

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

BLUESTONE LANE ROASTING, LLC

Employer

and

Case 04-RC-339236

**PHILADELPHIA JOINT BOARD, WORKERS
UNITED A/W SEIU**

Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue in this case is whether the multifacility unit sought by Philadelphia Joint Board, Workers United a/w SEIU (the Petitioner) is *an* appropriate unit. The Petitioner seeks to represent a bargaining unit consisting of approximately 30 full-time and regular part-time service professionals, baristas, head baristas, culinary leads, team leads, cooks, kitchen leads, and porters¹ who are employed at Bluestone Lane Roasting, LLC's (the Employer's) three Center City Philadelphia locations, excluding store managers, office clericals, guards, and supervisors as defined in the Act. The three locations, collectively referred to as the Philadelphia stores, include the Employer's 1717 Arch Street coffee shop (the Arch Street Store), where three employees work; its 2000 Walnut Street café (the Walnut Street Store), where 12 employees work; and its 1701 Locust Street café (the Rittenhouse Store), where 15 employees work. In support of its proposed unit, the Petitioner maintains that the employees at all three stores possess similar skills and job duties, terms and conditions of employment, and common supervision, and that the Philadelphia stores are functionally integrated with frequent employee interchange, share centralized labor relations, and are in close geographic proximity to one another, such that the petitioned-for unit is appropriate.

The Employer agrees that the petitioned-for job classifications are appropriately included in the unit(s). However, it maintains that the employees at its two cafés possess different skills, duties, and working conditions than the three employees who work at its coffee shop; that the store managers maintain separate supervision at each store as they have discretion to adjust schedules, approve time off, perform evaluations, issue discipline, hire, assign work, train employees, and resolve grievances; and that there is little employee interchange among the three locations, such that the only appropriate units are three separate units, one for each store. There is no history of bargaining or of any unionization at any of the Philadelphia stores.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record

¹ Porters are also referred to as dishwashers.

and relevant Board law, I find that the petitioned-for multifacility unit is an appropriate unit and I therefore order an election in that unit.

The Petitioner presented as witnesses Julia Rick (Rick), a service professional at the Walnut Street Store who has been employed by the Employer since January 1, 2024, and Sophia Brookins (Brookins), a culinary lead at the Walnut Street Store who was first employed at the Rittenhouse Store in 2018, worked at one of the Employer’s California stores and then returned to the Rittenhouse Store that same year, left the Employer in November 2022, and then returned to work at the Walnut Street Store in May 2023. The Employer presented Senior Vice President Matthew Christy (Christy), who has served in that position since January 31, 2023 and previously served as the Employer’s Vice President of Operations for the East Coast as well as its Director of Operations. The witnesses all testified similarly, and the facts are largely undisputed.

I. THE FACTS:

A. The Employer’s Operations:

The Employer, a New York corporation, operates approximately 25 coffee shops and 29 cafes in California, Texas, Virginia, New York, New Jersey, Massachusetts, Pennsylvania, and Washington, D.C. Although the Employer previously maintained a corporate office in New York, all of its corporate operations are now fully remote. Approximately 30 of the Employer’s stores are located in New York, and the Employer employs eight area leaders there. The three petitioned-for Philadelphia stores are its only locations in Pennsylvania; the next closest store is a café in Princeton, New Jersey, about 45 miles away. The Rittenhouse Store opened around 2018, the Walnut Street Store opened in 2022, and the Arch Street Store opened at the end of 2022. The Employer also closed a fourth Philadelphia location, a coffee shop located in Penn Square across from City Hall, and has no current plans to reopen it.

According to the Employer’s Statement of Position, which is in the record as part of Board Exhibit 1, as of the hearing date, there were three employees working at the Arch Street Store, all baristas; approximately 12 employees working at the Walnut Street Store, including six service professionals, one head barista, one team captain, two cooks, one culinary lead, and one porter; and 15 employees working at the Rittenhouse Store, including 11 service professionals, one porter, one culinary lead, and two cooks.

In addition to Christy, the Philadelphia stores are overseen by Area Leader/Regional Manager Daniel Rodriguez (Rodriguez), Walnut and Arch Street Stores General Manager Kylie Burnham (Burnham) and Rittenhouse Store General Manager Tony Fiorello.

