FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
3-CA-232703	December 13, 2018

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Gimme Coffee

b. Tel. No. (607) 277-0620

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
3201 Krums Corners Rd
NY Ithaca 14850-8654

e. Employer Representative
Kevin Cuddeback
President/Owner

g. e-Mail
kevin.cuddeback@gimmecoffee.com

h. Number of workers employed
27

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Restaurants

j. Identify principal product or service
Cafe

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

--See additional page--

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Gary Bonadonna Jr. Title:
Rochester Regional Joint Board/Workers United

4a. Address *(Street and number, city, state, and ZIP code)*
750 East Ave
NY Rochester 14607-2100

4b. Tel. No. (585) 473-3280

4c. Cell No. (b) (6), (b) (7)(C)

4d. Fax No.

4e. e-Mail
gbonadonnajr@rrjb.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Joseph A. Gawlowicz, Esq.
(signature of representative or person making charge)

Title: Joseph Gawlowicz Esq. Partner
(Print/type name and title or office, if any)

Address 2 State Street Suite 1000
Rochester NY 14614-

12/13/2018 12:23:35
(date)

Tel. No. (585) 340-1776

Office, if any, Cell No. (585) 520-9459

Fax No. (585) 454-4026

e-Mail
jgawlowicz@trevettcristo.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(3)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6), (b) (7)(C)	Final Warning	(b) (6), (b) (7 /2018

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465
Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

February 19, 2019

PAUL E. WAGNER, Attorney at Law
Baker & Hostetler LLP
903 Hanshaw Road
Ithaca, NY 14850

Re: Gimme Coffee
Case 03-CA-232703

Dear WAGNER:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

PAUL J. MURPHY
Regional Director

cc: Kevin Cuddeback, President/Owner
Gimme Coffee
3201 Krums Corners Rd
Ithaca, NY 14850-8654

Gary Bonadonna JR.
Rochester Regional Joint Board/Workers United
750 East Ave
Rochester, NY 14607-2100

Joseph Gawlowicz, ESQ., Partner
Trevett Cristo
2 State Street
Suite 1000
Rochester, NY 14614-____

FORM NLRB-501
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
3-CA-271972	1/29/21

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Gimme Coffee, Inc.		b. Tel. No. 607-273-0111
		c. Cell No.
		f. Fax. No.
d. Address *(Street, city, state, and ZIP code)* 3201 Krums Corners Road, Ithaca, NY 14850	e. Employer Representative Colleen Anunu	g. e-mail colleen.anunu@gimmecoffee.com
		h. Number of workers employed
i. Type of Establishment *(factory, mine, wholesaler, etc.)* Coffee shop	j. Identify principal product or service Beverages	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3); (5) of the National Labor Relations Act, and thest unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
See attached

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Workers United Local 2833

4a. Address *(Street and number, city, state, and ZIP code)* 750 East Avenue, Rochester, NY 14607	4b. Tel. No. 585-473-3280
	4c. Cell No.
	4d. Fax No. 585-473-2109
	4e. e-mail gbonadonnajr@rrjb.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
Workers United

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Ian Hayes *(signature of representative or person making charge)*	Ian Hayes, Attorney *(Print/type name and title or office, if any)*	Tel. No. 716-854-0007
		Office, if any, Cell No. 716-608-3427
		Fax No. 716-854-0004
Address Creighton, Johnsen & Giroux 1103 Delaware Ave., Buffalo, NY 14209	Date 1/29/21	e-mail ihayes@cpjglaborlaw.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Section 2:

In or around (b) (6), (b) (7)(C) 2020, the Employer terminated the recall rights of fourteen (14) wait-listed employees (listed below) on temporary layoff, thus modifying, without the Union's consent, the collective bargaining agreement, the Effects Bargaining and COVID-19 Agreement, and the Memorandum of Agreement August 27, 2020 that the Union and Employer had negotiated, in violation of Sections 8(a)(5) and 8(d) of the Act. The Employer has continued to acknowledge its termination of employees' recall rights and its unilateral change to the parties' agreements throughout December 2020 and January 2021 on multiple occasions.

By these same actions, the Employer unilaterally changed employees' terms and conditions of employment, in violation of Section 8(a)(5) of the Act.

By these same actions, the Employer violated employees' recall rights in order to prevail in a decertification election, in violation of Section 8(a)(3) of the Act.

The names of the wait-listed employees terminated by the Employer are:

1. (b) (6), (b) (7)(C)
2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]
6. [redacted]
7. [redacted]
8. [redacted]
9. [redacted]
10. [redacted]
11. [redacted]
12. [redacted]
13. [redacted]
14. [redacted]

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

Download
NLRB
Mobile App

January 29, 2021

Colleen Anunu
Gimme Coffee, Inc.
3201 Krums Corners Rd
Ithaca, NY 14850

Re: Gimme Coffee, Inc.
Case 03-CA-271972

Dear Ms. Anunu:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner Michael Dahlheimer whose telephone number is (716)398-7008. If this Board agent is not available, you may contact Regional Attorney LINDA M. LESLIE whose telephone number is (716)398-7017.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlrb.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

PAUL J. MURPHY
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GIMME COFFEE, INC. Charged Party and **WORKERS UNITED LOCAL 2833** Charging Party	**Case 03-CA-271972**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 29, 2021**,** I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Colleen Anunu
Gimme Coffee, Inc.
3201 Krums Corners Rd
Ithaca, NY 14850

January 29, 2021
Date

Andrea Seyfried, Designated Agent of NLRB
Name

/s/ Andrea Seyfried
Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

Download
NLRB
Mobile App

January 29, 2021

Workers United Local 2833
750 East Avenue
Rochester, NY 14607

Re: Gimme Coffee, Inc.
Case 03-CA-271972

Dear Sir or Madam:

The charge that you filed in this case on January 29, 2021 has been docketed as case number 03-CA-271972. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner Michael Dahlheimer whose telephone number is (716)398-7008. If this Board agent is not available, you may contact Regional Attorney LINDA M. LESLIE whose telephone number is (716)398-7017.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to

take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlrb.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

PAUL J. MURPHY
Regional Director

cc: Ian Hayes, ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465
Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

March 31, 2021

Ian Hayes, Esq.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209

Re: Gimme Coffee, Inc.
Case 03-CA-271972

Dear Mr. Hayes:

We have carefully investigated and considered your charge that Gimme Coffee violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on that investigation, I have decided to dismiss the allegations that the Employer violated Section 8(a)(1) and (3) of the Act by terminating the recall rights of fourteen (14) wait-listed employees in order to prevail in a decertification election. The remaining allegation, that the Employer violated Section 8(a)(5) and 8(d) of the Act by modifying the Effects Bargaining and COVID-19 Agreement/August 27, 2020 Memorandum of Agreement without the Union's consent has not been dismissed and remains subject to further processing.

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlrb.gov. See User Guide. A video demonstration which provides step-by-step instructions and frequently asked questions are also available at www.nlrb.gov. If you require additional assistance with E-Filing, please contact e-Filing@nlrb.gov.

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **April 14, 2021**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than April 13, 2021. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before April 14, 2021.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after April 14, 2021, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,

/s/ Paul J. Murphy

PAUL J. MURPHY
Regional Director

Enclosure

cc: Colleen Anunu
Gimme Coffee, Inc.
3201 Krums Corners Rd
Ithaca, NY 14850

Workers United Local 2833
750 East Avenue
Rochester, NY 14607

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

_____

Case Name(s).

