morning all:

The Union does not agree to extend the ballot return date. The election has generated a substantial amount of engagement amongst bargaining unit members, and the Union is confident that those

bargaining unit members who wish to vote will be able to do so. Moreover, the election has generated sufficient public interest that delaying the vote count would be inappropriate.

If after the vote count the Employer believes that those voters who were not originally sent ballots a) were not able to vote and b) that their votes could be determinative in the outcome of the election, the Employer may have cause to file an objection.

Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | Associate Attorney (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

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---

**From:** Doud, Kimberly [<mailto:KDoud@littler.com>]  
**Sent:** Tuesday, April 5, 2022 8:41 AM  
**To:** [REDACTED]; Gabe Frumkin; Dmitri Iglitzin; Robert Cervone  
**Cc:** Carter, Elizabeth B.; [REDACTED]; Wilkes, Andrea J.  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Thank you for your response, [REDACTED]. We have not had a chance to discuss with Union counsel. The ballot return date is tomorrow Wednesday April 6 (three business days after mailing). It seems unlikely the partners you identified in your email below will receive their ballots in time to fill them out and mail them back. The ballot count is currently scheduled for this Friday April 8. We are concerned about disenfranchising these partners. We want to ensure they have a reasonable amount of time to receive and mail back their ballots. We request the ballot count be rescheduled to an agreeable future date to allow this to occur. The ballots were mailed to the rest of the partners at this store on March 16. Those partners were provided 3 weeks to return their ballots (April 6). Therefore, we propose these partners be provided the same amount of time by extending the ballot return date to Friday April 22 and holding the ballot count on Monday April 25. I am unaware of this coming up in any other Starbucks campaigns and am open to your thoughts. Please advise if you need a formal filing in this regard. Look forward to hearing from you. Thank you.

**Kimberly Doud**

Office Managing Shareholder  
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax  
[KDoud@littler.com](mailto:KDoud@littler.com)

Pronouns: She/Her



Labor & Employment Law Solutions | Local Everywhere  
111 N Orange Ave, Suite 1750, Orlando, FL 32801

---

**From:** [REDACTED] <[REDACTED]@nrb.gov>  
**Sent:** Monday, April 4, 2022 7:02 PM  
**To:** Doud, Kimberly <KDoud@littler.com>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

The day of the email, April 1, 2022.

---

**From:** Doud, Kimberly <KDoud@littler.com>  
**Sent:** Monday, April 4, 2022 9:55 AM  
**To:** [REDACTED] <[REDACTED]@nrb.gov>; Carter, Elizabeth B. <ECarter@littler.com>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED] <[REDACTED]@nrb.gov>  
**Subject:** RE: Starbucks Corporation; Case 14-RC-289926

Hi [REDACTED]. Please advise when the additional ballots were mailed. Thank you.

**Kimberly Doud**

Office Managing Shareholder  
407.393.2951 direct, 407.864.1852 mobile, 407.641.9263 fax  
[KDoud@littler.com](mailto:KDoud@littler.com)

Pronouns: She/Her



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111 N Orange Ave, Suite 1750, Orlando, FL 32801

---

**From:** [REDACTED] <[REDACTED]@nrb.gov>  
**Sent:** Friday, April 1, 2022 7:41 PM  
**To:** Carter, Elizabeth B. <ECarter@littler.com>; Doud, Kimberly <KDoud@littler.com>;  
[us2935803@starbucks.com](mailto:us2935803@starbucks.com); [frumkin@workerlaw.com](mailto:frumkin@workerlaw.com); [iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com); Robert Cervone  
<[rcervone@laboradvocates.com](mailto:rcervone@laboradvocates.com)>  
**Cc:** [REDACTED] <[REDACTED]@nrb.gov>  
**Subject:** Starbucks Corporation; Case 14-RC-289926

**[EXTERNAL E-MAIL]**

Due to a inadvertent fumble on my part, I used the first voter list when I was sending out the ballots, rather than the revised list. I have since corrected the error, sending out ballots to those voters who were added in the revised list. But, because I used the original numbering, the “new” voters had to be added to the bottom of the original list and given numbers 19 and 20. I have attached a copy of this list with the addition, which will be used at the count. I apologize for any confusion this may have caused.

-----

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**From:** [REDACTED]  
**To:** [Gabe Frumkin](#)  
**Cc:** "[Mariana Orrego](#)"; [Rebecca Breault](#)  
**Subject:** RE: Starbucks 14-RC-289926  
**Date:** Tuesday, April 5, 2022 9:09:00 AM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)

---

Gabe, with regards to your earlier question concerning Sage Quigley they will need to call me with any questions. I cannot provide you with information concerning who has or has not called the office and/or has voted in the election.

I will be on the vote count call on Friday, and will be assisting but it will be the [REDACTED], [REDACTED] who will be conducting the vote count is in the SubRegional office where the ballots are physically located. You should receive the Zoom invitation sometime today for the count on Friday.

---

**From:** Gabe Frumkin <frumkin@workerlaw.com>  
**Sent:** Monday, April 4, 2022 6:45 PM  
**To:** [REDACTED] <[REDACTED]@nlrb.gov>  
**Cc:** 'Mariana Orrego' <morrego@cmrjb.org>; Rebecca Breault <breault@workerlaw.com>  
**Subject:** RE: Starbucks 14-RC-289926

[REDACTED]:

I write with one other, related question regarding the above-captioned representation hearing.

As you know, the vote count is scheduled for this Friday, April 8 at 2:00pm.

First, will you be conducting the vote count?

Second, when can we expect to receive Zoom login information for the count? We have many workers who are interested in attending the vote count, and would appreciate the ability to distribute the login information ahead of time.

Sincerely,

Gabe Frumkin



**GABE FRUMKIN** | Associate Attorney (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

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---

**From:** Gabe Frumkin  
**Sent:** Monday, April 4, 2022 4:34 PM

**To:** [REDACTED]  
**Cc:** 'Mariana Orrego'  
**Subject:** RE: Starbucks 14-RC-289926

[REDACTED]:

I understand that Sage Quigley called either you or the Overland Park subregion today to schedule a time to vote, but it is unclear whether they were able to schedule a time to vote. Can you please let me know if Sage has been able to reach you and/or the subregion to schedule a time to vote?

Gabe Frumkin



**GABE FRUMKIN** | Associate Attorney (he/him)  
**DIR:** 206.257.6012 | **FAX:** 206.378.4132  
18 West Mercer Street, Suite 400, Seattle, WA 98119

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**From:** Gabe Frumkin  
**Sent:** Friday, April 1, 2022 12:22 PM  
**To:** [REDACTED]  
**Cc:** 'Mariana Orrego'  
**Subject:** RE: Starbucks 14-RC-289926

Thank you, [REDACTED]. I've passed the information onto the on-the-ground organizer.

Gabe Frumkin

---

**From:** [REDACTED] [[mailto:\[REDACTED\]@nrlb.gov](mailto:[REDACTED]@nrlb.gov)]  
**Sent:** Friday, April 1, 2022 12:15 PM  
**To:** Gabe Frumkin  
**Subject:** Starbucks 14-RC-289926

Gabe,

Just to confirm with you, please have the individuals that have not yet received ballots call me directly ([REDACTED]) and I will assist them in scheduling a time to visit the Overland Park office to pick up a ballot.



[REDACTED]  
Field Examiner  
NLRB, Region 14  
223 S Boulder, Suite 322  
Tulsa, OK 74103  
[REDACTED] – Phone  
[REDACTED] – Mobile  
918-581-7970 – Fax

Pronouns: [REDACTED]  
[REDACTED]@nlrb.gov

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### Investigative Summary

The attached messages were found in a review of the Regional Director's PST email file. The email PST file was provided to the OIG by the NLRB E-Litigation Branch and included email messages from February 2, 2022 through August 12, 2022.

The PST file also includes "archived" messages from the Microsoft Team application. In that application, NLRB personnel can send messages that are similar to text messages. Those messages appear in the PST file as deleted messages. [REDACTED]

[REDACTED] The Regional Director had 8,090 messages in that folder.

Attachments

**From:** [Wilkes, Andrea J.](#)  
**To:** [Coffman, Carla K.](#)  
**Subject:** RE: Board Case re: Picking Up Mail Ballot in Office  
**Date:** Tuesday, April 5, 2022 3:23:00 PM

---

Oh I am very happy – thank you so much!!!! Ahhh, phew....I don't suppose you can find me a case so quickly about the other part of the equation...???? Hey, maybe I can get lucky!

---

**From:** Coffman, Carla K. <Carla.Coffman@nlrb.gov>  
**Sent:** Tuesday, April 5, 2022 2:18 PM  
**To:** Wilkes, Andrea J. <Andrea.Wilkes@nlrb.gov>  
**Subject:** Board Case re: Picking Up Mail Ballot in Office

Hi Andrea,

Here is a Board case that hopefully makes you feel better about our situation. While the objection in that case involved plans for one voter to pick up a mail ballot packet for another voter, it didn't actually happen so the Board found it was not objectionable (though probably would have been if it had actually happened). However, the Board did say that the employee themselves could have come in and picked up the mail ballot packet, with proper ID. So I think we are on pretty solid ground.

Thanks!

Carla



Carla K. Coffman  
 Supervisory Field Examiner  
 NLRB, Subregion 17  
 8600 Farley Street, Suite 100  
 Overland Park, Kansas 66212  
 913.275.6536 - Phone  
 202.674.5225 - Cell  
 913.967.3010 - Fax  
[carla.coffman@nlrb.gov](mailto:carla.coffman@nlrb.gov)

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**From:** [Coffman, Carla K.](#)  
**To:** [Wilkes, Andrea J.](#)  
**Date:** Tuesday, April 5, 2022 4:44:45 PM

---

Did you want me to copy you on my email response to the parties regarding the request to delay the mail ballot count?