B. Similarity in Employees’ Skills, Job Duties, and Working Conditions:

All three of the Philadelphia stores serve a wide selection of coffees, teas, juices, and smoothies, and breakfast, lunch, and snack food items, although there are some differences between the cafés and the coffee shop. The coffee shop is considered a Quick Service Restaurant (QSR), so its food offerings are more limited. It does not offer seated service, provides only a small self-service seating area, and serves all its food and beverage items in “to-go” containers. The

coffee shop is staffed only by baristas, who are typically stationed behind the counter making drinks, preparing quick food items, restocking, and performing cleaning tasks.² The two cafés, on the other hand, are full-service restaurants with “front of the house” employees such as head baristas, who prepare coffee and other beverages, and service professionals, who wait on tables and spend about 20 percent of their time preparing beverages,³ as well as “back of the house” employees such as cooks, culinary leads, and porters, who prepare food and clean dishware and flatware.

The cafés and the coffee shop have separate menus, although many items offered, like the sunshine burrito (which consists of eggs and bacon), banana bread, and most of the toasts, overlap. Because the coffee shop has no substantial cooking equipment, however, all food items must be made in an induction heater/oven. The cafés, in contrast, each have a grill and a flat top where cooks can prepare items such as farro and roast vegetables for an ancient grains bowl. According to Christy, the main difference in the drink service between the cafés and the coffee shop is that coffee shop drinks are served in paper as opposed to ceramic or glass, and the baristas do not create “latte art” in the to-go cups since the cups contain lids and the baristas are not trained to do latte art. In addition, smoothies are made by baristas in the coffee shop, whereas cooks or service professionals make them in the cafés.⁴

Both the coffee shop and cafés use a point-of-service system for customer ordering. The employees at all three stores wear the same uniforms, consisting of jeans, khakis, or black pants and a button-down collared shirt in blue, green, or neutral tones, along with a navy-blue apron. The stores’ hours are the same, 7:00 a.m. to 4:00 p.m. on weekdays and 8:00 a.m. to 4:00 p.m. on weekends, except that the Walnut Street Store closes an hour earlier than the other two locations.

The employees at all three Philadelphia stores work six- to eight-hour shifts, with one 30-minute unpaid break. They are all entitled to one staff meal and one drink per shift. Employees’ salary ranges are set by the “People Team,” which is the Employer’s corporate human resources department, but the General Managers determine each individual employee’s starting rate. Typically, service professionals earn \$7.25/hour plus tips, which are pooled and divided by the number of employees who worked in the pay period and then by number of hours worked, usually working out to be about \$15 per hour in tips for a total compensation of about \$21 per hour. Cooks

² The Arch Street Store previously had a team captain, but no longer does. For reasons not evident from the record, it has never had a head barista.

³ Although the Walnut Street and Rittenhouse Stores previously each had a head barista and team captain, those positions are currently vacant. Head baristas/team captains perform the service professional role but are compensated for their extra training in drink selections.

⁴ According to the Employer’s website, of which I take administrative notice, the Employer’s offerings are “Australian-inspired.” The Arch Street Store offers avocado, salmon, banana, and nut butter toasts; the Sunshine Burrito; a protein bowl; a salad; a variety of bacon, egg, and cheese sandwiches served on either croissants or bread; fruit cups; oatmeal; and granola. The Walnut Street and Rittenhouse Stores serve those same items but offer additional hot breakfast and lunch dishes including scrambled eggs, burritos, salads, a few grain bowls, sandwiches, and a wrap. The coffee, tea, juice, and smoothie selections appear to be similar at all three stores.

earn \$17 per hour and the porters earn \$16 per hour, and neither regularly receive tips. Culinary leads earn about \$22/hour. In the coffee shop, the baristas earn \$11.25 per hour and receive tips averaging \$4 to \$7 per hour for a total of \$15.25-18.25 per hour.

The Employer offers all employees the same health insurance as well as 401(k) benefits with an Employer match of up to three percent, which fully vests after three years. All Philadelphia employees also receive up to five sick days, consistent with the Philadelphia Promoting Healthy Families and Workplaces Law, and enjoy the scheduling rights provided by the Philadelphia Fair Workweek Law. Team leads – culinary lead, team captain, and head barista – also receive paid time off. Through its “Grounds” app, the Employer distributes an Employee Handbook as well as training videos which are the same for all of the Employer’s stores but specific to job classifications.

