

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 17**

STARBUCKS CORPORATION

Employer

and

Case 14-RD-327273

AMY SMITH

Petitioner

and

**CHICAGO & MIDWEST REGIONAL JOINT
BOARD, WORKERS UNITED/SEIU AKA
STARBUCKS WORKERS UNITED**

Union

DECISION AND ORDER DISMISSING PETITION

On October 4, 2023, Amy Smith (the Petitioner) filed a petition in Case 14-RD-327273, seeking to decertify Chicago & Midwest Regional Joint Board-Workers United/SEIU (the Union) as the exclusive collective-bargaining representative of the following appropriate unit of employees employed by Starbucks Corporation (Employer).

All full-time and regular part-time hourly Baristas and Shift Supervisors employed by the Employer at 1123 NW 63rd Ave., Oklahoma City, OK 73116 (Store 6490 - often referred to as “Nichols Hills”)¹ but excluding all Store Managers, office clerical employees, professional employees, guards, and supervisors as defined by the Act, and all other employees.

On October 18, 2023, the Union filed a Motion to Dismiss Petition. Thereafter, on October 23, 2023, I issued an Order Indefinitely Postponing Statements of Position, Responsive Statements of Position, and Hearing, and Notice to Show Cause in this matter directing the parties to submit their positions as to the following:

1. Whether the instant petition should be dismissed, subject to reinstatement, based on the unfair labor practices found in Cases 19-CA-294579 *et al.*, and/or Cases 01-CA-305952 *et al.*, and/or 19-CA-321234 and/or other cases cited by the Union in its Request to Dismiss. See *Rieth-Riley Construction Co.*, 371 NLRB No. 109 (2022).

¹ The store is referred to herein as the Nichols Hills store. It is located at 1123 NW 63rd Ave., Oklahoma City, OK, in the City of Nichols Hills, located within Oklahoma City limits.

2. Whether the unfair labor practices alleged in the Consolidated Complaint in Cases 01-CA-305952 *et al.* and/or 19-CA-321234, if proven, would require the remedy of a bargaining order and extension of the certification year, thereby precluding the existence of a question concerning representation. See *Big Three Industries*, 201 NLRB 197 (9173); *Brannan Sand & Gravel*, 308 NLRB 922 (1992); NLRB Casehandling Manual Part II, *Representation Proceedings*, Section 1733.1(a)(2), 11733.1(a)(3) and 11730.3(b).

3. Whether the unfair labor practices alleged in Consolidated Complaints in Cases 19-CA-294579 *et al.*, Cases 01-CA-305952 *et al.*, and 19-CA-321234, if proven, would establish that a causal relationship exists between the unfair labor practices and the employee disaffection underlying the decertification petition. See *Master Slack Corp.*, 271 NLRB 78, 84 (1984)

Each of the parties timely submitted their positions in response to this Order. The Union subsequently filed additional Notices of Supplemental Authority in support of its Motion to Dismiss Petition, and the Employer filed a response to these Supplemental Authorities. As discussed in more detail below, the Employer and the Petitioner urge that the petition continue to be processed to election and the Union contends that the petition should be dismissed.

After carefully reviewing the parties' positions, the relevant law, and the circumstances of this case, I have concluded that the unfair labor practices related to the above-described unit that are alleged in the complaint in Cases 01- CA-305952 *et al.*, if proven, will preclude the existence of a question concerning representation, and are grounds to merit dismiss the petition.

I further find that the alleged unfair labor practices in Cases 19-CA-294579 *et al.*, 28-CA-289622, *et al.*, 19-CA-303717, *et al.*, and 14-CA-294430, *et al.*, if proven, provide a separate basis to merit dismiss the petition subject to reinstatement based on a *Master Slack* analysis.

THE UNION'S CERTIFICATION

The Union was certified as the representative of the employees in the above unit at Store 6490 (the Nichols Hills store) on August 5, 2022, in Case 14-RC-290942. The petition in Case 14-RC-290942 was filed on February 2, 2022, and the mail ballot election was concluded on May 5, 2022.

**COMPLAINT ALLEGATIONS IN CASES 19-CA-294579 *et al*; 01-CA-305952
et al; 19-CA-321234; and 14-CA-294830 *et al***

Cases 19-CA-294579, et al.