**From:** [Wilkes, Andrea J.](#)  
**To:** [Coffman, Carla K.](#)  
**Date:** Tuesday, April 5, 2022 4:49:49 PM

---

not needed unless you want me to see it first

**From:** [Coffman, Carla K.](#)  
**To:** [Wilkes, Andrea J.](#)  
**Date:** Tuesday, April 5, 2022 4:50:38 PM

---

I was planning to just say, "While we understand the concerns raised by the Employer, we do not believe that there is any basis to postpone the count at this time." and leave it at that. Sound good?

**From:** [Wilkes, Andrea J.](#)  
**To:** [Coffman, Carla K.](#)  
**Date:** Tuesday, April 5, 2022 4:51:55 PM

---

sounds good to me - may be useful to add 'and noting the U's opposition...'"?

## Investigative Summary

On June 6, 2023, Carla Coffman, ARD Region 14, provided the following information:

She recalled that she had discussion with the RD regarding the practice of individual picking duplicate mail ballot kits at the office. The RD was not aware of that practice as it was not done in Region 15, the RD's prior office. The RD was questioning whether the Region 14 should be allowing individuals to pick up duplicate ballot kits.

This conversation resulted her in researching the issue. She spoke a Field Examiner in another Region and other ARDs. By doing so she became aware of a case involving picking up ballots that she forward to the RD. She believed that these discussions with the RD would have been on April 4th and 5th.

She could not recall exactly when the meeting with RD occurred that resulted in the notes that she provided to OIG. She agreed it had to be after they received the request on April 5<sup>th</sup>, but she could not recall whether it was before or after she had the meeting with the RD.

**OFFICIAL REPORT OF INVESTIGATIVE INTERVIEW  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

---

**In the Matter of:**

**Case No.:     OIG – I - 569**

**ANDREA WILKES**

**Place:           Via Teleconference  
Date:           06/21/23  
Pages:          32-88  
Interview of: Andrea Wilkes (continuation)**

---

**OFFICIAL REPORTERS**

**Veritext  
Mid-Atlantic Region  
1801 Market Street, Suite 1800  
Philadelphia, PA 19103  
215-241-1000**

1 UNITED STATES OF AMERICA  
2 NATIONAL LABOR RELATIONS BOARD

3  
4 \_\_\_\_\_  
5 |  
6 In the Matter of: |  
7 ANDREA WILKES | Case No. OIG-I-569

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11 \_\_\_\_\_  
12 Investigative Interview Vol. II of:  
13 ANDREA WILKES,  
14 was held from the National Labor Relations Board, 1015  
15 Half Street, S.E., 5th Floor, Washington, D.C., on  
16 Wednesday, June 21, 2023 at 2:22 p.m. EDT.

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18 \*\* HIGHLY CONFIDENTIAL \*\*  
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A P P E A R A N C E S

On Behalf of the National Labor Relations Board:

DAVID P. BERRY, Inspector General  
National Labor Relations Board  
1015 Half Street, S.E., 5th Floor  
Washington, D.C. 20570  
(202) 238-3000  
david.berry@nlrb.gov

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I N D E X

WITNESS:	EXAMINATION	PAGE
Andrea Wilkes (Cont.)	By Mr. Berry	35

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	E-Mail from Employer .....	60
Exhibit 2	E-Mail from Union .....	62
Exhibit 3	E-Mail from Carla to Andrea .....	67
Exhibit 4	E-Mail .....	71
Exhibit 5	Response to E-Mail .....	71
Exhibit 9	E-Mail from Carla to Andrea .....	71
Exhibit 10	E-Mail .....	79

(All exhibits were marked prior to the start of the interview. Page numbers noted above indicate where the exhibit was first mentioned during the interview. All exhibits were retained by Mr. Berry.)

1 P R O C E E D I N G S

2 (Time Noted: 2:22 p.m. EDT)

3 MR. BERRY: I am Dave Berry. I am an  
4 Inspector General, and this is an investigatory  
5 interview with Andrea Wilkes, W-I-L-K-E-S.  
6 I spelled it right.

7 So the matter we are involved in is  
8 identified as Case 14-RC-289926. So if you could  
9 raise your right hand, please.

10 ANDREA WILKES,  
11 was called as a witness on behalf of the National  
12 Labor Relations Board, and after having been duly  
13 sworn, was examined and testified as follows:

14 (Due to a technical issue, a short break was  
15 taken.)

16 MR. BERRY: So Andrea, you have been sworn  
17 in, so now we'll get started.

18 EXAMINATION

19 QUESTIONS BY MR. BERRY:

20 Q. So, Andrea, for the record, can you please  
21 identify yourself just to make sure you are who you  
22 say you are?

23 A. I am An -- sorry.

24 Q. Go ahead.

25 A. I am Andrea Wilkes, the Regional Director of

1 Region 14 of the National Labor Relations Board.

2 Q. Okay. So this is a -- a second interview.  
3 We conducted our first interview on March 22nd, 2023,  
4 and when I spoke to you last Friday, which would be  
5 Friday before this date, you had indicated that you  
6 thought you'd be given an opportunity to supplement  
7 your statement, and I have now provided you the  
8 transcript, so now you've had a chance to review the  
9 transcript. Is there anything you would like to add  
10 to the interview we conducted on the 22nd of --

11 A. Yes.

12 Q. -- March. Okay. Go ahead.

13 A. Okay. During our interview on March 22nd,  
14 2023, you made some statements that I did not  
15 necessarily agree with. But if you did not ask me a  
16 direct question, I did not contest them. After  
17 reviewing the transcript of our conversation on  
18 March 22nd, 2023, via Zoom, I will try to make it  
19 clear today that any silence on my part at that time  
20 did not indicate agreement.

21 In the interest of completeness, I note I  
22 have not been given the exhibits to the transcript to  
23 review. I also note that I did not know what you  
24 would be asking about prior to our interview today and  
25 did not review any materials before we spoke.

1 Q. Is there any -- are you done?

2 A. No. No. Though I want to -- I do want to  
3 ask you. I guess what I'll do is I -- I -- you had  
4 asked me for some information in our conversation on  
5 Friday. I can go ahead and try to give you that  
6 information or now, or no?

7 Q. First, I would like you to provide any  
8 information that you think you should have provided  
9 during the prior interview.

10 A. Okay. I have now reviewed the file, and let  
11 me get the case number, Starbucks Case No.  
12 14-RC-289926, and I'm better able to respond to some  
13 of your questions about this case.

14 Although I have approved and signed the  
15 stipulation in Starbucks 14-RC-289926 on February 25,  
16 2022, a little over a month after I began my new job  
17 as regional director, I was unaware of any issues  
18 regarding the conduct of the election until  
19 Supervisory Field Examiner Carla Coffman contacted me  
20 to discuss the case what I now believe to be April 5,  
21 2022. As I remember it, there was a lot to this  
22 conversation, much beyond responding to a particular  
23 e-mail from an employer.

24 During our initial conversation, you  
25 reported that Coffman had notes of this conversation,

1 but if so, I have not seen them, have had no  
2 opportunity to review them for completeness, and I do  
3 not think that any such notes are part of the official  
4 nex-gen case file. This gives me cause for concern as  
5 I believe all case processing information belongs in  
6 the official case file. There should be no shadow  
7 files.

8           During this phone conver- -- telephone  
9 conversation, Supervisory Field Examiner Coffman told  
10 me that she did not know how to respond to an inquiry  
11 we had received from Starbucks. She told me and, I  
12 believe, read to me at one point from an e-mail from a  
13 Starbucks attorney asking if the election period  
14 should be extended to permit employees to vote who had  
15 been omitted in the initial mailing of ballots.

16 Coffman explained that --

17           Q. Can I ask you a question before we get --

18           A. Sure.

19           Q. -- too far? You said she read to you the  
20 e-mail. So you had not received that e-mail?

21           A. I said -- I -- I see on the e-mail when I  
22 looked at it that I was CC'd on it, but it was not  
23 something that I would have had any expectation of  
24 responding to, and in the context of that  
25 conversation, she read it to me, as I recall. I have

1 no reason to disbelieve that I -- that I didn't get  
2 it. It was just not addressed to me. I was CC'd, I  
3 believe, and so it's not -- I'm not normally involved  
4 in case processing at that level, though I am CC'd on  
5 a wide range of materials.

6 Q. Okay.

7 A. Coffman explained that [REDACTED]  
8 [REDACTED] had inadvertently used an incomplete voter list  
9 supplied by the Employer when [REDACTED] first mailed the  
10 ballots, which did not have all the voters included?  
11 The Employer had subsequently fixed the error after  
12 the due date for the list and added the voters who  
13 what had been omitted, but [REDACTED] had not discovered  
14 the corrected list until recently and late in the  
15 election process.

16 Coffman explained to me that [REDACTED] had then  
17 advised the parties that [REDACTED] would send out ballots to  
18 the two voters who were the second corrected list,  
19 which I was told [REDACTED] did. My review of the file  
20 indicates [REDACTED] responded via e-mail to the Employer  
21 that [REDACTED] mailed the omitted ballots on April 1, 2022.

22 Q. Okay. Can we stop for a second? I really  
23 don't care about the facts that you have viewed, you  
24 are repeating out of the file. When we ask you  
25 questions, we care about what's in -- what's in your

1 memory and what you give at the time.

2           So we have the file available to us, and so  
3 we can review and get that same information, but the  
4 purpose of the investigation is fairly limited,  
5 because some of these things are outside what we  
6 consider the normal purview of the OIG; in other  
7 words, whether something was done necessarily, that  
8 the impact it might have on a party, you know, whether  
9 or not it was misconduct under our case rules is  
10 something we're not looking at. Okay? I believe that  
11 it's important to draw a distinction.

12           So to the extent that you're -- you're now  
13 making statements regarding what's in the case file,  
14 if you did not know about that at the time of  
15 April 5th, then it's not really relevant to our  
16 interview. Does that make sense? In other words, I  
17 don't need you to put into our record what we already  
18 have in the record.