C. Centralized Control of Management and Supervision:

Area Leader/Regional Manager Rodriguez oversees the three Philadelphia stores and four stores in New Jersey, with the General Managers for those stores reporting to him. Burnham has been the General Manager at the Walnut Street Store for about 18 months, and Fiorello has been the General Manager at the Rittenhouse Store since September 2023. Critically, there was no General Manager at the Arch Street Store until about a week prior to the hearing in this matter, when Burnham became the Area General Manager, overseeing both the Walnut Street Store and the Arch Street Store. According to Christy’s testimony, that occurred because the Penn Square and Arch Street Stores previously shared a General Manager, but since the closure of the Penn Square Store, the Employer could not justify employing a General Manager solely for the Arch Street Store. Christy confirmed that the Employer intends to have Burnham supervise the Arch Street Store for the foreseeable future and that she will divide her time between the stores.

The General Managers appear to have operational authority over their individual stores with some oversight from District Managers, who regularly visit all of the stores in the Philadelphia area. Rick testified that she has met her District Manager, Daniel Kissinger, twice in the year since she has been back working at the Walnut Street Store – once when she went to the Arch Street Store to retrieve “to-go” bags and takeout boxes and again when he came to the Walnut Street Store on a Saturday to meet the employees. Christy also testified that he visits his stores once every two weeks. The General Managers determine staffing at their stores, select applicants for interviews, and conduct initial interviews. While it is undisputed that the General Managers have hiring authority for their stores, the District Manager may also conduct a brief second interview to confirm the applicant’s status and ensure transparency, but there were no instances in the record in which the District or Regional Manager disagreed with the General Manager’s hiring decisions. For example, when she was rehired in May 2023, Rick was interviewed by the Walnut Store General Manager Kylie Burnham, but she was also interviewed by then-District Manager Katie Applegate (Applegate),⁵ who has since been replaced by Daniel Kissinger.

⁵ Applegate was the General Manager of the Arch Street Store from August 2023 to January 2024.

General Managers prepare the schedules for their respective stores about a month in advance through a centralized app called “TeamLive.” The app shows employees’ work locations and the other employees assigned to the shift. Employees can access TeamLive to request time off for sick or personal reasons after they have discussed it with their General Manager, and they can also use the app to pick up extra shifts or switch shifts at their home store or at another Philadelphia store by going into a “shift pool.” Employees communicate by iMessage to switch shifts, and there are separate chats for each store. When switching shifts within one’s assigned store, the employees notify the General Manager after they have verbally agreed upon the switch; however, if picking up a shift at another store, the employees must obtain General Manager approval from the visiting store because the employee must be added to the TeamLive portal for that store.

General Managers each order supplies for their individual stores, with the assistance of the culinary leads, who order food, and the head barista, who orders milk products. Supplies for the Philadelphia stores are furnished by the same vendors and are delivered to each store; the Arch Street Store’s supplies vary somewhat from those of the cafés, largely because the coffee shop uses paper goods. Despite this, the Philadelphia stores share supplies as needed. Brookins testified that the Rittenhouse Store General Manager would come to the Walnut Street Store at least once a month to procure product if that store was out, and that Arch Street Store employees come to the Walnut Street store for needed product at least three times per month.

General Managers train new employees for their stores, with the assistance of leads. If there is no lead, then the most senior employee conducts the training. At the Walnut Street Store, the leads⁶ include a culinary lead (Sylvia); a team captain (Tristan Mayo); and a head barista (Sara Logue) (collectively, the “Leads”). The Leads also act for the General Managers when they are absent and serve as a shift manager, which entails ordering supplies, running the kitchen, and interacting with customers.

While Christy testified that General Managers have the authority to issue discipline, including discharge, to employees in their own stores, there is no record evidence that the General Managers have exercised that authority.⁷ Christy acknowledged that the issuance of any such discipline would be coordinated with the People Team and/or Human Resources, and that employees may appeal any discipline to the People Team.

The record contains a general reference to the General Managers conducting company-wide performance evaluations in early 2023, and Brookins testified that General Manager Burnham gave her a performance evaluation in May 2023, when she was promoted to culinary lead, and in the fall of 2020. Aside from these facts, there is no other record evidence concerning these evaluations. In addition, although General Managers are tasked with resolving employees’ grievances, employees can also file them with the Employer’s corporate “silent witness hotline” or email them to the People Team.