On October 4, 2022, the Regional Director of Region 19 issued Orders Severing Case and Further Consolidating Cases, Amended Further Consolidated Complaint and Notice of Hearing in Cases 19 - CA-294579 *et al*. This complaint alleges that the Employer violated Section 8(a)(1) and (3) of the Act by 1) promising benefits to employees at all U.S. stores, including those where employees have sought union representation; and 2) by withholding benefit improvements and wage increases from employees at unionized stores while granting those benefits to stores where employees had not sought representation. The unionized stores specifically referenced in Attachment B to the Complaint include the Nichols Hills store.

Following a hearing regarding the allegations in the complaint, the Administrative Law Judge closed the record by Order on November 14, 2022, and the parties filed post-hearing briefs with the Administrative Law Judge. On September 28, 2023, Administrative Law Judge Mara-Louise Anzalone issued a Decision recommending that the Board find that the Employer violated Section 8(a)(1) of the Act by (1) promising employees that it would implement increased wages and benefits for employees working at its U.S. stores where employees were not represented and not seeking union representation; (2) soliciting employee complaints and grievances, thereby impliedly promising employees that it would implement increased wages and benefits for employees working at its U.S. stores where employees were not represented and not seeking union representation; and (3) threatening employees that they would suffer a loss of wages and benefits if they support the Union or union organizing. ALJ Anzalone further recommended that the Board find that the Employer violated Section 8(a)(3) and (1) of the Act by announcing and implementing increased or new wages and benefits to employees but excluding those employees working at stores where employees exercised their rights guaranteed under Section 7 of the Act by seeking union representation and/or participating in Board representation proceedings. *Starbucks Corporation*, JD(SF)-29-23, slip op. at 38 (September 28, 2023).²

The ALJ found that the Employer planned and executed a continual corporate-wide response to the Union's organizing involving "collaboration sessions" with employees at stores that were not organized, where no petition for representation had been filed by the Union, and where employees had not written a letter to the Chief Executive Officer stating their intention to file a petition for union representation (slip op. at 5-6); and that the Employer conducted a sophisticated online messaging campaign deployed through many public website and internal electronic platforms, which especially throughout the month of early April to early May 2022 (slip op. at 4, 7 to 14), following a three-month period of

² The ALJ decision is available at www.nlr.gov and is linked here: [Starbucks Corporation](#)

numerous union organizing successes. (slip op. at 3). The ALJ found that interim Chief Executive Officer of the Employer, Howard Schultz, was the voice of the Employer's response to the union organizing effort, and that he personally engaged in much of the conduct on which she based her unfair labor practice findings. (slip op. at 8 to 12, 14 to 19, 31 to 37). For example, she found that Schultz's numerous announcements starting on May 3, 2022, about increased wages and benefits for the Employer's employees throughout the U.S. except those at "unionized" or "unionizing" stores (slip op. at 14- 20), and the subsequent implementation of those increases on dates from June to October 2022 (slip op. at 6 to 7), were unlawfully motivated to punish employees at the unionized and unionizing stores for engaging in union activity, and to make clear to employees at the vast majority of stores who received the improvements that they would only receive such improvements if they remained unrepresented. (slip op. at 21 to 31).

The ALJ recommended various remedies, including a broad order requiring the Employer to cease and desist from violating the Act in any manner, and electronic posting of the Board notice and Explanation of Rights poster, and a video of the Employer's CEO reading the notice and Explanation of Rights poster, to be maintained on the Employer's Partner Hub platform for one year. (Slip op. at 39-40). However, the ALJ declined to recommend a bargaining order extending the certification year. (Slip op.. at 41).

Cases 01-CA-305952, et al.

On August 1, 2023, the Regional Director of Region 19 issued an Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Consolidated Hearing in Cases 01-CA-305952 *et al.* alleging *inter alia* that the Employer has, at numerous stores since about August 5, 2022, violated Sections 8(a)(5) and (1) of the Act by failing and refusing to offer bargaining dates, appearing in person to meet but refusing to bargain if any of the Union's bargaining team or observers appeared virtually; and refusing to meet in person and refusing the Union's request to have members appear virtually for a first contract at represented stores. The General Counsel is seeking an extension of the certification year as required by *Mar-Jac Poultry*, 136 NLRB 785 (1962).

Thereafter, on September 28, 2023, the Regional Director of Region 19 issued a Consolidated Complaint and Notice of Hearing in Case 19-CA-321234, alleging *inter alia* substantially the same violations as described above at numerous stores, including since August 12, 2022, at the Nichols Hills store. As in Case 01-CA-305952, the General Counsel is seeking an order requiring the Employer to bargain in good faith with the Union for the period required by *Mar-Jac*.