19           A. Okay.

20           Q. I want to know what you knew on April 5th.

21           A. I was told that [REDACTED] had mailed the -- mailed  
22 the ballots already.

23           Q. And when were you told that?

24           A. During that conversation on April 5.

25           Q. Okay. When did that conversation occur,

1 because when we talked before, you couldn't recall a  
2 conversation?

3 A. I did recall a conversation as relating to  
4 that e-mail because I never saw that e-mail. If I can  
5 continue?

6 Q. Okay.

7 A. The Employer then sent the -- on April 5,  
8 2022, sent us an e-mail about whether -- asking  
9 whether the election period for the return of ballots  
10 should be extended, because there was only a few days  
11 between when the ballots for the employee [sic] on the  
12 correct list were mailed and when the ballots would be  
13 collected and counted at the Regional Office, which  
14 was April 6 and April 8, respectfully.

15 So in other words, this was April 5. The  
16 ballots were due on April 6, and we were getting ready  
17 to have the count on April 8. Those were all things  
18 that we discussed during that conversation, was the  
19 timing, because it was very important. I would ask,  
20 and I just don't know if the exhibit, the April 5,  
21 2022 e-mail from -- e-mail to [REDACTED] from Starbucks'  
22 attorney, Dowd, is that one of the exhibits already?

23 Q. It will be for this interview if it's not  
24 already. I do have questions about that that I'm  
25 going to ask you.

1           A.     Okay.   Coffman also informed me of the  
2 following, that Region 14 had permitted voters in this  
3 election to vote in person by coming to the Overland  
4 Park Subregion 17 Office. All of the voters added by  
5 the amended list had contacted the region and appeared  
6 in person on April 4, 2022 and voted.

7           She explained to me that Subregion 17 had  
8 used this in-person practice for years when voters  
9 notified the region there were problems with mail --  
10 with ballot delivery in mail ballot elections,  
11 permitting effected voters to pick up and drop off  
12 ballots. This was not a practice unique to this case  
13 or done as an accommodation to this particular Union  
14 here. She explained this was a Regional Office,  
15 Subregion 17 practice.

16           This was the first time I had heard of any  
17 in-person voting in this election or even the practice  
18 of in-person voting in any NLRB mail ballot election.  
19 Coffman assured me other regions did it too. I was  
20 very surprised to learn of it and conveyed to Coffman  
21 that I was very uncomfortable with it.

22           After learning of these events, I debated  
23 whether the election could continue at all under these  
24 circumstance. However, in reliance upon the  
25 availability of former post-election procedures, I

1 determined we should proceed.

2 Just as a note of edification, it wasn't  
3 apparent at the time, but I do rely on Case Handling  
4 Manual 11312.4. I think that is instructive in making  
5 that decision, but I did not have that at that time.

6 As a side note, after learning about this as  
7 a regional director, I had directed this practice be  
8 ended throughout Region 14.

9 Okay. Therefore, in response to the  
10 Employer's e-mail about whether to extend the election  
11 to permit the added voters time to return their  
12 ballots, I told Coffman to advise the Employer, that  
13 while we understood their concerns, we did not believe  
14 it was necessary to extend the date of the election.  
15 This was because we knew we had the ballots from the  
16 employees added to the list because they had voted in  
17 person the day before. It wouldn't have merely  
18 delayed the process without reason if we had agreed to  
19 the Employer's request.

20 The Employer made its request to extend the  
21 voting period to give all employees an opportunity to  
22 vote. We knew the employees had voted, so it would  
23 not have been an additional cause for objection to --  
24 it could have been an additional cause for objection  
25 to extend the voting period unnecessarily.

1           However, it was not prudent to volunteer to  
2 the Employer at the time that we had received the  
3 ballots from the voters at issue. For one thing, that  
4 jeopardized the secrecy of the election and the  
5 authority of the voting list. If we had told the  
6 Employer that we had the ballots already from the  
7 voters added via the amended list, they would know the  
8 -- these voters had voted, and we would have  
9 irrevocably tainted the election results.

10           Additionally, then the Employer would have  
11 information that the Union did not have, namely that  
12 those employees had, in fact, voted. The Union had  
13 been apprised of the in-person procedure, but not  
14 whether the votes had, in fact, been received at the  
15 Subregion 17 office. We do not, generally, and did  
16 not, as far as I know in this case, tell any party  
17 that any specific voter had returned to vote in any  
18 mail ballot elections. If we had, we would have been  
19 jeopardizing the secrecy of the election.

20           I was told and I believe regional employees  
21 responded directly to employees who asked for  
22 duplicate ballots. Regional staff did appropriately  
23 talk to both the Employer and the Union separately  
24 about election procedures and answered questions,  
25 contacts, which are explicitly invited by the initial

1 docketing letters accompanying the petition in every  
2 case.

3 I also made the determination at that time  
4 to move forward with the election and respond this way  
5 based on my conclusion that the variation in voting,  
6 for example, that some voters did not vote by mail,  
7 would be apparent at the tally because of the absence  
8 of a postmark.

9 The Agency maintains specific procedures how  
10 to challenge ballots to address such issues, relating  
11 to ballot irregularities and the election generally.  
12 These procedures were, in fact, used in this case and  
13 is accepted as the proper forum for resolving such  
14 election issues. I believed responding with more  
15 details would only prompt additional questions which  
16 could not be resolved in absence of a post-hearing  
17 election.

18 So, specifically, you asked me about the  
19 different objections, and so regarding Employer  
20 Objection 4, Regional staff communicated with the  
21 Union representative and the Employer representative  
22 separately. Regional staff answered questions from  
23 both parties in response to questions relating to  
24 specific voters. The regions advised the Union to  
25 direct voters with whom it was in contact to reach out

1 to the region directly to make arrangements to vote.  
2 The timing and substance of the communication of each  
3 party with the region were different and prompted  
4 different responses.

5           Specifically as to Employer Objection 5,  
6 there was no misrepresentation at that time. The  
7 voters, which the Employer originally omitted from the  
8 list, were mailed ballots. They subsequently called  
9 on April 4 and arranged to vote in for a person.

10           As to Objection 6, the Employer did not  
11 follow up or ask further questions about why the  
12 region was not extending the vote return period. We  
13 could not share this information with the Employer  
14 about why, and the Employer did -- could and did raise  
15 that in the post-election procedures, which is  
16 appropriate.

17           In sum, if we had apprised the Employer on  
18 April 5, 2022, which is one of the things you kind of  
19 were suggesting, I think, in our initial discussion,  
20 that the employees on the amended list had voted in  
21 person on April 4, 2022, we would have tainted the  
22 election results as a matter of certainty.

23           We could not answer the question about why  
24 the election did not need to be extended without doing  
25 so. We responded to their question directly and told

1    them we did not think we needed to extend the voting  
2    period, and in so doing, left the circumstances of the  
3    voting to the post-hearing procedures where they can  
4    properly and fully be considered via status board  
5    procedures.

6            I also have some specific corrections to  
7    specific pages of the transcript.  On Page 10 of the  
8    transcript, Line -- medium (phonetic) Line 9, I had  
9    conversations with Carla Coffman, the supervisory --

10           Q.    Oh, no, no, no, no, no, no.  You wait a  
11   second.  Just wait a second.  That's not a correction.  
12   You can't change what's on the transcript.  Do you  
13   have typographical corrections?

14           A.    Okay.  All right.  All right.  Then I  
15   apologize if I misspoke.  Let me supplement my  
16   response.

17           Q.    No, no, no, no, no.  You can stop.  You can  
18   stop.  Do you have anything else you want to add as --  
19   with regard to information which you did not provide  
20   during the interview?

21           A.    Yeah.

22           Q.    You can keep talking.  You can talk all you  
23   want, but you can't change the words that are on the  
24   transcript.  If I have follow-up questions for some of  
25   the questions we ask you, which we'll get into, but if

1 you -- you will answer questions that I ask you, once  
2 you provide the information that you said you weren't  
3 able to provide when we were interviewed, that's the  
4 purpose of this part of the interview.

5           You said on Friday that you didn't feel that  
6 you got a chance to provide information you want now.  
7 You were asked a specific question on Page 10, and you  
8 answered very specifically, and so changing the answer  
9 is not a correction. Okay?

10           So what other factual information do you  
11 want to provide at this time, before we get into our  
12 question and answer part of the interview?

13           A. Okay. Regarding Pages 14 through 16, during  
14 the interview and also upon review of the transcript,  
15 what I was -- during the interview, I was not clear,  
16 and I think that's apparent from the transcript if you  
17 were asking me a question or making observations. So  
18 to the extent it was unanswered, I think the answer is  
19 no, the Region did not confirm to the Union that  
20 individ- -- individual voters did not have a ballot by  
21 advising the Union to have the voter contact the  
22 region if no ballot had been obtained.

23           I do think it was clear, as of April 1, that  
24 at least two voters did not have ballots when [REDACTED]  
25 [REDACTED] [REDACTED] realized [REDACTED] had used the first voter

1 list and let the parties know [REDACTED] was adding the two  
2 omitted voters in response to finding the corrected  
3 voter list.

4 On Page 18, first is Line 11. It was not  
5 clear to me at the time that you were asking a  
6 question, but if you --

7 Q. Wait, wait, wait. Wait, wait, wait. The  
8 transcript speaks for itself. I mean, if I asked you  
9 a question then, and you answered it, then you  
10 answered it. If I didn't ask a question or whatever,  
11 I mean, it just speaks for itself.

12 A. Okay. Well, again, I --

13 Q. To the extent that I -- to the extent that I  
14 was making a statement during the interview, which I'm  
15 allowed to make during an interview. Right. This is  
16 not a court proceeding. I'm allowed to -- to say  
17 things to get your reaction. You reacted however you  
18 reacted to the information you were provided.