⁶ The parties stipulated that all of these classifications should be included in the bargaining unit.

⁷ The only testimony concerning discipline was Brookins’ statement that she was disciplined for lateness by the head barista in 2018.

Monthly, the Employer holds nationwide voluntary “All Hands” staff meetings via videoconference on Google Meet, the reminders for which are sent through the Grounds app, but few, if any, hourly employees from the Philadelphia stores attend. The Employer also held an optional 10-year anniversary party in August 2022, but it is unclear who attended. Apart from those examples, the Employer does not offer any employee outings or events in which all three Philadelphia stores participate other than the annual trustee event, but it is also unclear who has attended that event other than Brookins, who testified she has attended more than one.

D. Functional Integration of Business Operations and the Degree of Employee Interchange:

The record reflects that there is employee interchange among the three Philadelphia stores. Rick generally testified that although employees at the Walnut Street Store typically work in that store, there have been numerous instances in which Walnut Street employees have worked at the Rittenhouse Store, and vice versa. Rick testified that she herself has worked at the Rittenhouse Store about 10-15 times during her approximately three months of employment. While the Employer maintained that employees have worked at other stores only on a voluntary basis, Rittenhouse employee Brookins recalled two occasions – one in October and one in November 2022 – on which she was working at the Rittenhouse Store and her General Manager directed her to report to the Walnut Street Store to work. She also recalled switching shifts with the cooks at the Walnut Street Store in October and November, 2022, and that on at least one occasion, she was sent to the Rittenhouse Store by that store’s General Manager in the middle of her Walnut Street shift to cover a shift at Rittenhouse. On all those occasions, Brookins performed exactly the same job duties for the same pay, and TeamLive reflected that she was still working at the Walnut Street Store. Although she has never worked at the Arch Street Store, Brookins testified that she volunteered to deliver bananas and protein powder for smoothies from the Walnut Street Store to the Arch Street Store when the coffee shop ran low on those supplies. Brookins also noted that she was originally hired to work at both the Walnut Street and Rittenhouse Stores, but she ended up not working at the Rittenhouse Store because it was adequately staffed.

According to Employer’s Exhibit 1, a list of all Philadelphia employees and their hours worked at each store during the first quarter of 2024, the following employees worked outside of their home store during that period: Rick worked 218 hours at the Walnut Street Store and 26 hours at the Rittenhouse Store⁸; Walnut Street Store employee Emma Carlson worked 124.38 hours at the Walnut Street Store and 43.35 at the Rittenhouse Store; and Rittenhouse employee Gary Gregg worked 342.62 hours at the Rittenhouse Store and 7.28 at the Walnut Street Store.

Additionally, Employer’s Exhibit 1 reflects that during 2023, 18 of its 90 Philadelphia employees worked at stores other than their assigned store, as follows:

⁸ The record does not address whether there is any incongruity between her testimony that she worked at the Rittenhouse Store 10-15 times and her balance of 26 hours worked there.

<u>Employee</u>	<u>Assigned Store</u>	<u>Hours Worked at Arch</u>	<u>Hours Worked at Rittenhouse</u>	<u>Hours Worked at Walnut</u>
Maria Nolasco	Arch	123.47	11.87	31.88
Antoinette Graham ⁹	Arch	897.83	360.80	21.22
Rachel Collier ¹⁰	Arch	322.85	9	-
Madison Mauro	Rittenhouse	5.5	556.15	6.97
Beverly Sillman	Rittenhouse	-	1629.74	504.12
Joshua Peeter	Rittenhouse	-	163.72	6.67
Fiona Conquegrana	Rittenhouse	-	210.72	8.45
Dante Painter	Rittenhouse	-	855.75	8.32
Philly Meas	Rittenhouse	-	1919.50	152.95
Joshua Jackson	Rittenhouse	-	410.90	14
Westley Young	Rittenhouse	-	1032.22	10.12
Raekwon Gonzalez-Ehredt	Rittenhouse	8.75	515.30	-
Joe Schindler	Rittenhouse	-	453.23	23.92
Sylvia Brookins	Walnut	-	12.50	985.89
Lauren Huyler	Walnut	-	7	427
Maryann Abraham	Walnut	-	120.81	1078.11
Trista Mayo	Walnut	-	5.5	1734.77
De'Jon Howard ¹¹	Walnut		225.47	11.37

⁹ There was testimony that Graham, who was a barista at the Arch Street Store, had previously served as the culinary lead at Rittenhouse and was promoted to team captain, but she is no longer employed by the Employer.