On October 16, 2023, ALJ Anzalone issued an Order Consolidating Cases in Cases 01-CA-305952 *et al.* and Case 19-CA-321234. A hearing before ALJ Anzalone has commenced and is ongoing at the time of this decision.

Cases 14-CA-294830, et al.

On March 10, 2023, the Acting Regional Director of Region 14 issued an Order Further Consolidating Cases, Second Consolidated Complaint, and Notice of Hearing in Cases 14-CA-294830, *et al.*, alleging that the Employer has at numerous stores since December 9, 2021, including at the Nichols Hills store, violated Sections 8(a)(5) and (1) by the following: prohibiting employees from discussing the Union while permitting employees to talk about non-work subjects; interrogating employees about their protected, concerted, and/or union activities; threatening employees with job loss, loss of access to the Employer, and loss of previously announced pay raises if they selected the Union as their bargaining representative; informing employees it would be futile for them to select the Union as their bargaining representative; prohibiting employees from recording conversations under their no recording policy; threatening employees with unspecified reprisal if they declined to listen to employer speech concerning employee exercise of Section 7 rights; soliciting employee complaints and grievances; promising employees increased benefits and improved terms and conditions of employment if they refrained from union organizational activity; threatening employees with unspecified reprisal if they continued to post union literature in the back of the store; creating the impression that their union activities were under surveillance by telling employees that the names of every person continuing to post union literature had been requested by the District Manager; selectively and disparately applying its Dress Code Rules, Pin Policy, and Posting Policy by more strictly enforcing them against employees who joined, formed, or assisted the Union; and making unilateral changes to the Posting Policy without prior notice to the Union and without affording the Union an opportunity to bargain with the Employer.

On May 16, 2023, Administrative Law Judge Geoffrey Carter approved Employer's Motion for Consent Order Approving Proposed Settlement over the objections of the General Counsel and the Union. On May 26, 2023, the General Counsel requested special permission to the Board to appeal the ALJ's approval of the unilateral Consent Order on several grounds, including that the inclusion of non-admissions clause language and exclusion of default judgment language in the settlement agreement was unreasonable under *Independent Stave Co., Inc.* 287 NLRB 740 (1987). The Board has yet to respond.

Positions of the Parties

A. Petitioner

The Petitioner urges the Region to continue processing the decertification petition. Petitioner argues that if the Board is going to continue to conduct certification elections at Starbucks locations, despite the pending unfair labor practice litigation, it must also hold decertification elections and that the Union has already conceded that these unfair labor practices do not preclude raising a question of representation in Starbucks bargaining units, given that it continues to file certification petitions and seek elections.

Next, the petitioner argues that under the NLRB Rules and Regulations Section 103.20 and the NLRA Section 9 (c) (1)(A) they have a right to an election because none of the allegations have been proven by a final determination before the Board and therefore, they

cannot block an election. Consequently, dismissing the petition under *Rieth-Riley Construction Co.*, 371 NLRB No. 109 (2022) is inconsistent with Section 103.20. Further, the Petitioner argues that to the extent the Region believes it can dismiss a petition without a final determination of the Board, it must hold a hearing pursuant to *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004) and consider the factors the Board outlined in *Master Slack Corp.*, 271 NLRB 78 (1984). The Petitioner argues that without a hearing they would be denied their due process and that their statutory rights would be prejudiced because they are not able to adequately address the specific allegations included in the Notice to Show Cause.

In addition, without waiving the above arguments, the Petitioner argues that, assuming arguendo, the Regional Director can engage in a *Master Slack* analysis without holding a hearing, no causal nexus exists where the alleged unfair labor practices referenced occurred months ago and has no discernable effect on her or her co-workers' desire to be represented by the Union. Further, the Petitioner argues that Cases 01-CA-305952, *et al.*, cannot be properly relied upon as a basis to dismiss the petition because it does not include the bargaining unit at Nichols Hills.

