

Analysis

Starbucks' Election Misconduct Claims Turn Up Heat On NLRB

By [Tim Ryan](#) · Aug 17, 2022, 8:58 PM EDT ·

The letter [Starbucks](#) sent to the [National Labor Relations Board](#) earlier this week claiming widespread misconduct in union representation elections could bring additional public scrutiny to the agency, experts said, raising the possibility of investigations and litigation over its handling of the voting process.

The company's [letter](#) to NLRB Chair Lauren McFerran and general counsel Jennifer Abruzzo [accused board agents](#) of "highly improper, systemic misconduct" when handling Starbucks union representation elections conducted by mail. The letter specifically detailed alleged misconduct in the board's St. Louis regional office, which the company claims tried to cover up its actions, but it also said Starbucks has concerns that similar improprieties have come up in elections in other parts of the country.



Starbucks, whose corporate headquarters in Seattle is shown here, accused the NLRB of misconduct when handling mail-ballot union representation elections at its stores. Experts are split on how the board might respond. (AP Photo/Ted S. Warren)

Starbucks asked the board and its inspector general to investigate the claims and for the agency to pause mail-ballot elections at Starbucks stores across the country and only conduct in-person representation elections going forward.

While the allegations in the letter are explosive, experts were split on how the board might respond and what the broader effects of the company's broadside might be.

"Even if one of those allegations is true, it really undermines the NLRB's whole position of being a neutral party in conducting elections," said Jerry Hunter, a former NLRB general counsel who is now a management-side attorney at [Bryan Cave Leighton Paisner LLP](#).

Others said that the purpose of the letter is not merely to spur an agency investigation, but to cast doubt on the board's handling of one of the most high-profile union campaigns in years.

"It's a public relations effort to try to intimidate the agency and its ability to enforce the law," said Mark Gaston Pearce, who served as chairman of the NLRB from 2011 to 2017.

The 16-page letter is the latest turn in Starbucks' campaign against a nationwide unionization drive led by Workers United. The [Service Employees International Union](#) affiliate has won union representation elections at 210 stores and filed for votes at 340 locations across the country, according to [Law360's Starbucks Unionization Tracker](#).

The letter largely focused on alleged misconduct by board officials during an election conducted by mail for workers at a Starbucks in Overland Park, Kansas, citing revelations from a "career NLRB professional" who came forward to the company. Starbucks claims that agents allowed some workers to vote in person in violation of an election agreement, gave Workers United "nonpublic, real-time information" about ballots and botched the actual counting of the ballots.

Some of those allegations are already being litigated as part of Starbucks' formal objections to the store's election, which the union won 6-1. Those objections, which could result in a new election, include the claim that some workers were allowed to vote in person, that the region mishandled replacement ballots and that it lost ballots both before and during the count.

But the letter added a number of allegations to the formal objections, including a claim that board agents created "self-serving" memos about how some workers were given the chance to vote in-person and claims of similar misconduct in the board's Seattle and Buffalo offices. Starbucks also said that

regional offices have been one-sided in their investigation and prosecution of unfair labor practice cases against the coffee company.

A hearing on Starbucks' objections began Tuesday in the NLRB's Brooklyn regional office, which is handling the objections proceeding because the claims concern misconduct by the office that conducted the election. The letter came up at Tuesday's hearing, but the hearing officer presiding over the case declined to consider it as part of the record in the dispute, according to Gabe Frumkin, an attorney at [Barnard Iglitzin & Lavitt LLP](#) who represents Workers United in the case.

"We need to recognize the letter for what it is, which is basically a piece of theater," Frumkin told Law360.

An NLRB spokesperson said the board uses "well-established processes" for challenges to elections and for unfair labor practice proceedings and that the regional offices and the board "will carefully and objectively consider any challenges raised through these established channels."

Given the board's procedures, Starbucks may first get the opportunity to formally litigate the allegations in the letter if it decides to test the certification of a bargaining unit and raise the claims on appeal, said Steven Swirsky, a management-side attorney at [Epstein Becker Green](#).