19 I mean, it's not a -- I don't -- I don't --  
20 I understand what you're saying, but that's not how we  
21 interpret the -- I would interpret that type of  
22 statement from me. I mean, unless you said -- unless  
23 you agreed, I wouldn't say you were adopting whatever  
24 it was I said. I mean, you say whatever it is you  
25 say, and that's the answer, to the extent that there

1 is an answer or the response; to the extent that it's  
2 not an answer, but it's a response.

3 A. Okay. I just -- when I was there and then  
4 reading the transcript, it wasn't clear to me if you  
5 were inviting a response or not. I was a little  
6 confused with how we were -- how -- the conduct of the  
7 proceeding, which was you said things that I disagreed  
8 with, but you didn't ask me if I disagreed. So I  
9 didn't have an opportunity to say, "Hey, I don't think  
10 that's correct."

11 Q. Well, if you didn't agree, then -- if you  
12 didn't state, "I agree," then you did not agree.

13 A. Okay. All right. Well, fair enough.  
14 I'm glad to hear it. I wasn't quite --

15 Q. You can't -- silence is not necessarily an  
16 agreement during an interview.

17 A. All right. Good. I'm glad to --

18 Q. You either answered or responded or didn't  
19 answer or respond.

20 A. Okay. I'm hap- -- I'm glad to have that  
21 clarified.

22 Q. Okay. We will go back to Page 10, but do  
23 you have anything else that you want to -- you want to  
24 say?

25 A. Yes. You're talking about a failure on

1 roughly Page 19, and -- and I --

2 Q. The transcript's not going to be clear. You  
3 have to be more specific than that.

4 A. I'm going through the transcript now. I  
5 think I'm on the -- oh, it's really Page 24. You say  
6 that the information could have been conveyed in the  
7 response to the Employer's request, and I'd like to  
8 add to that, if I may, if I can supplement it.

9 Q. I think you've already done that. You've  
10 already said that you couldn't. You've said a rather  
11 long uninterrupted statement that there was no way  
12 that you could have provided information to the  
13 Employer without disclosing information about the  
14 ballots, but that's your position, a very brief  
15 summary of it, but...

16 A. It is, yeah, but I think that you were  
17 suggesting that it would have been all right to do so,  
18 and I think that -- and I just wanted to add that for  
19 the sake of argument, borrowing your logic, which I  
20 don't accept, there would have been no way to fix any  
21 asserted neutrality concern by any communication at  
22 that time after the Union had the information about  
23 the voting processes for days in advance of the  
24 Employer. So in other words, there was no way we  
25 could have, if we had changed the communication, we

1 would not have fixed any -- any issue. We would only  
2 have added to it.

3 Q. Okay. Well, perhaps you would have added to  
4 it by letting the Employer know what information the  
5 Union had, and then the Employer could have  
6 appropriately filed objections, if that's what they  
7 wanted to do at a later date. But when you don't tell  
8 the Employer, they can't very well file an objection  
9 over information which they have not been given.

10 A. Well, it would be clear at the vote when you  
11 have the ballots that don't have postmarks, so they  
12 are very different. And that's common what -- that's  
13 commonly what happens, is that that would prompt the  
14 objection, based on the fact that these are not --  
15 clearly not voted the way the other ballots were.

16 Q. If it would have been clear at the tally,  
17 then why wouldn't you just explain that in the e-mail  
18 beforehand so you do at least give the appearance that  
19 you are acting neutrally with regard to the Petitioner  
20 and the Employer?

21 A. Again, because the communications weren't  
22 the same. They asked about the timing of the election  
23 as opposed to the identity and the specifics of the  
24 voters at issue, so the communications wouldn't --  
25 they couldn't be the same, because -- and then we

1 would have the -- you know, we would also be -- you  
2 know, have the issue, as I've already fully explained,  
3 that we would have identified the fact that those  
4 voters had come in, and that was information that  
5 neither party knew for certain at that juncture.

6 Q. Okay. So is there anything else you want to  
7 add before I get started with my questions?

8 A. No.

9 Q. Okay. You're all done, and you have nothing  
10 else you want to --

11 A. Yes.

12 Q. Okay. Very well. When you got started with  
13 your statement here, you talked about a shadow file.  
14 Can you explain to me what that is?

15 A. My understanding is that -- that if there  
16 are case file records, that there are files or memos  
17 or anything related to a -- to a case file, it should  
18 go in a nex-gen file. You don't keep things to the  
19 side. They need to go into the files, or else they're  
20 -- you know, they -- it creates all sorts of issues,  
21 problems, and doubts about the integrity of our record  
22 keeping.

23 Q. And so what kind of things are you talking  
24 about? Can you just explain that in a little more  
25 detail for me, please?

1           A.    Sure.  This is something you referenced, and  
2 you asked me --

3           Q.    No.  Wait, wait, wait.  I want to know what  
4 you think.  I want to know what you -- I don't want to  
5 know what I think.  I want to know -- when you say  
6 things should be put in the file, what things do you  
7 think should be in the file?

8           A.    If there are notes about conversations  
9 regarding case handling, they could go into the file.  
10 They should not go into somebody's desk drawer.

11          Q.    And you've looked at this case file?

12          A.    I have.

13          Q.    Okay.

14          A.    Now, I had not when we talked earlier, but I  
15 have now.

16          Q.    Okay.  But since we talked, you looked at  
17 the case file?

18          A.    Uh-huh.

19          Q.    Okay.  So what communication are you  
20 concerned about not being in the case file?

21          A.    You -- you asked me questions about --

22          Q.    No, no, no, no.  Wait, wait, wait.  I'm  
23 asking you now, having looked at the case file now,  
24 what information do you think is missing from the case  
25 file?

1           A.    I don't think anything is missing, but you  
2 told me that Carla Coffman had notes about the  
3 conversation.  If she had notes, those should be in  
4 the case file.

5           Q.    Okay.  So her notes with you should be in  
6 the case file?

7           A.    I -- I would think so, yes.

8           Q.    And her e-mails, or anyone's e-mails with  
9 you should be in the case file?

10          A.    Yeah.

11          Q.    Okay.  So -- and you've looked at the case  
12 file, and your only concern is that these notes aren't  
13 in there?  That's your concern?

14          A.    That is a concern.

15          Q.    Okay.  Well, with regard --

16          A.    You asked me about notes that aren't in the  
17 case file, and that -- that is a concern to me.

18          Q.    Yeah.  Are you concerned about anything else  
19 not being in the case file?

20          A.    Not off the top of my head.

21          Q.    But you've looked at the case file?

22          A.    I did look at the case file.

23          Q.    And you know what kind of communication,  
24 having now sort of reflected since our last interview,  
25 you know the kind of communication that you engaged in

1 that you could not recall during our last interview,  
2 correct?

3 A. I'm not sure I understand the question.

4 Q. Well, on Page 10, which you were getting to,  
5 on Page 10 of that transcript -- it starts on Page 9,  
6 but it was sort of long -- it was kind of a long sort  
7 of foundational thing to an actual question. I said  
8 again, the e-mail's missing information. This is the  
9 e-mail that Carla, who is the Assistant to the  
10 Regional Director, sent out in response to the  
11 Employer's request to extend the voting time?

12 A. Yes.

13 Q. And you said, "I did not."

14 And then I asked you, "So did you have any  
15 conversations with Carla about the contents of the  
16 e-mail and how she would respond?"

17 And you said, "I did not."

18 A. What I tried to tell you or tried to correct  
19 in my earlier statement is that we had a very long,  
20 raging conversation. I did not identify or pinpoint  
21 the conversation she and I had in relation to that  
22 e-mail you showed me, which I had not seen before, so  
23 I tried to explain that that conversation we had was  
24 about a lot of things that has happened during the  
25 course of that election, all these things that I did

1 not know, and -- and up to and including communicating  
2 with the Employer, but that I never saw, or at least I  
3 have no recollection of seeing that specific e-mail  
4 that she subsequently sent out.

5 Q. So you didn't tell her what to put in the  
6 e-mail; is that what you're saying?

7 A. I think I probably generally did, because  
8 I -- just along the lines of what I told you, which is  
9 call -- we can't -- I did not want -- we responded.  
10 She read me what they -- what they had asked, which  
11 was, "Can we extend it?"

12 I said, we should -- "We need to respond to  
13 what they're asking and be very specific and say 'No,'  
14 because if we add anything, we're in danger of  
15 disclosing who has voted." So, you know...

16 Q. But you didn't review the text of the  
17 e-mail? You didn't get like a draft of the e-mail?

18 A. No, no, not that I remember. I mean, I  
19 clearly don't remember that, if I did.

20 Q. Yeah. Okay. So who else did you talk to  
21 about these issues with this election?

22 A. Who else did I talk to?

23 Q. And -- and I don't really care about after  
24 the objections were filed. I mean, I'm -- I'm not  
25 talking about after the tally. I'm talking about that

1 very short period of time between April 1st and the  
2 end of the business day April 5th.

3 A. Well, I didn't have any -- I didn't have any  
4 knowledge of anything that, I don't believe, until  
5 April 5th. So April 5th was the first time I had any,  
6 to the best of my recollection, had any -- any  
7 knowledge of the issues relating to the conduct of the  
8 election, so I don't -- I -- I'm not sure who else I  
9 talked to.

10 Q. Did you talk to any other regional  
11 directors?

12 A. No, I don't think so.

13 Q. It seems to me that was something you should  
14 remember if you did. This is kind of a big deal  
15 election.

16 A. I don't think I did.

17 Q. Okay. We have very specific -- okay, you  
18 don't think you did. You have very specific memories  
19 now of our conversations with your ARD. So I would --  
20 I mean, yeah. Okay. So you don't think you talked to  
21 any other regional directors?

22 A. I -- I've talked -- I've talked to regional  
23 -- it's hard for me to pinpoint the timing. I mean, I  
24 have talked to -- I mean, this -- I was -- again, I  
25 was very surprised to hear about this in-person

1 election procedure and -- and pretty shocked. I  
2 subsequently did talk to a number of people about it  
3 to try and determine if this was something that really  
4 happened elsewhere.