_____

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

_____

(Signature)

E-FILING TO APPEALS

1. **Extension of Time**: This document is used when the Charging Party is asking for more time to efile an Appeal.

    - If an Extension of Time is e-filed, and there are additional documents to be e-filed simultaneously with it, please e-file those documents under the selection **Correspondence**.
    - After an Extension of Time has already been e-filed, any **additional** materials to add to the Extension of Time should be e-filed under **Correspondence**.

2. **File an Appeal**: If the Charging Party does not agree with the Region's decision on the case, an Appeal can be e-filed.

    - Only **one** (**1**) **Appeal** can be e-filed to each determination in the Region's decision letter that is received.
    - After an Appeal has been e-filed, any **additional** materials to add to the Appeal should be e-filed under **Correspondence**.

3. **Notice of Appearance**: Either party can e-file a Notice of Appearance if there is a new counsel representing one side or a different counsel.

    - This document is only e-filed with the Office of Appeals after a decision has been made by the Region.
    - This document can be e-filed **before** an Appeal is e-filed.

4. **Correspondence**: Parties will **select** Correspondence when adding documents or supplementing the Appeal or Extension of Time.

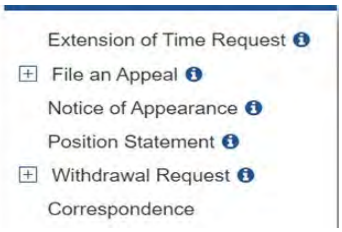
    - Correspondence is used to e-file documents **after** an **Extension of Time, Appeal** or **Notice of Appearance** has been e-filed.

5. **Position Statement**: The Charging Party or Charged Party may e-file a Position Statement.

    - The Charging Party will e-file this document as a supplement of the Appeal.
    - The Charged Party will specifically file one to support the Region's decision.
    - This document should be e-filed **after** an **Extension of Time, Appeal** or **Notice of Appearance** has been e-filed.

6. **Withdrawal Request**: If the Charging Party decides to no longer pursue their appeal, he/she can e-file a Withdrawal Request to the Office of Appeals.

    - This document should be e-Filed **after** an **Extension of Time, Appeal** or **Notice of Appearance** has been e-filed.



7. The selections of **Evidence** or **Other** should no longer be used.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
Gimme Coffee, Inc. **Case 03-CA-271972**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS**:

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them at its Ithaca and Trumansburg, New York facilities where the Charged Party normally posts notices to employees. If the Employer's place of business is currently closed and a substantial number of employees are not reporting to the facility due to the Coronavirus pandemic or is operating with less than a substantial complement of employees, the 60 consecutive day period for posting will begin when the Employer's place of business reopens and a substantial complement of employees have returned to work. For purposes of this notice posting, a substantial complement of employees is at least 50% of the total number of employees employed by the Employer prior to closing its business due to the Coronavirus pandemic. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice**.**

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes __[redacted]_ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does

not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.
The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement that requires it to post a Notice to Employees for the stated time period, restore and give effect to the Effects Bargaining and COVID-19 Agreement and August 27, 2020 Memorandum of Agreement, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices.
NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **Gimme Coffee, Inc.**		**Charging Party** **Workers United Local 2833**	
By: Name and Title (b) (6), (b) (7)(C)	Date 4/8/2021	By: Name and Title	Date
Print Name and Title below (b) (6), (b) (7)(C)		Print Name and Title below	

Recommended By:	Date	Approved By:	Date
Michael Dahlheimer Field Examiner		PAUL J. MURPHY Regional Director, Region 3	

(To be printed and posted on official Board notice form)

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT repudiate the Effects Bargaining and COVID-19 Agreement and August 27, 2020 Memorandum of Agreement ("MOA") with Workers United Local 2833 (the Union) by modifying the recall rights and procedures for the bargaining unit, described below, without the consent of the Union.

The bargaining unit is described below:

All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg, New York.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL restore and give effect to above mentioned MOA.

Gimme Coffee, Inc.
(Employer)

Dated: April 8, 2021 **By:** (b) (6), (b) (7)(C)
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at

https://www.federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Telephone: (716)551-4931
Hours of Operation: 8:30 a m. to 5 p m.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Centralized Compliance Unit at complianceunit@nlrb.gov.

Confirmation Number	1047978133
Date Submitted	Tuesday, April 13, 2021 12:04 PM (UTC-05:00) Eastern Time (US & Canada)
Case Name	Gimme Coffee, Inc.
Case Number	03-CA-271972
Filing Party	Charging Party
Name	Ian Hayes
Email	ihayes@cpjglaborlaw.com
Address	1103 Delaware Ave Buffalo NY 14209
Telephone	7168540007
Fax	
Original Due Date	4/14/2021
Date Requested	4/28/2021
Reason for Extension of Time	I was notified yesterday that the Regional Office and Charged Party are considering a settlement of the remaining aspects of the charge. My client is currently considering that settlement offer and attempting to decide how to proceed. Since an appeal of the 8(a)(3) aspect of the is interrelated with the settlement of the remaining aspects of the charge, we request additional time to make a consistent decision.
What Document is Due	Appeal
Parties Served	

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

April 15, 2021

IAN HAYES, ESQ.
CREIGHTON, JOHNSEN & GIROUX
1103 DELAWARE AVE
BUFFALO, NY 14209

Re: Gimme Coffee, Inc.
Case 03-CA-271972

Dear Mr. Hayes:

We are granting your request for an extension of time to file an appeal to April 28, 2021. As fully explained in the Region's dismissal letter, you **must file** your appeal electronically. If you cannot file electronically, unless already provided to the Region, please provide a written statement explaining why electronic submission is not possible or feasible. With your appeal, you are encouraged to also submit a complete statement of the facts and reasons why you believe the decision was incorrect. **Do not fax or email your appeal**. The Office of Appeals will not process faxed or emailed appeals.

Instructions on how to file your appeal electronically through the Agency's e-filing system can be found on the Agency's website www.nlrb.gov. If you choose to e-file your appeal, remember to allow enough time to complete the e-filing process by 11:59 pm (E.T.) on April 28, 2021. Otherwise, your appeal will be late.

1) Click on E-File documents;
2) Enter your NLRB Case Number; and,
3) Follow the detailed instructions.

If you cannot file your appeal electronically, please send the appeal and your written explanation of why you cannot file electronically to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to the Regional Director. Your appeal will be timely if it is postmarked or given to a delivery service no later than April 27, 2021. If your appeal is postmarked or given to a delivery service on the due date or

after, this office will reject it as untimely. If hand delivered, an appeal must be received by the General Counsel in Washington, D.C. by 5:00 p.m. E.T. on the appeal due date.

Sincerely,

Peter Sung Ohr
Acting General Counsel

By: _____
Mark E. Arbesfeld, Director
Office of Appeals

cc: PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
130 S ELMWOOD AVE STE 630
BUFFALO, NY 14202-2465

PAUL E. WAGNER, ESQ.
STOKES WAGNER
903 HANSHAW RD
ITHACA, NY 14850

cl

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Gimme Coffee, Inc.,

Charged Party/Employer,

and

Workers United Local 2833, SEIU

03-CA-271972

Charging Party/Union.
_____/

<u>Charging Party Workers United Local 2833's Objections to Proposed Settlement</u>

Workers United Local 2833, SEIU objects to the settlement. The settlement purports to settle Gimme Coffee's unlawful repudiation of laid-off employee recall rights as set forth in the parties' Effects Bargaining and COVID-19 Agreement and August 27, 2020 Memorandum of Agreement ("MOA"). However, it permits both Gimme and Courtney Susan Shelton, the decertification petitioner in 03-RD-271639, to claim in post-election proceedings that challenged laid-off employees were ineligible to vote because they lacked recall rights, while Board policy and precedent preclude the union from defending that Gimme's termination of recall rights violated the Act. Workers United requests that the Region reject the settlement absent an amendment that includes either (a) a provision in which Gimme admits that it violated the Act by repudiating employee recall rights protected by the MOA; or, (b) a provision in which Gimme and Shelton, as a party to the settlement,[1] agree that they shall not, during the post-election proceedings in 03-RD-271639, contradict the employees' recall rights protected by the MOA.