B. Employer

Employer urges the Region to continue processing the decertification petition and asserts that unit employees supported the decertification petition of their own accord and that the passage of over a year since the Union was certified was sufficient for the unit employees to determine that they wished to proceed without representation. Employer further argues that the Election Protection Rule prohibits the use of blocking charges to delay an election or cause the dismissal of a petition and that under the rule, the Region is required to process the petition through to election and ballot count and to only allow an unfair labor practice "blocking charge" to determine when the Region counts the ballots or certifies the election results. The Employer further contends that merit-dismissals are prohibited by the Election Protection Rule, despite the failure of the Rule to mention merit-dismissals, by virtue of the Rule's language which only provides that, in limited circumstances, election certifications may be withheld, and more rarely that ballots may be impounded, pending the processing of certain types of unfair labor practice charges.

The Employer further argues that *Rieth-Riley Construction Co.*, 371 NLRB No. 109 (2022) was wrongly decided by the Board, and that it "amended" the Election Protection Rule by permitting the continued use of merit dismissals, in violation of the Administrative Procedure Act.

In addition, without waiving the above arguments, the Employer takes the position that in order to dismiss the petition, the Region must first hold a hearing pursuant to *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), and conduct an analysis pursuant to *Master Slack Corporation.*, 271 NLRB 78, 84 (1984) to determine if there is a causal nexus between the alleged unfair labor practices and employee disaffection from the Union. The Employer contends that based on a *Master Slack* analysis, no causal nexus exists between any alleged unfair labor practices in the above complaints or other

pending litigation, and the employee disaffection from the Union that resulted in the filing of the petition in the instant case. The Employer contends that the alleged unfair labor practices, if proven, would not warrant the extension of the certification year concerning the Nichols Hills store unit, and that to assume an extension of the certification year or an affirmative bargaining order remedy is unsupported and would result in "prejudicial speculation and conjecture."

Finally, the Employer urges the Region to disregard the authorities and arguments set forth in the Union's Supplemental Authorities because the Union's reliance upon them is misplaced as those cases were incorrectly decided by relying on the Board's erroneous decision in *Rieth-Riley*.

C. Union

The Union argues that the petition should be merit dismissed pursuant to the Board's decision in *Rieth-Riley* based on the Employer's alleged unfair labor practices affecting employees at the Nichols Hills store, based on the need for a *Mar-Jac* extension of the certification year and bargaining order remedy, and because the Employer's alleged unlawful conduct caused employee disaffection from the Union that led to the filing of the decertification petition. The Union relies on the above-described complaint allegations, and other alleged unfair labor practices that it claims affected Nichols Hills store employees, including allegations I have summarized as follows:

- The Complaint issued on April 26, 2023, in Case 09-CA-303717, and alleges that the Employer violated Section 8(a)(1) and (3) by, including at the Nichols Hills store, granting credit card tipping and training for credit card tipping to employees at non-union stores nationwide, while it withheld those benefits from union stores; providing higher raises to non-union stores than it provided at union stores; and issuing a new Benefits Plan Description in which unionized employees are not eligible to participate absent a collective bargaining agreement providing for participation. The hearing is scheduled to begin January 9, 2024.
- The Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, issued on May 15, 2023, in Cases 28-CA-289622 *et al.* (First Rules Complaint) and Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on May 15, 2023, in Cases 19-CA-294708 (Second Rules Complaint). The complaints allege that the Employer has violated Section 8(a)(1) of the Act, by maintaining overly-broad and discriminatory work rules published in its Partner Guide, Mutual Arbitration Agreement, Weekly Updates, Store Operations Manual, Standards of Business Conduct, updated Partner Guide (2023), all of which appear to be applicable to all the Employer's stores nationwide, including the Nichols Hills store. The hearing in these cases is in progress before an administrative law judge and is scheduled to resume on January 9, 2024.

- The complaint issued on April 12, 2023, in Case 19-CA-305406. An Order Consolidating Cases and Notice of Hearing with Case 32-CA-298607 issued on April 20, 2023. On October 23, 2023, Administrative Law Judge Robert Ringler issued his decision finding that the Employer had violated Section 8(a)(1) of the Act by certain provisions on its <https://one.starbucks.com> website, applicable to the Employer's stores nationwide, including the Nichols Hills store by implementing an unlawful *Peaceful Protests* clause which had the tendency to chill employees from exercising their Section 7 rights; and announcing an unlawful *Management Access* clause which threatened employees that if they unionized they would lose access to management. On October 23, 2023, the case was transferred to the Board.

Finally, in Supplemental Authorities, the Union argues that the Board has already considered and rejected substantially the same arguments relied upon here by the Employer and the Petitioner in other cases for continued processing of the petition, and that these Board decisions are now Board law and binding precedent, and therefore the petition must be dismissed.