5           Now, I don't recall the timing of those  
6 discussions, and, again, those became very, very --  
7 you know, throughout the objection process and so  
8 forth and so on, I mean, they became a fairly -- it  
9 was quite common when this issue -- this issue came up  
10 with multiple -- multiple directors, multiple, you  
11 know, with AGCs. I mean, it as a -- it was a hot  
12 topic, if you will.

13           Q.    Okay. So I'm going to show you some records  
14 which probably should be in the case folder now, so I  
15 think these records would -- would be what you would  
16 consider a shadow file, but these are your records,  
17 and I don't understand why they're not in the case  
18 file. So we're going to talk about that.

19           A.    Okay.

20           Q.    The other thing I want to talk about is  
21 what's your practice of deleting e-mail from your  
22 government e-mail account?

23           A.    I don't do it very often.

24           Q.    When do you do it?

25           A.    I don't have a set practice.

1 Q. Have you ever deleted any e-mails related to  
2 specific cases?

3 A. Probably.

4 Q. Okay. And what would be the circumstances  
5 where it would be appropriate to delete an e-mail  
6 related to a specific case?

7 A. Well, I think the e-mails don't get deleted.  
8 I mean, they go in -- I mean, they're saved, is my  
9 understanding. It doesn't matter what I do with it,  
10 it's still -- it's still there.

11 Q. So -- okay. Well, then, why would you  
12 delete them?

13 A. Just to show that I've gone through it, I  
14 guess. I mean, I, you know, to de-clutter my inbox  
15 sort of thing.

16 Q. Okay. So I'm going to show you what I've  
17 marked now and for this interview as Exhibit 1. Hold  
18 on just a second. Okay. This is the e-mail that  
19 you -- so this is the e-mail. Can you see it?

20 A. Yes.

21 Q. Okay. I've marked this Ex. 1 for Exhibit 1.  
22 Okay. This is the e-mail from the Employer requesting  
23 time, right? This is the one you were speaking about,  
24 so this is the e-mail that came from the Employer and  
25 was to -- I guess [REDACTED] the [REDACTED] and

1 does not include an ARD, right?

2 A. We do not have an ARD.

3 Q. What's -- I thought -- sorry. Well, I'm  
4 confused, but I thought Carla was your ARD?

5 A. She is now. At the time, we did not have an  
6 ARD. We did not have a regional attorney. We did not  
7 have an --

8 Q. She was the acting ARD at the time?

9 A. No, I don't think she officially had that  
10 title. I think she was just supervisory and field  
11 examiner.

12 Q. Okay. Well, at any rate, Carla's not on  
13 here? Right. This is the e-mail you're talking  
14 about?

15 A. Yes.

16 Q. So you received this at 11:41, and you  
17 forwarded it to Carla, right?

18 A. I don't have a specific recollection of  
19 that, but I wouldn't be surprised since she wasn't on  
20 it.

21 Q. Okay. I believe you did, and I don't think  
22 I made a copy of that one. But at any rate, she's not  
23 on this e-mail. So for you to have some sort of  
24 conversation with her, she would need to somehow get  
25 this e-mail, so someone had to send it to her.

1           Okay. So -- okay. And then Exhibit 2 is  
2 the e-mail from the Union representative or the  
3 Petitioner, which, again, does not include Carla, who  
4 was the supervisory or acting ARD, whatever her  
5 position was, right? So -- and in this case, the  
6 Union also did not mention if there were any  
7 arrangements that the Region had made for the people  
8 to come in and vote. So -- but do you recall this  
9 e-mail?

10           A. Yes.

11           Q. So did you ask Carla to go do research at  
12 any point on these things that were your concern?

13           A. What specifically are you asking?

14           Q. I'm asking, if you learned of this and you  
15 had this conversation with her on April 5th, did you  
16 ask her to go do any research to find out if this was  
17 an okayed procedure, or if there was some problem that  
18 you guys had?

19           A. No, because she represented to me that it  
20 had been fine and in operation and, you know,  
21 well-established at -- within the Region, so no, I  
22 didn't. I mean, she -- she told me it was -- it was  
23 well-established, so she -- it seemed to be -- and  
24 they had been doing it for years, so I didn't ask her  
25 to do research about it.

1 Q. Okay.

2 A. You know, I was processing the information.

3 Q. What were -- what were your two concerns or  
4 three or four concerns, however many? I think you  
5 mentioned two. What were your primary concerns with  
6 what the region had done?

7 A. I was -- I was very concerned with letting  
8 people vote in person. I was very concerned about it.  
9 I had never heard of any such thing before. You know,  
10 I've since learned that it has been done, and it has  
11 been done in other Regions, but I -- I didn't know  
12 anything about it, so I was very, very concerned about  
13 it and didn't know if it meant we should -- you know,  
14 the whole election was tainted.

15 I really -- I really didn't know what the  
16 implications were, but Carla assured me that oh, no,  
17 the Region had been doing this for years. It was --  
18 it was a way to get employees to vote. I mean, it was  
19 to assist voters, and that there was -- there was, in  
20 essence, no -- no problem with it.

21 But I, you know, again, looking at -- at the  
22 stipulated agreement, since it wasn't part of the  
23 stipulated agreement, that troubled me. You know, it  
24 was something extraneous to what both -- what all the  
25 parties and what I, myself, had approved, so I was

1 very twitchy about that.

2 Q. What about picking the ballots up in the  
3 office?

4 A. The same. The same, picking the ballots up  
5 in the office. Yeah, I did not -- I was not aware of  
6 any extraneous procedures, other than what's set out  
7 in the stip or that the region had done that or had an  
8 established practice of doing that, so this was all  
9 new information to me.

10 Q. I don't think there's anything in the  
11 stipulation that says how duplicate ballots will be  
12 sent to a -- to an individual?

13 A. I thought there was. I thought there was.

14 Q. I think the standard stipulation and every  
15 stipulation I've seen, and I've looked at hundreds of  
16 stipulations in the last six months, and I've never  
17 seen a statement that says, "Duplicate ballots will be  
18 mailed in the U.S. Postal -- by the U.S. Postal  
19 Service."

20 A. I -- I think that's correct, but I seem to  
21 recall that there's a question of when they don't get  
22 ballots. If they call in, there's a discussion about  
23 -- there's some language about mailing duplicate  
24 ballots, but I, you know --

25 Q. I don't think so.

1           A.    Okay.  I -- okay.  I mean, I was not --  
2 okay.

3           Q.    The stipulations generally say that ballots  
4 will be mailed within so many days of a list or  
5 something along those words.  But when it comes to be  
6 to the issue of duplicate ballots, it doesn't say that  
7 they'll be mailed, and it also doesn't require that  
8 ballots be received by a certain day.  It just says  
9 they should.  It doesn't say they must.

10                   And I believe your stipulation for this case  
11 is pretty much identical to -- at least those parts of  
12 the mechanics are very much identical to every mailed  
13 ballot stipulation.  I didn't see any significant  
14 differences in the stipulation.  Now, I can tell  
15 you're looking at something.  Are you trying to look  
16 at the stipulation?

17           A.    Yeah, I would like to see it.

18           Q.    Well, we'll come back to that.

19           A.    Okay.

20           Q.    I probably can find it.  It's not really all  
21 that significant.  Again, you know, I think it's  
22 important for you to keep in mind.  You know, you  
23 talked about the objections.  I'm not -- I'm not  
24 investigating.  We are not rendering any opinions on  
25 the objections.  Okay?  We're looking at whether or

1 not employees did what they were supposed to do or did  
2 not do what they were supposed to do, but we're not  
3 looking at whether or not such conduct would support  
4 an objection or whether it even impacted the election.  
5 Okay. That's what a hearing officer does, and that's  
6 what the regional director does, and the Board reviews  
7 that. That's -- the IG does not have any role in that  
8 process.

9 A. Uh-huh.

10 Q. So I personally don't care whether employees  
11 picked up ballots in the regional office. If the  
12 Agency wants that to happen, then the Agency can set  
13 up procedures for that to happen. I mean, that's  
14 between the Board and the general counsel and, you  
15 know, whatever. It just doesn't matter for what I'm  
16 doing. Okay?

17 A. Uh-huh.

18 Q. But they are -- these issues are sort of  
19 wondering around, what it is we're looking at. But to  
20 the extent it appears or you think that I'm taking a  
21 position on whether or not it's appropriate or  
22 inappropriate, I'm not. Okay. I don't. I personally  
23 have no opinion on that. I'm looking at the conduct  
24 and the management of the regional employees and the  
25 regional office. Okay? So I'm going to show you

1 Investigative Exhibit 2 -- or 3. So this is an e-mail  
2 from Carla to you. This is an e-mail from Carla to  
3 you on Tuesday, April 5th, 2:18 p.m. and Carla's  
4 basically saying, "Here's a four (phonetic) case. I  
5 hope it makes you feel better." And this has to do  
6 with whether or not it would be objectionable conduct  
7 for an individual to come to the region to pick up a  
8 ballot. So she found this, but you didn't ask her to  
9 go find this case or to go research this issue?

10 A. I don't think so. I think it was more that  
11 I was -- I -- I mean, she was very aware of my  
12 discomfort with the situation, so I think that her  
13 effort to reassure me that this was, you know, a -- an  
14 established practice, or it was in the realm of --

15 Q. You then responded on April 5th at 3:23, you  
16 know, basically thanking her and then saying, "I don't  
17 suppose you can find me a case so quickly about the  
18 other part of the equation." I'm not trying to trick  
19 you that you asked her to do legal research. I'm just  
20 pointing out that when you got this, you then said to  
21 her, "If you've got a case on the other part of the  
22 equation"...

23 Now, I'm guessing. I'm probably correct,  
24 but the other part of the equation is people voting in  
25 the regional office. Is that what you mean by the

1 other part of the equation?