The settlement currently leaves Workers United defenseless in the post-election proceedings from any opposing party attack on the MOA's protections of recall rights. By claiming that the employees lack recall rights, Gimme would be repudiating the MOA and therefore violating the

[1] Decertification petitioners are permitted – and in fact are "encouraged" – to become parties to unfair labor practice settlements that affect the decertification election. "We reiterate, as the Board has previously stated, that we 'encourage the inclusion of the petitioner in settlement discussions to allow for the possibility that the petitioner could agree to a settlement that provides for the dismissal of the petition.'" *Pinnacle Foods Group*, 368 NLRB No. 97 (2019), slip op. at 3, fn.9, quoting *Truserv Corp.*, 349 NLRB 227, 232, fn. 14 (2007), and citing *Jefferson Hotel*, 309 NLRB 705, 706 (1992) and *Nu-Aimco*, 306 NLRB 978, 980 (1992), all holding that settled alleged violations could not taint a decertification petition where the decertification petitioner did not participate in the settlement.

settlement. Yet, the only remedy for breaching the settlement is for the Regional Director to issue a complaint. Defending a complaint and, eventually complying with an order to effectuate the MOA would be a small price to pay for obtaining Workers United's decertification, the likely result if the union loses the challenges.

And Workers United's loss of the challenges is the likely result of Gimme's repudiation of recall rights during the post-election challenge proceedings because Workers United would be unable to claim in those proceedings that Gimme's repudiation violated the Act. To assert its claim that the laid-off employees lack recall rights, Gimme would only have to present the evidence that it presented in the unfair labor practice investigation. Gimme's termination of employee recall rights would be presumed lawful. See *Texas Meat Packers*, an objections case where arguably unlawful layoffs were presumed lawful, citing several cases involving challenges that held that discharges were presumed lawful.[2] To overcome the presumption, Workers United must show that the repudiation violated the Act.

However, Workers United may not offer this defense. "To make such a finding in a representation case [that a party violated the Act] would conflict with the statutory scheme which vests the General Counsel with final authority as to the issuance of complaints based upon unfair labor practice charges and the prosecution thereof."[3] So when the General Counsel (acting through the Regional Director) opts to settle rather than issue a complaint – at least without the employer's admission that it violated the Act – no unfair labor practice determination can be made in a representation case.

> [T]he parties' settlement of those cases without final action by the Board precludes any conclusion that the Employer's conduct at issue there violated the Act. And no such finding can be made in this [representation] proceeding, consistent with the long-established rule that the Board will not make a determination on unfair labor practices in a representation proceeding.[4]

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[2] 130 NLRB 279, 279-280 (1961), citing *Stainless Welded Products*, 104 NLRB 204, 205 (1953); *Dura Steel Products Co.*, 111 NLRB 590, 591 (1955); and *National Foundry Company of New York*, 112 NLRB 1214, 1216 (1955).

[3] *Texas Meat Packers*, 130 NLRB at 279.

[4] *Cablevision Systems Corp.*, 367 NLRB No. 59 (2018), slip op. at 4 (once unfair labor practice charges are settled, even after an ALJ determination that the employer violated the Act, no finding can be made that violations tainted a decertification petition, so petition may not be dismissed), citing *Times Square Stores Corp.*, 79 NLRB 361, 365 (1948) (union challenges to votes of strike replacements overruled where strike is presumed to be economic strike and finding of unfair labor practices – necessary for determination that strike is unfair labor practice strike – cannot be made in representation case).

A settlement usually – and in the instant case – does not encompass a violation finding because it settles "alleged but unproven unfair labor practices." *Truserv Corp.*[5] A settlement only encompasses a violation finding if it includes an admission of guilt. "[A] settlement agreement is not an admission that the employer's actions, alleged but not found to be unlawful, constituted an unfair labor practice unless such an admission is an express part of the agreement." *Truserv Corp*.[6]

Shelton, as the decertification petitioner, is in an even stronger position than Gimme to claim that the challenged employees lack recall rights. Shelton, unlike Gimme, never promised to honor the MOA. Shelton, unlike Gimme, would suffer no consequences by claiming that the challenged employees were terminated. Moreover, Shelton did not agree to the settlement and is therefore not bound by it. A decertification petitioner cannot "be bound to a settlement by others that has the effect of waiving the petitioner's right under the Act to have the decertification petition processed." *Pinnacle Foods Group*.[7] In the instant case, Shelton would argue – correctly under current law – that they are entitled to an unrestricted right to fully present their case during the petition's processing, including the right to contend that the laid-off employees were ineligible because they lacked recall rights.[8]

Workers United and the laid-off employees are entitled to the reaffirmation of the employees' recall rights for purposes of both the unfair labor practice case and the representation case. The proposed settlement leaves vulnerable the employees' right to vote in the representation case. Therefore, Workers United requests that the settlement be rejected.

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[5] 349 NLRB 227 (2007) (because settlement agreement, in which employer does not admit unfair labor practices and therefore establishes no violations, a decertification petition is not tainted by any violations, and therefore must be processed).

[6] 349 NLRB at 228. See also 349 NLRB at 231-232 ("Without a finding of liability or an admission of wrongdoing, there is no substantial evidence that the employer engaged in the alleged unfair labor practices.").

[7] 368 NLRB No. 97 (2019), slip op. at 2 (reversing Regional Director's dismissal of petition based on settlement agreement provision stating that approval of the agreement precluded the processing of any RD petition filed prior to fulfillment of the agreement's provisions, where the petitioner did not consent), quoting *Jefferson Hotel*, 309 NLRB 705, 706 (1992). See also *Truserv*, 349 NLRB at 232 fn. 14 ("Without the petitioner's agreement, . . . we do not intend that the petitioner be bound to a settlement by others that purports to waive the petitioner's right under the Act to have the decertification petition processed.").

[8] Shelton uses the pronouns "they" and "them."

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

June 9, 2021

IAN HAYES, ESQ.
CREIGHTON, JOHNSEN & GIROUX
1103 DELAWARE AVE
BUFFALO, NY 14209

Re: Gimme Coffee, Inc.
Case 03-CA-271972

Dear Mr. Hayes:

We have carefully considered your appeal from the Regional Director's decision to dismiss the Section 8(a)(3) charge in the above captioned matter. Based upon our review of the evidence disclosed by the Regional Office's investigation as well as applicable case law, we have decided to deny the appeal.

You allege that the charge has merit because the Employer knew the laid-off employees supported the Union and the Employer exhibited animus toward the Union, as required to prove unlawful discrimination under *Wright Line*, 251 NLRB 1083, 1089 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981). However, your argument that the Employer had knowledge of the laid-off employees' support of the Union is not sufficiently supported by the evidence. There is insufficient evidence that the waitlisted employees were predominantly pro-union.