¹⁰ There was some speculation in the record that this could have been a day of onboarding for Collier, a barista, but there is no evidence to show employees were onboarded at other stores.

¹¹ The record is silent as to why Howard worked significantly more hours away from his assigned store than at it.

In terms of the overall percentages, the above evidence reflects that in the first quarter of 2024, out of approximately 6,978 total work hours at the three stores, about 77 hours, or 1.1 percent, were performed by employees outside of their assigned store. For 2023, out of 39,546 work hours at the three stores, about 1,556 hours, or 3.93 percent were performed by employees outside of their assigned store.

As previously discussed, the Employer utilizes a corporate-wide People Team and Human Resources office to deal with its employees' personnel matters. At all its stores, including the Philadelphia stores, it also uses standardized apps such as TeamLive for scheduling, Grounds for human resource and training functions, and Paylocity for its payroll needs. Employee complaints concerning paychecks are handled by the Employer's Payroll Department and complaints about General Managers are directed to the People Team or Human Resources. There is no evidence that any labor relations issues are handled at the individual stores by General Managers. While Christy testified that he visits the Philadelphia stores once every two weeks, it is not clear that he visits each of the stores that frequently.

E. Geographic Proximity of Locations Involved:

The Walnut Street and Rittenhouse Stores are located about four blocks apart, or one-third of a mile from one another. The Arch Street Store is also located about four blocks, or one-third of a mile, from the Walnut Street Store. These distances are easily walkable in six to eight minutes.

F. Bargaining History and Extent of Unionization:

The parties agree that there is no history of collective bargaining or unionization at any of the Employer's stores.

II. LEGAL AUTHORITY

It is well established that a petitioner is not required to seek a bargaining unit that is the only appropriate unit or even the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 417-418 (1950). The Act merely requires that the unit sought by a petitioner be *an* appropriate unit. *Wheeling Island Gaming, Inc.*, 355 NLRB 637, 637 fn. 2 (2010). When a union petitions for a multifacility unit, the Board's presumption on the appropriateness of a single-facility unit does not apply and need not be overcome. *Hazard Express, Inc.*, 324 NLRB 989, 989 (1997), citing *NLRB v. Carson Cable TV*, 795 F.2d 879, 886-87 (9th Cir. 1986); *Capital Coors Co.*, 309 NLRB 322, 325 fn. 1 (1992). Instead, when presented with a petitioned-for multifacility unit, the Board evaluates the following community-of-interest factors among employees working at the different locations:

1. similarity in employees' skills, duties, and working conditions;
2. centralized control of management and supervision;
3. functional integration of business operations, including employee interchange;
4. geographic proximity;
5. bargaining history; and
6. extent of union organization and employee choice.

Exemplar, Inc., 363 NLRB 1500, 1501 (2016), *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005); *Bashas', Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 897 (2000).

Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment, that they participate in the same employer training programs and/or that they use similar equipment supports a finding of similarity of skills. *Ikea Distribution Servs.*, 370 NLRB No. 109, slip op. at 10 (2021), citing *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penney Co., Inc.*, 328 NLRB 766, 767 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); and *Phoenician*, 308 NLRB 826, 827 (1992).

Functional integration refers to when “employees must work together and depend on each other to accomplish their tasks.” *WideOpenWest Illinois, LLC*, 371 NLRB No. 107, slip op. at 7 fn. 16 (2022).

III. ANALYSIS

While the Employer acknowledges that it is typically employers who seek broader multifacility units, it argues that only single-facility units are appropriate in this instance based on the Board's longstanding principle that single-facility units are presumptively appropriate, citing *Starbucks Corporation*, 371 NLRB No. 71 (2022) (finding petitioned-for single facility unit appropriate and rejecting multifacility unit sought by employer); *Cazanove Opici Wine Group*, 371 NLRB No. 30 (2021) (finding petitioned-for unit of employees in New York City appropriate, rejecting statewide unit sought by employer); and *Alamo Rent-A-Car*, 330 NLRB 897 (2000) (finding a petitioned-for unit of two out of four stores in San Francisco area not appropriate, where it did not conform to administrative function or grouping of employer's operations, and there was no functional integration or interchange nor common supervision).