2 A. I don't recall. I don't know.

3 Q. Maybe I can get lucky. What would be the  
4 other part of the equation?

5 A. Pick up a mail -- I mean, I -- I come in and  
6 picked up. I think that's probably correct, but...

7 Q. Yeah. It seems -- I asked you what issue  
8 you were concerned about. The two issues, one, you  
9 primarily seemed to be concerned with people picking  
10 up the ballots, at least while you're explaining it.  
11 That's the first thing you explained, so we would  
12 say --

13 A. No. The in-person voting was the really --  
14 the big deal for me --

15 Q. Okay.

16 A. But -- so...

17 Q. Okay. Then that would make sense, that this  
18 is the in-person voting, is -- is the other part of  
19 the equation, then. The two things, picking up the  
20 ballots and voting in person, those would be the two  
21 main concerns that you would have -- you had at the  
22 time --

23 A. Uh-huh.

24 Q. -- based on this -- these e-mails that we  
25 can now find; is that correct?

1 A. I thought that was your -- wait. Sorry.

2 Q. I'm asking you a question. I'm asking do  
3 you agree with me, that those are -- I'm trying to  
4 figure out what the other part of the equation is.

5 A. I -- I -- I thought -- sorry. I thought I  
6 already had. I think that's a reasonable assumption.  
7 I don't have a specific recollection, sitting here  
8 today, but I was worried about those issues. There's  
9 no question. I mean, it would make sense.

10 Q. Yeah, exactly. It would make sense. Those  
11 are the two things. Okay. Hold on just a second,  
12 please.

13 So just focus for a second. So your  
14 response to her is at 3:23 p.m. This is Exhibit 3,  
15 and then you go back to Exhibit 1, and the e-mail from  
16 Starbucks or the Employer representative is at 11:41,  
17 and the Union and Petitioner responds at 2:47.

18 Okay. So you've got 11. It was almost  
19 noon, almost 3, and then Carla -- my Exhibit 3 went  
20 away. That's okay. I can bring it up. And then  
21 Carla gives you the legal research. And then at 4:50,  
22 almost 5:00, Carla sends you this message, "I was  
23 planning to just say while we understand the concerns  
24 raised by the employer, we do not believe there is any  
25 basis to postpone the count at this time, and leave it

1 at that. Sound good?" This was from Carla to you at  
2 4:50. So, clearly, she is sending the text of the  
3 e-mail that she's about to send out.

4 A. Yes.

5 Q. Okay. This is not in the case file, and  
6 earlier you said you did not recall reviewing the text  
7 of the e-mail, but obviously you did?

8 A. No. No. I didn't -- I don't -- I didn't  
9 recall that e-mail -- that e-mail, which is what you  
10 asked me about.

11 Q. I asked you if you recall reviewing the text  
12 of the e-mail, and you said you didn't.

13 A. Well, I thought you meant that actual  
14 e-mail, and I do not recall seeing that e-mail prior  
15 to it being sent out, or after.

16 Q. Here's the text. If I ask you the question  
17 and you had reviewed the text, why wouldn't you say,  
18 "I didn't see the e-mail, but I saw the text"

19 A. Because I didn't remember seeing the text in  
20 this way, or I would have to compare them side by  
21 side, which I did not do.

22 Q. Okay. But here it is. She sent you the  
23 text and asked you what you thought?

24 A. Yeah, which I still think was a good  
25 response.

1 Q. Yeah, that's not the point. Okay. And you  
2 responded in Exhibit 5 -- I'm sorry. That exhibit I  
3 just talked about was Exhibit 4.

4 It sounds good to me. "It may be useful to  
5 add, 'Noting the Union's opposition.'" So not only  
6 did you review it, but you told her what to add to it.  
7 Okay. So that's Exhibit 5.

8 So let's go to Exhibit 9, from Carla to you.

9 "Do you want me to copy you on my e-mail  
10 response to the parties regarding the delay in the  
11 mail ballot count?" Do you recall getting this  
12 e-mail?

13 (Unreportable cross-talk.)

14 A. I don't recall.

15 Q. Well, she's asking you now, "Do you want the  
16 e-mail that I just asked you if you reviewed or you  
17 had saw?"

18 And you -- and now you respond," Not need  
19 -- "Not needed unless you want me to see it first."

20 A. So I didn't see it, it looks like.

21 Q. No, you didn't see it, but I think that this  
22 is an issue of your candor during the interview.  
23 Obviously, you were very involved in dictating parts  
24 of that e-mail, were very involved in the response,  
25 and yet when we interviewed you in April, you claim to

1 have no recollection of being involved in the e-mail?

2 A. No, and that, you asked me about, and that  
3 was the problem. That's why I wanted to see the  
4 transcript. Because the way you asked that question  
5 was key to that e-mail, which I had not seen, so that  
6 was what I wanted to fix in talking to you today, was  
7 because I definitely remember having the discussions.  
8 I remember, I mean, but they were a wide-ranging  
9 discussion much more, I mean, about all the things  
10 that had gone on with the election, including  
11 responding to that Employer concern. So it wasn't  
12 just a finite, you know, conversation about this  
13 e-mail that I -- you know, that I had not seen. I  
14 didn't see.

15 Q. On Page 10 of the transcript I sent to you,  
16 on Line 6, Question: "Did you have any conversation  
17 with Carla about the contents of this e-mail, how she  
18 would respond?"

19 Line 9, "I did not."

20 Line 10, Question: "Okay. Does this e-mail  
21 cause you any concern that it is not complete?"

22 Line 12, Answer: "Again, I was not aware of  
23 it at the time."

24 A. Because I did not realize that was the  
25 e-mail that we were -- that was the result of this

1 discussion. I didn't put it into context because I  
2 honestly did not remember this e-mail or what -- what  
3 specifically it referred to.

4 Q. I'm going to be very -- I'm going to give  
5 you an opportunity to rethink that answer. I don't  
6 believe you. I think there's ample evidence that you  
7 were intimately part of drafting this e-mail. I asked  
8 you back in March in a good faith attempt just to find  
9 out if you had looked at the e-mail, if you were part  
10 of that e-mail process, fully giving you the  
11 opportunity to answer. These were not  
12 cross-examination questions.

13 They were actually open-ended questions, and  
14 you did not answer the questions with the proper  
15 candor that we would expect of a person of your  
16 experience and grade. Particularly since you're an  
17 attorney and you understand these things. I want you  
18 to think really carefully about what you were about to  
19 say to me. Because it sounds to me like you were  
20 about to say -- I may be wrong, but it sounds to me  
21 you were about to say that you didn't realize that  
22 this was the e-mail I was talking about. Is that what  
23 you were going to say?

24 A. This was the e-mail I was talking about.

25 Q. In other words, that this -- the response

1 from Carla to the Starbucks attorney, it sounds to me  
2 like you're about to say you didn't understand that's  
3 the e-mail I was asking you questions about?

4 A. Sorry. Now I'm getting -- now I'm getting  
5 confused and another person --

6 Q. When I -- when I questioned you...

7 A. I didn't -- I didn't realize at the time  
8 that that was the e-mail that was the result of all  
9 the conversations Carla and I had about everything  
10 that was going on with the election. I did not  
11 recognize it when you showed it to me.

12 Q. I find that very difficult to believe.

13 A. I didn't review the file in advance. I wish  
14 I had known to do that. I think I would have been  
15 much better prepared, but I -- I didn't. And when I  
16 -- when I saw that e-mail out of the blue, I didn't --  
17 I didn't remember what it referred to or the timeline  
18 or anything else, so it was very difficult for me.

19 Q. How could you not know what it referred to?  
20 It's the denial of the request for the extension of  
21 time for the voting from the Employer?

22 A. That was almost a year previously. I really  
23 hadn't referred -- I hadn't reviewed the file. I  
24 mean, I don't, you know, to remember the time line,  
25 is -- I regret that I didn't review the file. I would

1 have been much better prepared, but when seeing that,  
2 something I had never seen before and the  
3 conversations about it and e-mails about it that  
4 you've shown me, which I believe were, you know, what,  
5 nine months prior?

6 Q. It appears to me that these e-mails I'm  
7 showing to you, that Exhibit 10 and Exhibit 9 have  
8 been deleted from your e-mail account?

9 A. But they don't go away. I didn't know that  
10 mattered. You obviously have them. That means it  
11 doesn't matter if I delete them. They're still --  
12 they're still in the system.

13 Q. Well, they are and they're not. We can't  
14 find deleted e-mails, but that's not the point. The  
15 point is why did you delete them?

16 A. Because it was over. We moved through. I  
17 mean, there was no -- there was nothing nefarious  
18 about it. It's just I delete all sorts of stuff  
19 moving on down the road.

20 Q. You've got a bunch of sort of -- I mean, I  
21 looked at your e-mail account in depth, and you don't  
22 delete a lot of things that you've moved on about.  
23 Why are these e-mails deleted?

24 A. No reason that I have any recollection for,  
25 nothing. There is certainly not -- it was not an

1 attempt to hide anything. I've got -- I mean, I do  
2 not consider I have anything to hide in this regard.

3 Q. It just doesn't make sense why you would go  
4 in and delete two -- these two e-mails, and yet  
5 we've -- these other, almost nonsensical e-mails, what  
6 I would sort of say just chatter between regional  
7 directors, you don't delete them. And why aren't  
8 these e-mails in the case file?

9 A. That's a good question. I don't know. I  
10 usually rely on my staff to upload e-mails and --

11 Q. Well, it's -- you're ultimately responsible  
12 for that case file. If you're deleting an e-mail from  
13 your e-mail folder, you don't have the ability to put  
14 it in there. So how would you know to make sure the  
15 file is completed if you deleted something? You  
16 pretty much, immediately after you sent it, you delete  
17 it. How did you know that it was okay to delete if  
18 you didn't look at the case file?

19 A. Well, because it went to Carla. So, Carla  
20 -- I mean, my -- I would assume that Carla would  
21 upload it.

22 Q. Did you tell Carla to upload all your  
23 e-mails?

24 A. No, I did not. That was just my assumption.

25 Q. So you've never told your staff to upload

1 your e-mails to nex-gen?