In addition, the evidence is insufficient to establish a discriminatory motivation for the Employer's revocation of recall rights for the laid-off employees. Evidence that may establish a discriminatory motive includes close timing between the discovery of the protected activities and the discipline (*e.g., Traction Wholesale Center Co., Inc. v. NLRB*, 216 F.3d 92, 99 (2000) (immediately after employer learned that union had obtained a majority of authorization cards from employees, it fired an employee who had signed a card)), the existence of other unfair labor practices that demonstrate that the employer's animus has led to unlawful actions (*e.g., John Wyke*, 253 NLRB 856 (1980)), and evidence that the employer's asserted reason for the employee's discipline was pretextual, such as shifting explanations for the adverse action. (*see, e.g., Precision Indsutries, Inc.*, 320 NLRB 661, 662 n. 7 (1996), *enfd. sub nom. Pace Industries, Inc. v. NLRB*, 118 F.3d 585 (8th Cir. 1997), *cert. denied* 523 U.S. 1020 (1998)). Here, although the Employer's adverse action appears to begin shortly after a decertification petition was filed, the timing is not suspicious in the broader context because the Employer had just started negotiating a successor CBA with the Union and thus had a reason to first assert its position. You contend that the Employer offered insubstantial and shifting explanations for not honoring indefinite recall rights for the laid-off employees, showing pretext. However, the reasons given

appear to be rationally based on the Employer's interpretation of the past agreements. The Region concluded that the interpretation was misplaced, but there is no evidence that the Employer asserted its interpretation for discriminatory or bad faith reasons. Finally, the argument that the Section 8(a)(5) and (d) unfair labor practice charge shows animus for the *Wright Line* is without merit, as the other case is absent an allegation of hostility or retaliation.

Accordingly, the appeal is denied.

Sincerely,

Peter Sung Ohr
Acting General Counsel

By: _____
Mark E. Arbesfeld, Director
Office of Appeals

cc: PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
130 S ELMWOOD AVE STE 630
BUFFALO, NY 14202-2465

PAUL E. WAGNER, ESQ.
STOKES WAGNER
903 HANSHAW RD
ITHACA, NY 14850

COLLEEN ANUNU
GIMME COFFEE, INC.
3201 KRUMS CORNERS RD
ITHACA, NY 14850

WORKERS UNITED LOCAL 2833
750 E AVE
ROCHESTER, NY 14607

kh

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
Gimme Coffee, Inc. **Case 03-CA-271972**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS**:

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them at its Ithaca and Trumansburg, New York facilities where the Charged Party normally posts notices to employees. If the Employer's place of business is currently closed and a substantial number of employees are not reporting to the facility due to the Coronavirus pandemic or is operating with less than a substantial complement of employees, the 60 consecutive day period for posting will begin when the Employer's place of business reopens and a substantial complement of employees have returned to work. For purposes of this notice posting, a substantial complement of employees is at least 50% of the total number of employees employed by the Employer prior to closing its business due to the Coronavirus pandemic. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice**.**

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does

not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.
The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement that requires it to post a Notice to Employees for the stated time period, restore and give effect to the Effects Bargaining and COVID-19 Agreement and August 27, 2020 Memorandum of Agreement, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices.
NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **Gimme Coffee, Inc.**		**Charging Party** **Workers United Local 2833**	
By: Name and Title	Date	By: Name and Title	Date
/s/ (b) (6), (b) (7)(C)	4/8/21		
Print Name and Title below (b) (6), (b) (7)(C)		Print Name and Title below	
Recommended By:	Date	Approved By:	Date
/s/ Michael Dahlheimer Michael Dahlheimer Field Examiner	4/26/21	/s/ Paul J. Murphy PAUL J. MURPHY Regional Director, Region 3	6/9/21

(To be printed and posted on official Board notice form)

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT repudiate the Effects Bargaining and COVID-19 Agreement and August 27, 2020 Memorandum of Agreement ("MOA") with Workers United Local 2833 (the Union) by modifying the recall rights and procedures for the bargaining unit, described below, without the consent of the Union.

The bargaining unit is described below:

All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg, New York.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL restore and give effect to above mentioned MOA.

Gimme Coffee, Inc.
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at

https://www.federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Telephone: (716)551-4931
Hours of Operation: 8:30 a.m. to 5 p.m.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Centralized Compliance Unit at complianceunit@nlrb.gov.

FORM NLRB-4722
(10-17)

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT repudiate the Effects Bargaining and COVID-19 Agreement and August 27, 2020 Memorandum of Agreement ("MOA") with Workers United Local 2833 (the Union) by modifying the recall rights and procedures for the bargaining unit, described below, without the consent of the Union.

The bargaining unit is described below:

All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg, New York.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL restore and give effect to above mentioned MOA.

GIMME COFFEE, INC.
(Employer)

Dated: 7/5/21 **By:** (b) (6), (b) (7)(C) [redacted]

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at https://federalrelay.us/tty (link is external), calling one of its toll free numbers and asking its Communication Assistant to call our toll free number at 1-844-762-NLRB..

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Assistant, 550 MAIN ST. ROOM 3-111 FEDERAL BLDG, CINCINNATI, OH 45202-3271, TELEPHONE: (513) 684-3686, HOURS OF OPERATION: 8:00 a.m. to 4:30 p.m.

CERTIFICATION OF COMPLIANCE

RE: GIMME COFFEE, INC.
Case 03-CA-271972

(If additional space is needed to provide a full response, attach a sheet(s) with the necessary information.)

Delayed Posting

Complete this section only and return to the Region if the Charged Party's place of business is currently closed or does not have a substantial complement of employees due to the Coronavirus Pandemic. For purposes of this notice posting, a substantial complement of employees is at least 50% of the total number of employees employed by the Charged Party prior to closing its business due to the Coronavirus pandemic. On a monthly basis, the Charged Party will be asked for updates on the status of the business.

I certify that the Charged Party's facility is currently closed/operating with a less than a substantial complement of employees. We anticipate reopening Respondent's facility/returning a substantial complement of employees back to work on 8/26/21. The Certification of Compliance below will be completed and returned to the Region shortly after the anticipated date above.

CHARGED PARTY/RESPONDENT

By: (b) (6), (b) (7)(C)

Title: [redacted]

Date: 7/5/21

Physical Posting

The signed and dated Notice to Employees in the above matter was posted on

(date) 7/5/21 at the following locations: (List specific places of posting.)

Gates Hall, MLK St., Cayuga St., Trumansburg, Community Corners, Krums Corners

I have completed this Certification of Compliance and state, under penalty of perjury, that it is true and correct.

CHARGED PARTY/RESPONDENT

By: _____

Title: _____

Date: _____

This form should be returned to the Regional Office, together with **ONE** original Notice, dated and signed in the same manner as those posted. The Certification of Compliance form, signed/dated color-scanned Notice should be retuned via e-file. Please do not e-mail or send hard copies of the Certification of Compliance form or Notice at this time.

CERTIFICATION OF COMPLIANCE

RE: GIMME COFFEE, INC.
Case 03-CA-271972

(If additional space is needed to provide a full response, attach a sheet(s) with the necessary information.)

Delayed Posting

Complete this section only and return to the Region if the Charged Party's place of business is currently closed or does not have a substantial complement of employees due to the Coronavirus Pandemic. For purposes of this notice posting, a substantial complement of employees is at least 50% of the total number of employees employed by the Charged Party prior to closing its business due to the Coronavirus pandemic. On a monthly basis, the Charged Party will be asked for updates on the status of the business.