The Employer's argument misses the mark, however, as it has long been settled that the single-facility unit presumption does not apply, and need not be overcome, when a union has petitioned for a multifacility unit. See *Hazard Express, Inc.*, supra. and *Capital Coors Co.*, supra. Therefore, the only question before me is whether the petitioned-for unit is an appropriate unit. As discussed in greater detail below, an evaluation of the community-of-interest factors supports my finding that it is an appropriate unit.

A. Similarity in Employees' Skills, Duties, and Working Conditions

The employees at the three Philadelphia stores clearly share many similar skills, duties, and working conditions. Working in a coffee shop or café, they all work in the food service industry with the shared goal of providing quality food and beverages with exemplary service to satisfied customers. As to the two cafés, the employees appear to share not only similar but identical skills, duties, and working conditions as they perform their tasks to prepare and serve the Employer's food and beverage offerings to its customers. While the baristas at the Arch Street Store prepare some different menu items or serve them in different containers, many of the beverages and food

offerings are the same, or very similar to, those at the cafés, and thus require similar skills to produce. The employees at both the cafes and coffee shops learn these skills by viewing the same training videos, prepare these items using the same or similar equipment, and do so while wearing the same uniforms. The Employer argues that because it is a coffee shop, the Arch Street Store lacks a community of interest with the two cafés because, although the baristas there prepare food and beverages for customers, the work is fast-paced, quick service work distinguishable from the work of café employees who serve patrons seated at tables. This argument, which relies on the finest of distinctions between similar food service jobs, is unpersuasive and insufficient to overcome my finding that the petitioned-for unit is an appropriate unit based on all of the relevant factors. See *Ikea Distribution Services*, supra.

Further supporting a community of interest finding, employees at the two cafés receive the same pay, using the same pay scale set by the Employer at the corporate level. While the baristas at the coffee shop may earn a few dollars less than the service professionals at the cafés (\$15.25-\$18.25 versus \$21 per hour), that is a function of receiving lower tips, which can be variable. In any event, their pay is comparable to the pay of the porters and cooks at the cafés, who earn \$16 and \$17 per hour, respectively, and would be included in the same bargaining unit. The employees at all three stores work the same hours and receive the same employee benefits, such as health insurance, 401(k) benefits, sick time, and personal time off, as applicable. All three stores follow the same employee handbook, work rules and guidelines; utilize the same apps such as TeamLive for scheduling, Paylocity for payroll, and Grounds for human resources; and use iMessage for communicating with co-workers. Therefore, I find that the similarity in skills, duties, and working conditions at the three Philadelphia stores weighs in favor of a finding that the petitioned-for unit is appropriate.

B. Centralized Control of Management and Supervision

The three Philadelphia stores are centrally managed and supervised by Senior Vice President Christy, District Manager Kissinger, and Area Leader/Regional Manager Rodriguez, with the General Managers serving as a limited supervisory presence at each store. At the outset, I note that the same General Manager – Burnham – now supervises both the Walnut Street and Arch Street Stores, so there can be no question that those two stores share common supervision. Moreover, although the General Manager does appear to have some independent authority in certain areas such as hiring, hiring decisions are also vetted by the Regional Manager by way of a second interview with the applicant before a final decision is made. The fact that Kissinger and Christy regularly visit the stores and the Employer maintains a centralized human resources office and People Team for all of its stores bolsters the finding that the Employer maintains centralized control over its stores.

Although the Employer acknowledges that much of its operation is centralized, and many of the terms and conditions of employment at the three stores are the same, it maintains that its General Managers autonomously operate their stores. It argues that they determine the staffing needs, create the schedule, approve time off, assign work, issue discipline, evaluate employees, conduct training, manage inventory, and handle employee grievances. However, the record evidence does not support this contention, as it reflects that hiring decisions are also approved by

regional managers, that discipline has been issued by leads and must be approved by Human Resources, that employees themselves modify the schedule without approval, and that leads, who are stipulated as included in the bargaining unit, also train employees, and do the ordering. See *Kirlin's, Inc.*, 227 NLRB 1220, 1221 (1977) (limitations on store manager's authority indicate a lack of autonomy at a store level) and *Big Y Foods, Inc.*, 238 NLRB 860, 861 (1978) (local manager's autonomy circumscribed and participation in personnel and labor relations matters limited). I find that the Employer's centralized control of management and supervision at the three Philadelphia stores, including the identical local supervision of the Arch Street and Walnut Street Stores, weighs in favor of a finding that the petitioned-for unit is appropriate. See *Exemplar, Inc.* supra.