Analysis

A. Merit-Determination dismissals are appropriate notwithstanding the Election Protection Rule.

I am bound to follow current Board precedent. In its decision in *Rieth-Riley*, the Board held that the Election Protection Rule did not impact the ability of Regional Directors to make merit-determination dismissals, stating:

In 2020, the Board issued the “Election Protection Rule” which...limited the circumstances in which Regional Directors could hold petitions in abeyance in the face of pending unfair labor practice charges. But the Election Protection Rule did not address the second aspect of the blocking charge policy: merit-determination dismissals. [...] [W]e hold that merit-determination dismissals remain available under the Election Protection Rule, a point on which the Board is unanimous.

371 NLRB No. 109, slip op. at 1 (footnotes omitted).

The *Rieth-Riley* Board incorporated the following quote from *Overnite Transportation Co.*, 333 NLRB 1392, 1392-1393 (2001) (citations omitted), with approval:

The Board generally will dismiss a representation petition, subject to reinstatement, where there is a concurrent unfair labor practice complaint alleging conduct that, if proven, (1) would interfere with employee free choice in an election, and (2) is inherently inconsistent with the petition itself. The Board considers conduct that taints the showing of interest, precludes a question concerning representation, or taints an incumbent

union's subsequent loss of majority support to be inconsistent with the petition.

371 NLRB No. 109, slip op. at 2.

Thus, merit-determination dismissals are appropriate where the General Counsel seeks an affirmative bargaining order in the unfair labor practice complaint. *Rieth-Riley Construction Co.*, 371 NLRB at slip op. at 7, citing *Big Three Industries*, supra; *Brannan Sand & Gravel*, supra; and Section 11733.1(a)(2) of the Board's Casehandling Manual.³ Merit-determination dismissals are also appropriate when unlawful conduct taints the showing of interest or taints an incumbent union's subsequent loss of majority support. The Board applies the analysis set forth in *Master Slack*, supra, in determining whether there is a causal nexus between unfair labor practice charges against an employer that have been found to have merit and a union's loss of employee support leading to the filing of a decertification petition. The factors considered by the Board in that analysis are as follows, in pertinent part:

These factors include (1) the length of time between the unfair labor practices and the withdrawal of recognition or filing of the petition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

Rieth-Riley Construction Co., 371 NLRB at slip op. at 2 fn. 8, citing *Master Slack Corp.*, supra. The *Master Slack* test is an objective one in which the Board does not consider employees' subjective reasons for supporting a decertification petition. See *Denton County Electric Cooperative, Inc. d/b/a CoServ Electric*, 366 NLRB No. 103, slip op. at 3 fn. 10 (2018), enfd. in relevant part 952 F.2d 695 (5th Cir. 2020).

Where the General Counsel seeks a bargaining order to remedy conduct violative of Sections 8(a)(1) and (5) of the Act, it is appropriate to dismiss petitions seeking decertification of the bargaining representative without the need to prove a causal nexus between the alleged unlawful conduct and the loss of the union's support, even before conducting an election. *Rieth-Riley Construction Co.*, 371 NLRB at slip op. at 7, citing *Big Three Industries*, 201 NLRB 197 (1993); *Brannan Sand & Gravel*, 308 NLRB 922 (1992); and Section 11733.1(a)(2) of the Board's Casehandling Manual.⁴

Most relevant, the Board has denied the Employer's Requests for Review of Regional

³ Section 11733.1(a)(2) of the Casehandling Manual states "[i]f the Regional Director finds merit to charges involving violations of Section 8(a)(1), (2), (3), (5), or 8(b)(3), and the nature of the alleged violations, if proven, would condition or preclude the existence of a question concerning representation, the petition should be dismissed with a dismissal letter setting forth the specific connections between the alleged unfair labor practices and the petition, subject to a request for reinstatement by the petitioner after final disposition of the charge.

Director's Decision and Order Dismissing Petition in Cases 03-RD-316974, 03-RD-317482, and 06-RD-321620, based on the Employer's alleged conduct in Case 01-CA-305952 mentioned above. In denying review of these cases, the Board confirmed that merit-dismissals remain available under Board law and are appropriate where an affirmative bargaining order and/or extension of the certification year are sought, regardless of any causal nexus between the unfair labor practices and the petition.