I certify that the Charged Party's facility is currently closed/operating with a less than a substantial complement of employees. We anticipate reopening Respondent's facility/returning a substantial complement of employees back to work on Aug 26, 2021 The Certification of Compliance below will be completed and returned to the Region shortly after the anticipated date above.

*** See attachment**

CHARGED PARTY/RESPONDENT

By: (b) (6), (b) (7)(C) [redacted]

Title: [redacted]

Date: July 5, 2021

Physical Posting

The signed and dated Notice to Employees in the above matter was posted on

(date) July 5, 2021 at the following locations: (List specific places of posting.)

130 N. Cayuga St. Ithaca, NY on the employee bulletin board; 7 E. Main St. Trumansburg, NY on the employee bulletin board; 506 W. MLK Jr. St. Ithaca, NY on the employee bulletin board; 903 Hanshaw Rd. Ithaca, NY on the employee bulletin board.

I have completed this Certification of Compliance and state, under penalty of perjury, that it is true and correct.

CHARGED PARTY/RESPONDENT

By: (b) (6), (b) (7)(C) [redacted]

Title: [redacted]

Date: July 5, 2021

This form should be returned to the Regional Office, together with **ONE** original Notice, dated and signed in the same manner as those posted. The Certification of Compliance form, signed/dated color-scanned Notice should be retuned via e-file. Please do not e-mail or send hard copies of the Certification of Compliance form or Notice at this time.

The Gimme Gates hall location, located at 343 Campus Road, is predicted to open August 26th. 2021. The employee notice will be posted on that date on the employee bulletin board.

FORM NLRB-502 (RC)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 3-RC-198769	Date Filed 5/15/17

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE -** A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representa ive of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)*
Gimme Coffee	3201 Krums Corners Rd NY Ithaca 14850-8654

3a. Employer Representative – Name and Title	3b. Address (If same as 2b – state same)
Kevin Cuddeback	3201 Krums Corners Rd NY Ithaca 14850-8654

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(607) 277-0620			kevin.cuddeback@gimmecoffee com

4a. Type of Establishment *(Factory, mine, wholesaler, etc)*	4b. Principal product or service	*5a. City and State where unit is located:*
Restaurants	Coffee	Ithaca, NY

5b. Description of Unit Involved

Included: See Attached Page 2 for additional details

Excluded: See Attached Page 2 for additional details

6a. No. of Employees in Unit: 23

6b. Do a substantial number (30% or more) of the employees in he unit wish to be represented by the Petitioner? Yes [✓] No [ ]

Check One:

[ ] 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) *(If no reply received, so state)*.

[ ] 7b. Petitioner is curren ly recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent *(If none, so state).*	8b. Address

8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address

8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)*

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____

(Name of labor organization) _____, has picketed the Employer since *(Month, Day, Year)* _____.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: [✓] Manual [ ] Mail [ ] Mixed Manual/Mail
11b. Election Date(s): May 31, 2017	11c. Election Time(s): 7am-11am, 4pm-9pm	11d. Election Loca ion(s): 506 W State St, Ithaca, NY, 14850

ner (*including local name and number)*	12b. Address *(street and number, city, state, and ZIP code)*
(b) (6), (b) (7)(C)	115 E State Street c/o Tompkins County Workers Center NY Ithaca 14850-4142

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(if none, so state)*

12d. Tel No.	12e. Cell No.	12f. Fax No.	
(b) (6), (b) (7)(C)			(b) (6), (b) (7)(C)

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address *(street and number, city, state, and ZIP code)*

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7	05/12/2017 16:26:43

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case 3-RC-198769	Date Filed 5/15/17

Attachment

Employees Included
All full time and part time employees at Gimme Coffee shops in Ithaca & Trumansburg, New York

Employees Excluded
All supervisors or managers as defined in the National Labor Relations Act

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

Gimme Coffee, Inc.

Employer

and **Case 03-RC-198769**

Workers United Local 2833

Petitioner

TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

Workers United Local 2833

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit:

Included: All full-time, regular part-time and variable-hour employees with the job titles of Barista, Lead Barista, or Barista/Design & Communications Assistant employed by the Employer at its facilities in Ithaca and Trumansburg, New York.

Excluded: Managerial employees, confidential employees, guards, professional employees and supervisors as defined in the National Labor Relations Act, and all other employees.

June 8, 2017

____/s/Paul J. Murphy__(SLL)___
PAUL J. MURPHY
Regional Director, Region 3
National Labor Relations Board

Attachment: Notice of Bargaining Obligation

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,[1] an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

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[1] Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

FORM NLRB-502 (RD)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 03-RD-268340	Date Filed 10/30/2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) -** A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)*
Gimme! Coffee	3201 Krums Corners Rd NY Ithaca 14850-

3a. Employer Representative – Name and Title	3b. Address (If same as 2b – state same)
Colleen Anunu CEO	3201 Krums Corners Rd NY Ithaca 14850-

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address

4a. Type of Establishment *(Factory, mine, wholesaler, etc)*	4b. Principal product or service	*5a. City and State where unit is located:*
Beverages (Nonalcoholic)	Coffee	I haca, NY

5b. Description of Unit Involved	6a. No. of Employees in Unit:
Included: See Attached Page 2 for additional details	12
Excluded: See Attached Page 2 for additional details	6b. Do a substantial number (30% or more) of the employees in he unit no longer wish to be represented by the cer ified or currently recognized bargaining representative? Yes [✓] No [ ]

Check One: [ ] 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) *(If no reply received, so state)*.

[✓] 7b. Petitioner is curren ly recognized as Bargaining Representa ive and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent	8b. Address
Workers United Local 2833	NY

8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address
			(b) (6), (b) (7)(C)

8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)*
Worker's United	12/28/2017	12/28/2020

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____

(Name of labor organization) _____, has picketed the Employer since *(Month, Day, Year)* _____.

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*

Gimme! Coffee

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
(b) (6), (b) (7)(C)	NY Ithaca		(b) (6), (b) (7)(C)
		10e. Fax No.	10f. E-Mail Address (b) (6), (b) (7)(C)

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: [ ] Manual [ ] Mail [✓] Mixed Manual/Mail

11b. Election Date(s):	11c. Election Time(s):	11d. Election Location(s):
10/21/20-10/24/20	N/a	Ithaca, NY

12a. Full Name of Petitioner Courtney S Shelton Barista	12b. Address *(street and number, city, state, and ZIP code)*
Gimme! Coffee	77 W Main St

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(if none, so state)* NY Trumansburg 14886-____
Worker's United

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
(520) 312-0166			(b) (6), (b) (7)(C)

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address *(street and number, city, state, and ZIP code)*

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	(b) (6), (b) (7	10/29/2020 19:42:44

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Attachment

Employees Included
Baristas working in cafes

Employees Excluded
Bakers and production

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME! COFFEE

Employer

and **Case 03-RD-268340**

(b) (6), (b) (7)(C)

Petitioner

and

ROCHESTER REGIONAL JOINT BOARD
WORKERS UNITED UNION

Union

ORDER APPROVING WITHDRAWAL REQUEST AND
WITHDRAWING NOTICE OF REPRESENTATION HEARING

The Regional Director of the National Labor Relations Board, Third Region, issued a Notice of Hearing in the above-entitled matter on October 30, 2020, scheduling a hearing to be held on November 20, 2020; and

The Petitioner on November 9, 2020, having requested permission to withdraw the petition, and the Regional Director having duly considered the matter,

IT IS HEREBY ORDERED that the Petitioner's request to withdraw its petition be, and it hereby is, approved without prejudice to filing a new petition, and;

IT IS FURTHER ORDERED that the Notice of Hearing in this matter be, and it hereby is withdrawn.