C. Functional Integration of Business Operations, Including Employee Interchange

With respect to the functional integration of its business operation, the Employer utilizes the same products at its three stores, and the stores often share goods and supplies when inventory is low. In addition to sharing product, the stores also share personnel, as employees are permitted to pick up extra shifts at other stores on a voluntary basis, and, according to the Petitioner's witnesses' testimony, can be mandated to do so as well. While the overall percentage of employee interchange may constitute only between three and five three percent, depending on the store, when accounting for all the hours worked, there is clearly voluntary and involuntary interchange of employees among the Philadelphia stores, and between employees at the Walnut Street Store and Rittenhouse Store in particular. In my view, the fact that at least 18 out of about 90 employees, or 20 percent of them, worked at least some hours at another store, alongside employees from that other store, presents a more accurate picture of the degree of the Employer's functional integration than the overall percentage of total hours cited by the Employer. Further, Rick's testimony that she worked at the Rittenhouse Store about 10-15 times during her approximately three months of employment supports this conclusion. In short, there is no evidence in this record to suggest that the individual stores maintain a strong individual identity. Rather, all the employees at the Philadelphia stores work together to accomplish their tasks and the Employer's objective. See *WideOpenWest Illinois, LLC*, supra. Accordingly, I find that the Employer's functional integration of business operations at the three Philadelphia stores weighs in favor of a finding that the petitioned-for unit is appropriate.

D. Geographic Proximity

It is undisputed that the three Philadelphia stores are in very close geographic proximity to each other, and that it is only a short walking distance between them. This distance is certainly small enough to "permit full employee participation in union activities" from any of the stores. See *Exemplar*, supra. The fact that the Petitioner is seeking a unit of all the stores in the Philadelphia area, and the next closest store is located an hour away in Princeton, also supports my conclusion. The Board has routinely found that a unit consisting of all of an employer's locations within a standard metropolitan statistical area is appropriate. See *AT&T Mobility Servs., LLC*, 371 NLRB No. 14 (2021). Therefore, I find that this close geographic proximity further supports my finding that a single unit consisting of all three stores is an appropriate unit.

D. Bargaining History and the Extent of Union Organization

There is no bargaining history or history of unionization here at the three Philadelphia stores or at the Employer in general. I find that these two factors are neutral in my analysis. *Trane*, 339 NLRB 866, 868 fn. 4 (2003) (“complete absence of bargaining history is at most a neutral factor in the analysis”).

IV. CONCLUSION

For the reasons stated above, I find that the petitioned-for unit of all full-time and regular part-time service professionals, baristas, head baristas, culinary leads, team leads, cooks, kitchen leads, and porters who are employed at the Employer’s coffee shop located at 1717 Arch Street and at its cafés located at 2000 Walnut Street and 1701 Locust Street, excluding store managers, office clericals, guards, and supervisors as defined in the Act, is an appropriate unit. Accordingly, I am directing an election in the petitioned-for unit. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based on the entire record in this proceeding, I find:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. There is no collective-bargaining agreement covering any of the employees in the unit, and there is no contract bar or other bar to an election in this matter.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time service professionals, baristas, head baristas, culinary leads, team leads, cooks, kitchen leads, and porters employed by the Employer at the following locations in Philadelphia, Pennsylvania: 1717 Arch Street, 2000 Walnut Street, and 1701 Locust Street.

Excluded: All other employees, store managers, office clericals, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Philadelphia Joint Board, Workers United a/w SEIU.

A. Election Details

The election will be held on **Friday, May 31, 2024**, from **11:00 a.m.-12:00 p.m. and 3:30 p.m. - 4:30 p.m.** in the **Conference Room at the Warwick Hotel**, located at 220 South 17th Street, Philadelphia, Pennsylvania.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Sunday, May 19, 2024**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 23, 2024**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**¹²

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

¹² The Petitioner waived 5 days that it is entitled to have the voter list.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 21, 2024

/s/ Kimberly E. Andrews

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