B. A merit-determination dismissal of the petition is appropriate in this case.

As alleged in the relevant complaint allegations in Cases 01-CA-305952 *et al.*, the Employer has violated Section 8(a)(5) of the Act by failing and or refusing, or unreasonably delaying in scheduling bargaining dates to begin negotiations. The remedies sought by the General Counsel in 01-CA-305952 *et al.* include a requirement that the Employer bargain in good faith with the Union, on request, for the respective periods required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative of each of the Units covered by the Complaint, including the Nichols Hills store. In *Mar-Jac* the Board held that an employer's refusal to bargain during the one-year certification period set forth in Section 9(c)(3) of the Act warrants extension of the certification year. The Board noted that allowing the certification year to elapse while an employer has delayed and undermined the bargaining process "would be to allow it to take advantage of its own failure to carry out its statutory obligation, contrary to the very reasons for the establishment of the rule that a certification requires bargaining for at least 1 year." *Id.* The Board construes "the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union." See e.g., *Hudson Inst. of Process Rsch.*, 372 NLRB No. 73, slip op. at 3 (2023); *Crushin' It LLC*, 372 NLRB No. 100, slip op. at 6 (2023); *United Scrap Metal, PA, LLC*, 372 NLRB No. 107, slip op. at 3 (2023).

I must presume the allegations of the above-described complaints are true. *Rieth-Riley*, 371 NLRB No. 109, slip op. at 5, fn. 27. I find that the complaint allegations in Cases 01-CA-305952 *et al.* concerning the Nichols Hills store, if proven, will preclude the existence of a question concerning representation because an affirmative bargaining order remedy will be warranted, extending the certification year for up to a full year from the time the Employer begins to bargain in good faith with the Union. I find that these cases, standing alone, warrant dismissal of the petition subject to reinstatement.⁵

Moreover, the other outstanding litigation affecting the Nichols Hills store, even standing separately from the bargaining issues in Case 01-CA-305952, *et al.*, support the conclusion that the petition should be dismissed subject to reinstatement, based on a *Master Slack* analysis of the following factors: (1) the length of time between the alleged unfair labor practices and the employee disaffection from the union (in this case manifested

⁵ See also *Starbucks Corporation*, 372 NLRB No. 156 (November 15, 2023), where the Board denied review of a Regional Director's Decision and Order Dismissing Petition finding that a merit determination dismissal was appropriate under *Rieth-Riley* for reasons similar to those relied on here.

by the filing of the decertification petition on July 25, 2023); (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of unlawful conduct on employee morale, organizational activities, and membership in the union. *Master Slack*, 271 NLRB at 84.

The ALJ's decision in Case 19-CA-294579 *et al.*, finding that the Employer unlawfully withheld wage and benefit increases from the unionized Nichols Hills store unit employees, if upheld by the Board, constitutes a hallmark violation of the Act and is strong evidence that *Master Slack* factors 2 and 3 are fully satisfied and favor finding a causal nexus between the alleged unfair labor practices which have been found by the ALJ in Cases 19-CA-294579 and the employee disaffection that led to the filing of the petition seeking the decertification of the Union as the representative of the Nichols Hills store unit. *Wendt Corporation*, 371 NLRB No. 159, slip op. at 5-6 (2022), citing *Tenneco Automotive, Inc. v. NLRB*, 776 F.3d 640, 650 (D.C. Cir. 2013). The Nichols Hills store unit is one of the unionizing or unionized groups of employees from whom the Employer withheld the wage increase and benefits improvements announced on May 3, 2022, and implemented thereafter, including the wage increase implemented on August 1, 2022, at the stores that were not unionizing or unionized. As the Board found in *Wendt*:

... the Board and courts find taint of a decertification petition where the employer's unilateral changes involve "bread and butter issues" like wage increases that lead employees to seek and gain union representation in the first place [] "Where unlawful employer conduct shows employees that their union is irrelevant in preserving or increasing their wages, the possibility of a detrimental or long-lasting effect on employee support the union is clear."

371 NLRB No. 159, slip op. at 5. (citations omitted).

In addition, the ongoing nationwide overbroad rules allegations in Cases 28-CA-239622 *et al.*, the additional alleged benefits allegations in Cases 19-CA-303717, *et al.*, and the allegations in Case 14-CA-294830, if proven, are all unremedied unfair labor practices affecting employees at the Nichols Hills store, and, further support finding that factors 2 and 3 are fully satisfied and favor finding a casual nexus between the alleged unfair labor practices and the employee disaffection that led to the filing of the petition seeking the decertification of the union as the representative of the employees at the Nichols Hills store. *Wendt Corporation*, 371 NLRB No. 159, slip op. at 5-6 (2022), citing *Tenneco Automotive, Inc. v. NLRB*, 776 F.3d 640, 650 (D.C. Cir. 2013).