DATED at Buffalo, New York this 12th day of November 2020.

/s/ Paul J. Murphy

PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME! COFFEE

Employer

and **Case 03-RD-268340**

(b) (6), (b) (7)(C)

Petitioner

and

ROCHESTER REGIONAL JOINT BOARD WORKERS UNITED

Union

AFFIDAVIT OF SERVICE OF ORDER APPROVING WITHDRAWAL REQUEST AND WITHDRAWING NOTICE OF REPRESENTATION HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **,** I served the above-entitled document(s) by **e-issuance** upon the following persons, addressed to them at the following addresses:

Colleen Anunu , CEO
Gimme! Coffee
3201 Krums Corners Rd
Ithaca, NY 14850

Paul Wagner , Attorney at Law
STOKES ROBERTS & WAGNER
1405 Hanshaw Rd
Ithaca, NY 14850-2730

Gary Bonadonna Jr.
Rochester Regional Joint Board Workers United
750 East Ave
Rochester, NY 14607-2100

Cathy Creighton , Esq., Attorney
1103 Delaware Ave
Buffalo, NY 14209

(b) (6), (b) (7)(C)

Vallana M. Harris
Designated Agent of NLRB
Name

Date: November 12, 2020

/s/ Vallana M. Harris
Signature

FORM NLRB-502 (RD)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 3-RD-270752	Date Filed December 29, 2020

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) -** A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer Gimme! Coffee	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)* 3201 Krums Corners Rd NY Ithaca 14850-
3a. Employer Representative – Name and Title Colleen Anunu Interim CEO	3b. Address (If same as 2b – state same) 3201 Krums Corners Rd NY Ithaca 14850-

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(607) 273-0111			colleen.anunu@gimmecoffee.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc)*	4b. Principal product or service	*5a. City and State where unit is located:*
Beverages (Nonalcoholic)	Coffee	I haca，NY

5b. Description of Unit Involved	6a. No. of Employees in Unit: 13
Included: See Attached Page 2 for additional details **Excluded:** See Attached Page 2 for additional details	6b. Do a substantial number (30% or more) of the employees in he unit no longer wish to be represented by the cer ified or currently recognized bargaining representative? Yes [✓] No [ ]

Check One: [ ] 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) *(If no reply received, so state)*.

[✓] 7b. Petitioner is curren ly recognized as Bargaining Representa ive and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent	8b. Address
Local 2833	115 E State Street NY Ithaca 14850-____

8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address
(607) 269-0409			

8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)*
Workers United	12/28/2017	12/28/2020

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____

(Name of labor organization) _____, has picketed the Employer since *(Month, Day, Year)* _____.

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*
Rochester Regional Joint Board

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
Gary Bonadonna Jr.	750 East Ave NY Rochester 14607-____	(585) 473-3280	
		10e. Fax No.	10f. E-Mail Address gBonadonnaJr@rrjb.org

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

11b. Election Date(s):	11c. Election Time(s):	11a. Election Type: [ ] Manual [ ] Mail [✓] Mixed Manual/Mail 11d. Election Location(s):
1/4/2021	Noon	Digital

12a. Full Name of Petitioner Courtney Susan Shelton	12b. Address *(street and number, city, state, and ZIP code)* 77 W Main St

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(if none, so state)* NY Trumansburg 14886-____
Workers United

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
(520) 312-0166			(b) (6), (b) (7)(C)

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address *(street and number, city, state, and ZIP code)*

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)		12/29/2020 00 01:25

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Attachment

Employees Included
Baristas working in cafes for 90+ days

Employees Excluded
Bakery, production

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME COFFEE, INC.

Employer

and **Case 03-RD-270752**

(b) (6), (b) (7)(C)

Petitioner

and

WORKERS UNITED LOCAL 2833

Union

ORDER APPROVING WITHDRAWAL REQUEST AND WITHDRAWING NOTICE OF REPRESENTATION HEARING

IT IS ORDERED that the Petitioner's request to withdraw the petition is approved without prejudice to the Petitioner's ability to file a petition in the same or a substantially similar unit to the one petitioned for in this case.

IT IS FURTHER ORDERED that the Notice of Representation Hearing previously issued in this matter is withdrawn and the hearing scheduled for January 22, 2021 is canceled.

Dated: January 21, 2021

/s/ Paul J. Murphy

PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME COFFEE, INC.

Employer

and **Case 03-RD-270752**

(b) (6), (b) (7)(C)

Petitioner

and

WORKERS UNITED LOCAL 2833

Union

AFFIDAVIT OF SERVICE OF: Order Approving Withdrawal Request and Withdrawing Notice of Representation Hearing, dated .1/21/21

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on1/21/21**,** I served the above-entitled document(s) bye-issuance and **regular mail** upon the following persons, addressed to them at the following addresses:

Gary J. Bonadonna JR.
Rochester Regional Joint Board
750 East Ave
Rochester, NY 14607-2100

Ian Hayes , ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209

Workers United Local 2833
115 E State Street
Ithaca, NY 14850

Colleen Anunu , Interim CEO
Gimme Coffee, Inc.
3201 Krums Corners Rd
Ithaca, NY 14850

Paul E. Wagner , ESQ.
Stokes Wagner
903 Hanshaw Road
Ithaca, NY 14850

(b) (6), (b) (7)(C)

Date: 1/21/21

Vallana M. Harris
, Designated Agent of NLRB
Name

/s/ Vallana M. Harris
Signature

FORM NLRB-502 (RD)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 3-RD-271639	Date Filed January 22, 2021

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) -** A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer Gimme Coffee, Inc.	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)* 3201 Krums Corners Rd. I haca, NY 14850 NY Ithaca 14850
3a. Employer Representative – Name and Title Colleen Anunu CEO	3b. Address (If same as 2b – state same) 3201 Krums Corners Rd. I haca, NY 14850 NY Ithaca 14850

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(607) 273-0111			colleen.anunu@gimmecoffee.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc)*	4b. Principal product or service	*5a. City and State where unit is located:*
Beverages (Nonalcoholic)		I haca，NY

5b. Description of Unit Involved	6a. No. of Employees in Unit: 13
Included:	6b. Do a substantial number (30% or more) of the employees in he unit no longer wish to be represented by the cer ified or currently recognized bargaining representative? Yes ☐ No ☐
Excluded:	

Check One: ○ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) *(If no reply received, so state).*

○ 7b. Petitioner is curren ly recognized as Bargaining Representa ive and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent	8b. Address
Workers United Local 2833	115 E State St. NY Ithaca 14850

8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address

8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)*
	06/08/2017	12/28/2020

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____

(Name of labor organization) _____, has picketed the Employer since *(Month, Day, Year)* _____.

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: ○ Manual ◉ Mail ○ Mixed Manual/Mail
11b. Election Date(s): February 9, 2021	11c. Election Time(s): N/a	11d. Election Location(s): Mail

12a. Full Name of Petitioner Courtney Susan Shelton	12b. Address *(street and number, city, state, and ZIP code)* 77 W Main St

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(if none, so state)* NY Trumansburg 14886

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
(520) 312-0166			cs2424@nau edu

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address *(street and number, city, state, and ZIP code)*

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
Courtney Susan Shelton	CSShelton		1/21/2021 16:42:25

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

Attachment

Employees Included
All full-time, part-time, and variable hour employees with the job title “Barista” including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg

Employees Excluded
Store managers, confidential employees, professional employees, and supervisors as defined in the National Labor Relations Act, and all other non-barista employees.

