

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STARBUCKS CORPORATION
Employer

and

Case 03-RD-361063

NADIA KUBAN
Petitioner

and

WORKERS UNITED
Union

ORDER¹

The Employer's and Petitioner's Requests for Review of the Regional Director's Decision to Dismiss Petition are denied as they raise no substantial issues warranting review.²

¹ The Employer asserts that Member Prouty should recuse himself, claiming that his "past, present and perceived relationships with the Service Employees International Union ("SEIU") International Union, SEIU Local Unions, and their affiliates, including Workers United" create a conflict of interest. Member Prouty has determined, in consultation with the NLRB Designated Agency Ethics Official, that there is no basis to recuse himself from the adjudication of this case.

² In denying review, we observe that the Regional Director engaged in what we have termed a "merit-determination dismissal" by dismissing the petition, subject to reinstatement, because of a merit determination with respect to certain types of unfair labor practice charges. Sec. 103.20(c) of the Board's Rules and Regulations, which governs this petition, provides for merit-determination dismissals "in appropriate circumstances." We find that a merit-determination dismissal was appropriate here under the standard set forth in *Rieth-Riley Construction Co., Inc.*, 371 NLRB No. 109 (2022), based solely on the Consolidated Complaints in Cases 01-CA-307838 et al. and Cases 13-CA-312554 et al. In this regard, and contrary to the Employer's and Petitioner's assertions, the Regional Director was not obligated to make a "causal nexus" finding before engaging in a merit-determination dismissal here because the Sec. 8(a)(5) refusal-to-bargain allegations in the complaints, if proven, may result in an affirmative bargaining order and/or extension of the certification year, a remedy the General Counsel has requested, which would, in turn, require the dismissal of the petition. See *Starbucks Corp.*, 373 NLRB No. 74 (2024); *BOC Group*, 323 NLRB 1100, 1100 (1997); *Big Three Industries, Inc.*, 201 NLRB 197, 197 (1973). We further note that those outcomes would not depend on the existence of a causal nexus between the unfair labor practices and the petition. See *Starbucks Corporation*, 372 NLRB No. 156, slip op. at 1 fn. 2 (2023).

Member Prouty notes that in dismissing the Petition the Regional Director appropriately applied Sec. 103.20(c) of the Board's Rules and Regulations, which codified the merit-

JAMES R. MURPHY,	CHAIRMAN
DAVID M. PROUTY,	MEMBER
SCOTT A. MAYER,	MEMBER

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determination-dismissals standard set forth in *Rieth-Riley Construction Co., Inc.*, supra. See *Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships*, 89 Fed. Reg. 62952, 62988 (August 1, 2024) (“Consistent with *Rieth-Riley* and longstanding practice predating the 2014 rule, ‘the appropriate circumstances’ in which the regional director may dismiss the petition subject to reinstatement are when the regional director has made a determination that certain types of Type II charges have merit.”).

Chairman Murphy and Member Mayer did not participate in *Rieth-Riley Construction Co.* and apply the standard set forth in that decision as extant law.

For the reasons stated in his separate opinion in *Starbucks Corp.*, Case 14-RD-327273, Member Mayer believes that a reassessment of the *Rieth-Riley* standard is long overdue in light of the way in which it can deprive employees for years of any opportunity to exercise their right freely to select, reject, or change their bargaining representative.