2 A. I have some -- sometimes. I mean, it -- it  
3 depends, but, no, I guess if the -- the person who's  
4 working on the file is typically the one who maintains  
5 the file, so I tend to rely on that.

6 Q. Okay. Well, the person in this case who's  
7 doing this, this would be the field examiner. [REDACTED]  
8 the one maintaining the file. [REDACTED] not on these  
9 e-mails. So if the field examiner is the one  
10 maintaining the filing, you're not forwarding these to  
11 [REDACTED] and telling [REDACTED] to put them in the file?

12 A. [REDACTED] supervisor is there, so I would rely on  
13 [REDACTED] supervisor to -- to -- you know, to have that.

14 Q. The report is not in the case file either.

15 A. All right.

16 Q. Your specific direction, Exhibit 4 and 5  
17 together, your review and direction of the response to  
18 the Employer, that's not in the file either. And I  
19 asked if you looked in the file, and you said you  
20 thought it was complete, but obviously, it's not  
21 complete, because this isn't in the file. But I don't  
22 know. It seems -- I don't understand how -- how you  
23 can say the file is complete or incomplete if you  
24 don't know what's in there. You said you reviewed it.  
25 Your only concerns were things that Carla didn't put

1 her notes in. Why don't you have the same concern  
2 about your notes?

3 A. Well, no, because you asked me about and  
4 asked me to verify notes that she supposedly has that  
5 I've never seen or knew about. So it's like if you're  
6 going to ask me about things I don't know about, it's  
7 pretty hard for me to respond.

8 Q. I wasn't asking about the notes. I was --  
9 well, in the original interview, you said you haven't  
10 had any conversations, and then I said, "Well, we have  
11 notes that you had conversations." And I explained  
12 the notes, and now we are trying to refresh your  
13 memory, so in which case you continue to say you have  
14 no memory of that. However, when -- when -- on the  
15 second interview, now you have a very, very --

16 A. I disagree, and I, in fact, told you in the  
17 interview later about the fact -- I mean, it -- it --  
18 you -- you tied it to that e-mail that I had not seen,  
19 and that was -- that was the problem where I couldn't  
20 pull it up, and then later on I told you I  
21 specifically had a recollection of the conversation --  
22 this is why I wanted to see the transcript.

23 Because, in other words, I did have -- I  
24 knew I had conversations. Could I tag it to April 5  
25 on that date? No, I couldn't when we talked, because

1 I didn't -- I don't have -- I don't have knowledge of  
2 those dates. I can't -- I can't do that without some  
3 sort of frame of reference. So -- so -- but I did, in  
4 our initial discussion, tell you that I had discussed  
5 these issues with Carla. I mean, I had specific  
6 recall of that. I could not tie it to the e-mail that  
7 I didn't remember seeing.

8 Q. Well, obviously, you did see it?

9 A. I didn't. I didn't.

10 Q. Well, we have Exhibit 9 --

11 A. I did not see that particular e-mail.

12 Q. -- and 10. We have Exhibit 9 and 10 where  
13 you say, "I don't want to see it." And then we have  
14 Exhibit 4 and 5, where you see the text and tell her  
15 what to put in the e-mail.

16 A. But that's different. I mean, we can  
17 quibble all you want, but, I mean, that particular  
18 e-mail, going to people I don't know -- you know what  
19 I mean? I didn't -- I didn't -- I didn't clue it in  
20 when you presented it to me, but I, of course,  
21 remember having those conversations, and I thought I  
22 made that clear, but that's exactly why I wanted to  
23 review my transcript, so it would be crystal clear  
24 that, you know, how it unfolded.

25 Q. At the very beginning, when I gave you the

1 opportunity to say whatever it was you wanted to say,  
2 you seemed very concerned about this shadow file and  
3 that your staff had not put things into the file that  
4 you thought should be in there with regard to their  
5 records. I don't understand why you don't have the  
6 same concern with regard to your records. Can you  
7 explain that to me?

8 A. Oh, I do, but I really do rely on people --  
9 people that I correspond with who are closer to the  
10 files to put it in. I mean, that's my understanding.  
11 And, again, it was -- it was troubling to me that you  
12 were asking me about things I had not seen or didn't  
13 know about.

14 Q. Okay. So what methodologies have you put in  
15 place to make sure that your information is  
16 appropriately documented in case files?

17 A. My understanding is that -- that I've asked  
18 on occasion. I will ask my secretary to upload things  
19 that I think are particularly important if I'm the  
20 only person involved on it. If somebody else is  
21 involved in the case file who -- who's closer, you  
22 know, closer to the workings of the case, my  
23 assumption is that they are the ones who upload these  
24 things.

25 Q. Well, again, I didn't ask you what your

1 assumption was. My question to you, what is your  
2 methodology? What have you done to ensure that that  
3 assumption is actually carried out?

4 A. I don't know. Not -- I mean, nothing other  
5 than -- nothing -- nothing specific that I can recall.

6 Q. You seem to say that any problems with these  
7 ballots, because they wouldn't have a postmark, would  
8 have been apparent at the tally. If that's the case,  
9 then why wouldn't you disclose that to the extent that  
10 people wanted to vote, the Region was allowing them to  
11 vote in the regional office?

12 A. Again, I thought that if we did that, we  
13 would be tallying -- first of all, the Employer wasn't  
14 asked, wasn't concerned about that, to my knowledge,  
15 about specific voters, and they were -- they had asked  
16 a very narrow question, so that's what I responded to.  
17 I was afraid that if we widened it out, that we would  
18 be disclosing that individuals had already come in and  
19 had voted, and specifically the ones who were added to  
20 the list.

21 Q. All right. What would be the problem with  
22 disclosing that to the extent that people wanted to  
23 vote, they would be allowed to come in and vote in the  
24 office? I mean, why would the Employer have to ask a  
25 specific question regarding specific employees?

1           A.     Because that -- that wouldn't have -- they  
2     didn't ask that, though.  They were asking about  
3     whether or not they needed to extend the time, and we  
4     couldn't answer that question without disclosing that  
5     we already had the ballots from those -- from those  
6     voters.

7                     So it was -- it's like apples and oranges,  
8     that we couldn't respond to their inquiry in an  
9     appropriate way without either moving the elections,  
10    saying, "Okay.  We'll open it up," which maybe we  
11    should have done, but either saying, "Okay.  We're  
12    going to let -- everybody can come in."  And then we'd  
13    have to reopen the election.

14                    But if they were just asking about those  
15    voters who were not, you know, who were on the amended  
16    list, we knew those were fine.  We knew those were  
17    okay, so we couldn't really -- we couldn't -- we  
18    couldn't respond in a different fashion, then.

19                    If we had said, "Okay.  Everybody can vote,"  
20    then it's like there's still -- then the question is,  
21    "Well, how would that be communicated to voters," and  
22    we would have to say, "We don't know."  I mean, that's  
23    just like -- there were so many variables there that  
24    would have been pretty hard to answer.

25            Q.     Why couldn't you have told them to the

1 extent that you were aware of anyone who needs  
2 additional time to vote, they should contact the  
3 regional office?

4 A. Again, well, it didn't occur to me, I guess,  
5 because they hadn't asked that. They had asked -- I  
6 mean, they were asking about the voting. I mean, they  
7 were asking about the timing of the tally, and we  
8 already had it, and we knew we didn't -- anyway, it  
9 just didn't -- it didn't seem relevant, I guess.

10 Q. You guys, your region responded fairly  
11 quickly to the Petitioner's questions and took a  
12 fairly long time to respond to the Employer's  
13 questions.

14 A. The same day.

15 Q. Well, they're not actually all on the same  
16 day. It just seems to be a rather lengthy response.  
17 When the Union calls for e-mails or does something  
18 about people not having ballots or whatever, the  
19 response seems to be fairly immediate, fairly quickly.

20 When the Employer expresses the same  
21 concern, the response seems to be delayed, and there's  
22 some much more deliberate sort of lawyerly kind of  
23 response that's happening than when the Union does.  
24 Can you explain why there seems to be a different type  
25 of communication?

1           A.    I'm not sure I -- I can.  If we're talking  
2 about that one day, I mean, I believe it was the same  
3 day that the Employer e-mailed about extending the  
4 date, and they e-mailed [REDACTED], who that's not, I  
5 think, who's, you know, who's a clerical employee, so  
6 that's really not in [REDACTED] bailiwick.

7           Q.    You, you're on the e-mail too.

8           A.    Well, I'm CC'd, right?

9           Q.    It doesn't matter.  You got the e-mail in  
10 your box.

11          A.    Well, I mean, but I'm not typically  
12 responding to -- which is why I forward to Carla  
13 because that's sort of her area, you know, which she  
14 oversees.

15          Q.    Right, but you can't -- you can't claim the  
16 Employer did anything wrong by putting a lower-level  
17 person in the "To" box?

18          A.    No, I'm not saying they did anything wrong.  
19 It's just that that is -- most likely, if [REDACTED] can't  
20 answer something like that, [REDACTED] going to take it up  
21 the chain, which will take -- take more time, right?

22                You know, they were -- they had a, you know,  
23 it was a chain between, you know, about [REDACTED] -- to  
24 ask [REDACTED], "Did you mail it?"

25                [REDACTED] says, "Yes, I did, April 1."  And that's

1 kind of why I brought that stuff earlier, because then  
2 we get into the, you know, the calendar issues, which  
3 is -- this is April 5. The Employer asked should we  
4 extend. The next day is when the ballots are due, and  
5 then the count's on the 8th. I mean, we don't have a  
6 whole lot of time here to figure things out, so I  
7 guess I don't -- I don't know about any lag in  
8 responding to them. I think we responded the same  
9 day, but, again, there was a lot of information for me  
10 to process or try and process that day about what all  
11 these things that I didn't know about in terms of the  
12 contact of the election, so -- but we did respond the  
13 same day, I thought.