Form NLRB-5544
(5-2015)

CERTIFICATE OF SERVICE

Employer Name:

Service on the Employer

I hereby certify that on 1/21/21 (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were served on the Employer by: (check whichever is applicable)

- [x] e-mail to the email address shown on the petition.
- [ ] facsimile (with the permission of the Employer) to the facsimile number shown on the petition.
- [ ] overnight mail to the mailing address shown on the petition.
- [ ] hand-delivery to_____(name of Employer's representative) at the following address:_____.

Service on the Other Party Named in the Petition

I hereby certify that on 1/21/21 (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on Gary Bonadonna Jr. (name of party or parties) by: (check whichever is applicable)

- [x] email to the email address shown on the petition.
- [ ] facsimile (with the permission of the party) to the facsimile number shown on the petition.
- [ ] overnight mail to the mailing address shown on the petition.
- [ ] hand-delivery to_____ (name of party's representative) at the following address:_____.

Service on the Other Party Named in the Petition

I hereby certify that on 1/21/21 (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on Workers United Local 2033 (name of party or parties) by: (check whichever is applicable)

- [x] email to the email address shown on the petition.
- [ ] facsimile (with the permission of the party) to the facsimile number shown on the petition.
- [ ] overnight mail to the mailing address shown on the petition.
- [ ] hand-delivery to_____ (name of party's representative) at the following address:_____.

Courtney Susan Shelton
Signature

Courtney Susan Shelton, member
Name and Title

1/21/21
Date

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

Download
NLRB
Mobile App

January 22, 2021

URGENT

Colleen Anunu, CEO
Gimme Coffee, Inc.
3201 Krums Corners Rd. Ithaca, NY 14850
Ithaca, NY 14850

Re: Gimme Coffee, Inc.
Case 03-RD-271639

Dear Ms. Anunu:

Enclosed is a copy of a petition that Courtney Susan Shelton filed with the National Labor Relations Board (NLRB) seeking to decertify Workers United Local 2833 as the collective-bargaining representative of certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, the Petitioner's requirement to complete and serve a Responsive Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures, including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner THOMAS A. MILLER whose telephone number is (716)398-7004. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Regional Attorney LINDA M. LESLIE whose telephone number is (716)398-7017. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by January 29, 2021 in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate electronically with employees in the petitioned-for unit, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is

replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time** on **February 03, 2021**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon February 03, 2021.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a

voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Responsive Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of an employer's Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in the employer's Statement of Position, such that it is received no later than **noon Eastern Time** on **February 08, 2021.**

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM** on **Thursday, February 11, 2021 Via Zoom teleconference call**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now*:* Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

(b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

(d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized 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 cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native

format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

PAUL J. MURPHY
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

cc: Paul E. Wagner, Esq.
Stokes Wagner
One Atlantic Center, Suite 2400
1201 West Peachtree Street NW
Atlanta, GA 30309

Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Courtney Susan Shelton has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 03-RD-271639 seeking an election to determine if the employees of Gimme Coffee, Inc. in the unit set forth below wish to be represented by Workers United Local 2833 for the purposes of collective bargaining:

Included: All full-time, part-time, and variable hour employees with the job title "Barista" including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg Excluded: Store managers, confidential employees, professional employees, and supervisors as defined in the National Labor Relations Act, and all other non-barista employees.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- **To self-organization**
- **To form, join, or assist labor organizations**
- **To bargain collectively through representatives of your own choosing**
- **To act together for the purposes of collective bargaining or other mutual aid or protection**
- **To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).**

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. NO FINAL DECISIONS HAVE BEEN MADE YET regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlrb.gov or contact the NLRB at (716)551-4931.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.

National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

Gimme Coffee, Inc. **Employer** **and** **Courtney Susan Shelton** **Petitioner** **and** **Workers United Local 2833** **Union**	**Case 03-RD-271639**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Thursday, February 11, 2021** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located Via Zoom teleconference call, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Gimme Coffee, Inc. and Workers United Local 2833 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on February 03, 2021**.** Following timely filing and service of a Statement of Position by Gimme Coffee, Inc. and Workers United Local 2833, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on February 08, 2021.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents 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. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: January 22, 2021

/s/Paul J. Murphy

PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Gimme Coffee, Inc. **Employer** **and** **Courtney Susan Shelton** **Petitioner** **and** **Workers United Local 2833** **Union**	**Case 03-RD-271639**

AFFIDAVIT OF SERVICE OF: Petition dated January 22, 2021**, Notice of Representation Hearing dated** January 22, 2021**, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 22, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Ian Hayes, ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209
ihayes@cpjglaborlaw.com
Fax: (716)854-0004

Gary J. Bonadonna JR.
Rochester Regional Joint Board
750 East Ave
Rochester, NY 14607-2100

Workers United Local 2833
115 E State St.
Ithaca, NY 14850

PAUL E. WAGNER, ESQ.
Stokes Wagner
One Atlantic Center, Suite 2400
1201 West Peachtree Street NW
Atlanta, GA 30309
pwagner@stokeswagner.com
Fax: (607)257-6293

Colleen Anunu, CEO
Gimme Coffee, Inc.
3201 Krums Corners Rd. Ithaca, NY 14850
Ithaca, NY 14850
colleen.anunu@gimmecoffee.com

Courtney Susan Shelton
77 W Main St
Trumansburg, NY 14886
cs2424@nau.edu

January 22, 2021	Andrea Seyfried, Designated Agent of NLRB
Date	Name
	/s/ Andrea Seyfried
	Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF REPRESENTATION CASE PROCEDURES IN CERTIFICATION AND DECERTIFICATION CASES

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlrb.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlrb.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

***Purpose of Hearing*:** The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

***Issues at Hearing*:** Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion*:** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing*:** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record*:** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections*:** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details*:** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs*:** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlrb.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election 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 cellular (''cell'') telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

> **Note:** ***Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.***

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

FORM NLRB-505
(12-20)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
03-RD-271639	January 22, 2021

INSTRUCTIONS: *Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.*
Note: *Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.*

1a. Full name of party filing Statement of Position	1c. Business Phone:	1e. Fax No.:
1b. Address *(Street and number, city, state, and ZIP code)*	1d. Cell No.:	1f. e-Mail Address

2. Do you agree that the NLRB has jurisdiction over the Employer in this case? [ ] Yes [ ] No
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate? [ ] Yes [ ] No *(If not, answer 3a and 3b)*

a. State the basis for your contention that the proposed unit is not appropriate. (*If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)*

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.

Added	Excluded

4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.