"It's not at all certain to me that they're going to have the opportunity at least until they challenge certification and if they can get a circuit court interested in it," Swirsky said.

A representative for Starbucks declined to comment beyond the company's statement announcing the letter on Monday.

BCLP's Hunter questioned whether the normal objections process would be enough to handle Starbucks' allegations, because they go to the "heart of the

board's integrity." He said that when he served as general counsel, he might have directed the Division of Operations Management to investigate claims of board misconduct.

But the current case presents some issues, Hunter said, because claims of systemic bias in favor of the union could call into question Abruzzo's impartiality. Handing the investigation to another regional office could be an option, he said, but that too could be thorny because every regional office in the country has handled at least one Starbucks petition.

Pearce said that he would expect NLRB Inspector General David Berry to probe the allegations, though the agency watchdog may wait until the formal objections proceedings have finished.

What the letter means in the short term is less clear, but experts generally agreed that the board is unlikely to grant Starbucks' request to pause mail-ballot elections on a national scale. David Pryzbylski, a management-side partner at [Barnes & Thornburg LLP](#), said the allegations are serious enough that they could result in the Kansas vote being set aside, but was skeptical the board would do more just yet.

"In the absence of some systemic evidence across the country, I don't see the board going that far," Pryzbylski said.

If Starbucks is worried about how the board is conducting elections, Pryzbylski said the company may be less likely to sign off on mail-ballot votes in the future.

Joseph Richardson, a union-side attorney at [Willig Williams & Davidson](#), said that allowing the company to earn major changes to board procedure with the letter would set a bad precedent in other cases going forward.

"If the board allows this to be a mechanism for Starbucks to circumvent the

election process, then I think you've just created a template for election obstruction that other parties will use and that Starbucks will almost certainly use again," Richardson said.

Even lodging the objections publicly is a risky move for Starbucks, said Mark Carter, a management-side partner at [Dinsmore & Shohl LLP](#), unless it is confident that it can back up the claims with solid evidence. If Starbucks falls short on that point, Carter said it could seriously damage the company's credibility both before the NLRB and even with other federal agencies.

But the letter and its allegations are not confined to the board or to specific legal proceedings, and the effects may be most visible on Capitol Hill if Republicans win the majority in the House of Representatives this fall.

Rep. Virginia Foxx, the top Republican on the House Education and Labor Committee, has already called for the committee to hold hearings on the allegations. In a statement to Law360 on Tuesday, the North Carolina congresswoman said that if Democrats do not launch an investigation, "committee Republicans will absolutely add this to the growing list of necessary oversight to examine other outrageous actions taken by the administration that favor union bosses while hurting workers and job creators."

Foxx has been out front on demanding investigations into board issues throughout the administration, beginning with President Joe Biden's controversial [Inauguration Day firing](#) of former NLRB general counsel Peter Robb.

Carter said it would be likely that Republicans investigate Starbucks' claims next Congress if they win a majority, potentially at the same time as an inspector general's probe heats up. Investigations from lawmakers and inspectors general can take up the NLRB's valuable time and staff, Carter noted, which could have to come from other agency priorities.

"It's obvious that Starbucks is fully prepared to generate heat in the press and more importantly in the Congress if they are not convinced that the NLRB has conducted a full and fair investigation and response to its allegations in the new year," Carter said.

Pearce, the former NLRB chair, also noted that the board has been demanding more money from Congress after years operating on a flat budget. Any questions about the fairness of the board's handling of representation elections is sure to draw attention from lawmakers when it comes time to divide up money during the appropriations process, Pearce said.

"The House holds the purse strings, and during appropriations hearings they will in all likelihood use this as an opportunity to put a stranglehold on an agency's already insufficient budget," Pearce said.

--Additional reporting by Beverly Banks. Editing by Haylee Pearl.