14 Q. You did. You responded at the end of the  
15 day. I'm just wondering, the Union seems to get -- or  
16 the Petitioner. I keep calling them the Union; but,  
17 technically, I guess, the Petitioner.

18 The Petitioner seems to get immediate  
19 responses, whereas the Employer's responses don't seem  
20 as immediate. This is my impression from looking at  
21 the case file.

22 A. I can't speak to that. I don't think I -- I  
23 don't recall responding to any of them directly.

24 Q. So I'm going to tell you straight up, I  
25 think there's a lack of candor issue, and our report's

1 going to reflect that.

2 A. I'm very, very disappointed, because I  
3 really -- that is exactly why I wanted to see that  
4 transcript because I felt that the way the question  
5 had been asked did not -- I didn't fully explain the  
6 sequence of events, and so that's what I said that I  
7 was trying to do.

8 Q. I think there's a lack of candor problem in  
9 this interview.

10 A. No way. In what regard?

11 Q. I think that you had plenty of time to  
12 review the file. You obviously did review the file,  
13 and still you, when asked specific questions, you did  
14 not answer them completely and fully. And that's a  
15 lack of candor.

16 A. Oh, I'm -- I'm very disappointed. I do not  
17 think that is the case at all. I think -- I mean, I  
18 have tried. I disagree. I disagree. I think that  
19 there are -- if you ask me questions about things I  
20 weren't [sic] involved with, I can't give you answers  
21 that are definitive. I can't give you answers about  
22 e-mails. I mean, why I deleted some things and don't  
23 delete something, it's haphazard. And I didn't think  
24 there was any issue with that, because, obviously,  
25 clearly, they're all there. I mean, there all kept,

1 so there's -- and there's nothing -- anyway, I'm --  
2 anyway, I've very, very disappointed by that, and I  
3 think it's erroneous. I really do.

4 Q. Well, the record will speak for itself, but  
5 I gave you the opportunity to respond to it, to the --  
6 that issue. Do you have anything else you want to  
7 say?

8 A. I do not.

9 Q. Okay. We will be issuing our report when  
10 the general counsel returns. Our report will also be  
11 provided to the Congressional Oversight Committees.

12 A. I understand.

13 Q. Yeah, not my choice. They've already  
14 requested it. Is there anything else you want to say?

15 A. No, sir.

16 MR. BERRY: Okay. There's nothing else.  
17 Thank you.

18 (Whereupon, at 3:42 p.m. EDT, the interview  
19 in the above-entitled matter was concluded.)  
20  
21  
22  
23  
24  
25

CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), in the matter of Andrea Wilkes, Case No. OIG-I-569, at Washington, D.C., on June 21, 2023, (Vol. II) was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording.

Brenda J. Orsborn

Brenda Orsborn  
Certified Court Reporter  
Registered Professional Reporter

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

In the Matter of:

Starbucks Corporation, Case No. 14-RC-289926

Employer,

and

Chicago & Midwest Regional  
Joint Board Workers  
United/SEIU,

Petitioner.

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Place: Brooklyn, New York (Via Zoom Videoconference)

Dates: August 19, 2022

Pages: 195 through 314

Volume: 3

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eScribers, LLC  
E-Reporting and E-Transcription  
7227 North 16th Street, Suite 207  
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(602) 263-0885



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 29

In the Matter of:

Starbucks Corporation,

Employer,

and

Chicago & Midwest Regional  
Joint Board Workers  
United/SEIU,

Petitioner.

Case No. 14-RC-289926

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **RACHEL ZWEIGHAFT**, Hearing Officer, at the National Labor Relations Board, Region 29, Two Metro Tech Center North 5th Floor, Brooklyn, New York 11201, on **Friday, August 19, 2022, 11:00 a.m.**

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Kimberly Doug	223	291, 292			



1 MS. DOUD: Yes.

2 HEARING OFFICER ZWEIGHAFT: Please raise your right hand.

3 Whereupon,

4 **KIMBERLY DOUD**

5 having been duly sworn, was called as a witness herein and was  
6 examined and testified, telephonically as follows:

7 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. Can you  
8 please state and spell your name for the record?

9 THE WITNESS: Yes. Kimberly Doud. D as in Delta, O-U, D  
10 as in Delta.

11 HEARING OFFICER ZWEIGHAFT: Okay. And I will just, you  
12 know, for the purposes of the record, clarify once again, that  
13 Ms. Doud is being offered as a fact, witness regarding the  
14 objections that the Employer has filed.

15 Mr. Mendelson, you may proceed.

16 MR. MENDELSON: Thank you.

17 **DIRECT EXAMINATION**

18 Q BY MR. MENDELSON: Ms. Doud, do you know whether in  
19 seeking representation at this store, I think I'll refer to it  
20 at as the container store, the Union at the outset sought any  
21 particular kind of election in terms of the mechanics of the  
22 balloting.

23 A Yes. The Union sought a mail ballot.

24 Q Okay.

25 MR. MENDELSON: And at this time, I'm going to ask Ms.

1 will allow you to -- you know, identify those employees.

2 A So Calvin Culey's ballot is the ballot that appeared in  
3 the subregion office the morning of the ballot count that [REDACTED]  
4 [REDACTED] said [REDACTED] wasn't sure where it came from or how it got  
5 there. There were --

6 HEARING OFFICER ZWEIGHAFT: So what hap -- so just --  
7 let's be a little -- can -- if we can be as specific as we can  
8 and what -- so what happened with that ballot? Like what --  
9 what do you remember about that ballot?

10 THE WITNESS: Right. So when we -- and I don't remember  
11 what number --

12 HEARING OFFICER ZWEIGHAFT: That's okay. But it's a --  
13 it's a --

14 THE WITNESS: -- was on the list, but when it came to that  
15 ballot, [REDACTED] -- [REDACTED] made an off-the-cuff comment about it,  
16 that [REDACTED] didn't know where it had come from, that it had  
17 appeared that morning.

18 MR. IGLITZIN: I'm going to object to the characterization  
19 of the comment came off-the-cuff. The testimony should be what  
20 [REDACTED] said.

21 HEARING OFFICER ZWEIGHAFT: Okay. Overruled. Go ahead.

22 THE WITNESS: So based on that comment and the fact that  
23 there was no postmark on there, I objected to the ballot or  
24 challenged a ballot, I should say.

25 HEARING OFFICER ZWEIGHAFT: Okay.

1 Q BY MR. MENDELSON: Do you remember any other ballots that  
2 engendered either a challenge or other -- objection by -- by  
3 you on behalf of the Company?

4 A Yes. Sage Quigley's and Alydia Claypool's were  
5 challenged. There were some that were challenged because the  
6 partners were no longer employed. It was the [REDACTED]  
7 and I cannot remember [REDACTED] name, but those two were  
8 challenged because they were no longer -- they had resigned  
9 their employment.

10 Q Can I go back -- can I go back to Claypool and Quigley,  
11 you said that you challenged them. Do you remember why you  
12 challenged them?

13 A They had no postmarks.

14 Q Okay. That -- that's what I was after. In -- in both  
15 their instances?

16 A Yes.

17 Q Okay.

18 A I'm just trying to --

19 Q And --

20 A -- keep track of who I've gone through.

21 Q Let me just -- let me just attain on Quigley and Claypool.  
22 Do you remember whether there was any kind of colloquy between  
23 you and anyone else regarding the absence of postmarks on one  
24 or both of those ballots?

25 A Yes. When I -- when I challenged on that basis, [REDACTED]

1 ██████ said that they -- that per Board proto -- protocol,  
2 special -- they had made arrangements to allow those voters to  
3 vote. And I said to ██████, I don't know what Board protocol ██████  
4 was referring to or what arrangements had be made. And because  
5 of that and because there were no postmarks, I was challenging  
6 the ballots.

7 Q Did -- did ██████ respond to your inquiry as to what  
8 ██████ meant by protocol or arrangements?

9 A No, ██████ said ██████ want -- ██████ just wanted to make that  
10 clear.

11 Q Okay. Okay. So we've covered Quigley, Ms. Claypool, Cal  
12 Culey, anyone else come to mind?

13 A I believe that I challenged Michael Vestigo's ballot as  
14 well for no -- for no postmark. And then I think there's one  
15 more that I'm trying to remember.

16 Q When you challenged Vestigo, did anyone else involved in  
17 the ballot count provide any explanation?

18 A I believe it was the same, the Board protocol.

19 Q Okay. Did you -- I -- I understand I covered this in a  
20 different respect, but I'm going to ask again in a different  
21 way. Did you know what was meant by Board protocol?

22 A No. And I said that to ██████. I didn't know what ██████ meant  
23 by Board protocol or the arrangements that had been made. And  
24 because of that and because of the lack of the postmark, I was  
25 challenging.

### Investigative Summary

We requested that the Office of the Chief Information Officer (OCIO) provide all meta data related to the documents uploaded into the 14-RC-289926 NxGen system case file. That information would show if a document was deleted from the case file. The data was provided to the OIG on August 18, 2022. Based on our review of the NxGen case file data, we determined that no relevant documents were deleted from the case file.



We also requested that the E-Litigation Branch provide the email PST files for the Regional Director, Supervisory Field Examiner, Field Examiner and [REDACTED]. The PST files included messages from February 2, 2022 through August 12, 2022. We reviewed the PST files for messages to or from the Petitioner and Employer and then compared those messages to the case file documents. We found that all messages were uploaded to the case file either individually or within a string of messages. We reviewed the Field Examiner's emails and verified that all messages that were related to the matter were in the case file. Our review of the PST files for the Supervisory Field Examiner and Regional Director disclosed messages that were related to the Regional Director's participation in the matter but were not uploaded to the case file.

We also reviewed the case file for documentation of case related activities that would not be captured in the official case related papers. We found case log entries and memorandum to the file. Based on our experience and understanding of the particular matter, we found that the case log entries and memorandums were appropriate.