With respect to *Master Slack* factor 1, the alleged unfair labor practices in Cases 19-CA-294579 occurred between early April 2022 and October 1, 2022, and ranges from 12 to 18 months before the filing of the decertification petition on October 4, 2023. The alleged unfair labor practices in Case 19-CA-303717 occurred between August 11, 2022, and December

26, 2022, ranging from 10 to 14 months prior to the filing of the petition. In Case 14-CA-294830, the alleged unfair labor practices occurred between December 9, 2021, and October 2022, and ranges from 12 to 23 months prior to the filing of the decertification petition. This time lapse is far less than the amount of time between the unfair labor practices and the filing of the decertification petition in *Master Slack* (4 years) or *Wendt* (2 years and 9 months), and the passage of time is not likely to dissipate the coercive effect of the unfair labor practices. As in *Wendt*, the length of time from the unfair labor practices until the filing of the decertification petition does not undermine the concern that the unfair labor practices tainted the decertification petition. *Wendt*, 371 NLRB No. 159, slip op. at 6-7. In view of the absence of any claim that the alleged unlawful conduct has been remedied, *Master Slack* factor 4, regarding the effect of the unfair labor practices on employee morale, does not militate against finding a causal relationship between the alleged unfair labor practices and employee disaffection from the Union. *Wendt*, 371 NLRB No. 159, slip op. at 7.

In summary, I find that the alleged unfair labor practices in Case 01-CA-305952, wherein the General Counsel seeks an affirmative bargaining obligation and extension of the certification year, and the unfair labor practices in Cases 19-CA-294579, *et al.*, 28-CA-289622, *et al.*, 19-CA-303717, *et al.*, and 14-CA-294430, *et al.*, is each separately grounds to dismiss the petition subject to reinstatement.

II. Conclusion

IT IS ORDERED that the petition in Case 14-RD-327273 is dismissed subject to reinstatement based on the outcome of the unfair labor practice charges in Cases 01-CA-305952 *et al.*, and, if appropriate, further consideration of the status of other unfair labor practice cases related to the petition that may be pending or decided at the time the outcome the unfair labor practice charges in Cases 01-CA-305952 *et al.* is known.

IT IS FURTHER ORDERED that the petition in Case 14-RD-327273 is dismissed subject to reinstatement based on the outcome of the unfair labor practice charges in Cases 19-CA-294579 *et al.* and, if appropriate, further consideration of the status of other unfair labor practice cases related to the petition that may be pending or decided at the time the outcome the unfair labor practice charges in Cases 19-CA-294579 *et al.* is known.

IT IS FURTHER ORDERED that the petition in Case 14-RD-327273 is dismissed subject to reinstatement based on the outcome of the unfair labor practice charges in Cases 28-CA-289622 *et al.* and, if appropriate, further consideration of the status of other unfair labor practice cases related to the petition that may be pending or decided at the time the outcome the unfair labor practice charges in Cases 28-CA-289622 *et al.* is known.

IT IS FURTHER ORDERED that the petition in Case 14-RD-327273 is dismissed subject to reinstatement based on the outcome of the unfair labor practice

charges in Cases 19-CA-303717 *et al.* and, if appropriate, further consideration of the status of other unfair labor practice cases related to the petition that may be pending or decided at the time the outcome the unfair labor practice charges in Cases 19-CA-303317 *et al.* is known.

IT IS FURTHER ORDERED that the petition in Case 14-RD-327273 is dismissed subject to reinstatement based on the outcome of the unfair labor practice charges in Case 14-CA-294430 *et al.* and, if appropriate, further consideration of the status of the other unfair labor practice cases related to the petition that may be pending or decided at the time of the outcome of the unfair labor practice charges in Case 14-CA-294430 *et al.* is known.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules does not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **January 22, 2024**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on January 22, 2024**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed

instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: December 29, 2023



Carla K. Coffman, Acting Regional Director
National Labor Relations Board
Region 14/Subregion 17
8600 Farley Street, Suite 100
Overland Park, KS 66212-4677