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### **NLRB Dismisses Charges Against Starbucks in La Quinta, California Alleging Interference with Employee Collective Bargaining Rights**

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A Starbucks store in La Quinta, California was recently successful in defending itself against allegations that the store engaged in unlawful union-busting tactics. In a decision issued December 6, 2022, the National Labor Relations Board ("NLRB") held that Starbucks did not violate Section 8(a)(1) of the National Labor Relations Act, which prohibits employers from interfering with or restraining their employees' rights to unionize.

In April 2022, Workers United filed a petition with the NLRB to conduct a representation election among the employees at Starbucks' Jefferson Street store in La Quinta. Several weeks later, the store's manager began meeting individually with each of the store's employees to discuss their performance and development. At some point during each meeting, typically after the performance review had concluded, the manager raised the subject of the union election campaign and referred to a packet Starbucks had prepared describing certain negative aspects of collective bargaining.

The NLRB filed charges against Starbucks based on allegations from two employees that the store manager had interfered with, restrained, or coerced them from exercising their rights during their individual performance review meetings. Specifically, the NLRB alleged that, during a performance review meeting on May 12, 2022, the store manager unlawfully forced the employee to listen to an anti-union presentation as a "captive audience." The NLRB also alleged that at both the May 12 performance meeting and during a subsequent meeting with another employee, the store manager made additional statements—not included in the packet prepared by Starbucks—that employees were not allowed to discuss the Union while working.

The NLRB held a hearing in October 2022, during which various personnel from the La Quinta store testified, including the complaining employees and the store manager. The NLRB ultimately dismissed both charges against Starbucks after finding that the complaining employees' testimony was not credible, whereas the store manager's testimony was consistent with the other evidence and testimony in the record. In particular, NLRB dismissed the "captive audience" charge largely based on the store manager's testimony that, after he conducted the May 12 performance review, he told the employee that the Company wanted him to go over information regarding the union campaign. However, the store manager testified that he had asked the employee if she was okay with that before he began discussing the information in the Company-prepared packet, to which the employee responded yes. The NLRB found that the store manager's testimony was supported by testimony from another store employee, who stated that the manager had asked her the same question after her performance review, told her she could opt out from hearing the Company's presentation about the union campaign, and did not go over any of the information with her after she opted out.

The NLRB also found that there was no credible testimony or evidence to support the allegation that the store manager told employees they could not discuss Union matters at work. Two employees alleged that the manager told them they could only discuss Union matters during their breaks or when clocked out. However, the store manager testified that he only ever told the employees that they could not engage in lengthy conversations with customers—even about Union matters—when the store was busy because they needed to keep up production. The store manager also provided uncontroverted testimony that he specifically told employees that he was *not* prohibiting them from ever discussing Union matters at work. The NLRB again found that the store manager’s testimony was supported by testimony from another store employee, who testified that employees were able to talk freely about Union matters and regularly did so in the store manager’s presence.

### **Lessons Learned**

Like McDonald’s and its franchises nearly a decade ago, Starbucks is now on the front lines of a concerted effort by unions to organize its employees. This effort has resulted in numerous allegations of unfair labor practices as well as a multitude of other charges. Still, contrary to the claims made by organizers, unionization of Starbucks, of franchisors, and of franchisees is not a foregone conclusion. In reality, the Board, the Courts, and the other government entities that are handling these cases are duty bound to follow the law and weigh the evidence presented to them even if they do not ideologically agree with the results.

Here, Starbucks’ success was based on just two critical facts. One, Starbucks had a formulaic system in place related to how to appropriately discuss union organizing with their employees. This method—which was implemented mechanically—ultimately undermined the allegations brought by the complainants. Two, Starbucks had a credible manager. We cannot understate the importance of this fact as the majority of cases like this turn on credibility determinations about events where there is no documentation that definitively demonstrates who is telling the truth.

As Starbucks continues to face this union onslaught in the coming months, we will provide lessons learned from each of these decisions—both good and bad. Franchisors, franchisees, and other potential union organizing targets should consider these matters as a preview of the union’s potential playbook and take note of what works and what doesn’t work. In furtherance of this, we will continue to cover these cases and provide our insights.

As always, our team stands ready to assist your business with all of its franchising needs. If you have questions or need assistance, please contact the attorney listed below.



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