5. Is there a bar to conducting an elec ion in this case? [ ] Yes [ ] No *If yes, state the basis for your position.*

6. Describe all other issues you intend to raise at the pre-election hearing.

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at **www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.
(a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)
(b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be *added* to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be *excluded* from the proposed unit to make it an appropriate unit. (Attachment D)

8a. State your position with respect to the details of any election that may be conducted in this matter. Type: [ ] Manual [ ] Mail [ ] Mixed Manual/Mail

8b. Date(s)	8c. Time(s)	8d. Location(s)
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period [ ] Weekly [ ]Biweekly [ ] Other *(specify length)*

9. Representative who will accept service of all papers for purposes of the representation proceeding

9a. Full name and title of authorized representative	9b. Signature of authorized representative	9c. Date
9d. Address *(Street and number, city, state, and ZIP code)*		9e. e-Mail Address
9f. Business Phone No.:	9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U S C Section 151 et seq The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings The routine uses for the information are fully set forth in the Federal Register, 71 Fed 74942-43 (December 13, 2006) The NLRB will further explain these uses upon request Failure to supply the information requested by this form may preclude you from litigating issues under 102 66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court

FORM NLRB-5081
(3-11)

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER
	03-RD-271639

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

[ ] CORPORATION [ ] LLC [ ] LLP [ ] PARTNERSHIP [ ] SOLE PROPRIETORSHIP [ ] OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS *(Products handled or manufactured, or nature of services performed).*

7A. PRINCIPAL LOCATION:	7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:	B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT *(Check the appropriate box):* [ ] **CALENDAR** [ ] **12 MONTHS** or [ ] **FISCAL YEAR** *(FY DATES)*

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value. $_____		
B. If you answered no to 9A, did you **provide services** valued in excess of $50,000 to customers in your State who purchased goods valued in excess of $50,000 from directly outside your State? If no, indicate the value of any such services you provided. $_____		
C. If you answered no to 9A and 9B, did you **provide services** valued in excess of $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than $50,000, indicate amount. $_____		
D. Did you **sell goods** valued in excess of $50,000 directly to customers located outside your State? If less than $50,000, indicate amount. $_____		
E. If you answered no to 9D, did you **sell goods** valued in excess of $50,000 directly to customers located inside your State who purchased other goods valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
F. Did you **purchase and receive goods** valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
G. Did you **purchase and receive goods** valued in excess of $50,000 from enterprises who received the goods directly from points outside your State? If less than $50,000, indicate amount. $_____		
H. **Gross Revenues** from all sales or performance of services ***(Check the largest amount)*** [ ] $100,000 [ ] $250,000 [ ] $500,000 [ ] $1,000,000 or more If less than $100,000, indicate amount.		
I. **Did you begin operations within the last 12 months?** If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

[ ] YES [ ] NO *(If yes, name and address of association or group).*

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE *(Type or Print)*	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

FORM NLRB-506
(12-20)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
03-RD-271639	January 22, 2021

INSTRUCTIONS: *If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.*

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer	**An Intervenor/Union**

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone	1d. Cell No.	1e. Fax No.	1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative	Signature of Authorized Representative	Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

Download
NLRB
Mobile App

January 22, 2021

URGENT

Workers United Local 2833
115 E State St.
Ithaca, NY 14850

Re: Gimme Coffee, Inc.
Case 03-RD-271639

Dear Sir or Madam:

Enclosed is a copy of a petition that Courtney Susan Shelton filed with the National Labor Relations Board (NLRB) seeking an election involving certain employees for which you are the exclusive collective bargaining representative. Please read this letter carefully to make sure you are aware of the union's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the Employer's requirement to post and distribute the Notice of Petition for Election, the requirement that you complete and serve a Statement of Position Form, the petitioner's requirement to complete and serve a Responsive Statement of Position Form, a scheduled hearing in this matter, other information needed, your right to be represented, and NLRB procedures, including how to submit documents.

Investigator: This petition will be investigated by Field Examiner THOMAS A. MILLER whose telephone number is (716)398-7004. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Regional Attorney LINDA M. LESLIE whose telephone number is (716)398-7017. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

The Union's Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the union is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time** on **February 3, 2021.** This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on the due date but after noon Eastern**

Time. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

The Employer's Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time** on **February 3, 2021.** This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on the due date but after noon Eastern Time.**

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also

indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Responsive Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of a Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing the issues raised in the Statement of Position. The petitioner must file a completed, signed copy in response to any timely filed and served Statement of Position by any party, with any necessary attachments, with this office and serve it on all parties named in the petition, such that it is received no later than **noon Eastern Time** on **February 8, 2021.**

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM** on **Thursday, February 11, 2021 Via Zoom teleconference call**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by January 29, 2021 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) The correct name of the Union as stated in its constitution or bylaws.

(b) A copy of any existing or recently expired collective-bargaining agreements, and any addenda or extensions, or any recognition agreements covering any employees in the petitioned-for unit.

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

(d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized 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 cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a

written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

PAUL J. MURPHY
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

cc: Gary J. Bonadonna JR.
Rochester Regional Joint Board
750 East Ave
Rochester, NY 14607-2100

Ian Hayes, ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209

Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Courtney Susan Shelton has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 03-RD-271639 seeking an election to determine if the employees of Gimme Coffee, Inc. in the unit set forth below wish to be represented by Workers United Local 2833 for the purposes of collective bargaining:

Included: All full-time, part-time, and variable hour employees with the job title "Barista" including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg Excluded: Store managers, confidential employees, professional employees, and supervisors as defined in the National Labor Relations Act, and all other non-barista employees.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- **To self-organization**
- **To form, join, or assist labor organizations**
- **To bargain collectively through representatives of your own choosing**
- **To act together for the purposes of collective bargaining or other mutual aid or protection**
- **To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).**

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. NO FINAL DECISIONS HAVE BEEN MADE YET regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlrb.gov or contact the NLRB at (716)551-4931.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.

National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

Gimme Coffee, Inc. **Employer** **and** **Courtney Susan Shelton** **Petitioner** **and** **Workers United Local 2833** **Union**	**Case 03-RD-271639**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Thursday, February 11, 2021** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located Via Zoom teleconference call, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Gimme Coffee, Inc. and Workers United Local 2833 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on February 03, 2021**.** Following timely filing and service of a Statement of Position by Gimme Coffee, Inc. and Workers United Local 2833, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on February 08, 2021.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents 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. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: January 22, 2021

/s/Paul J. Murphy

PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Gimme Coffee, Inc. **Employer** **and** **Courtney Susan Shelton** **Petitioner** **and** **Workers United Local 2833** **Union**	**Case 03-RD-271639**

AFFIDAVIT OF SERVICE OF: Petition dated January 22, 2021**, Notice of Representation Hearing dated** January 22, 2021**, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 22, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Ian Hayes, ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209
ihayes@cpjglaborlaw.com
Fax: (716)854-0004

Gary J. Bonadonna JR.
Rochester Regional Joint Board
750 East Ave
Rochester, NY 14607-2100

Workers United Local 2833
115 E State St.
Ithaca, NY 14850

PAUL E. WAGNER, ESQ.
Stokes Wagner
One Atlantic Center, Suite 2400
1201 West Peachtree Street NW
Atlanta, GA 30309
pwagner@stokeswagner.com
Fax: (607)257-6293

Colleen Anunu, CEO
Gimme Coffee, Inc.
3201 Krums Corners Rd. Ithaca, NY 14850
Ithaca, NY 14850
colleen.anunu@gimmecoffee.com

Courtney Susan Shelton
77 W Main St
Trumansburg, NY 14886
cs2424@nau.edu

January 22, 2021	Andrea Seyfried, Designated Agent of NLRB
Date	Name
	/s/ Andrea Seyfried
	Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF REPRESENTATION CASE PROCEDURES IN CERTIFICATION AND DECERTIFICATION CASES

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlrb.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlrb.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

***Purpose of Hearing*:** The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

***Issues at Hearing*:** Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion*:** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing*:** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record*:** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections*:** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details*:** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs*:** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlrb.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election 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 cellular (''cell'') telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

> **Note:** ***Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.***

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

FORM NLRB-505
(12-20)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
03-RD-271639	January 22, 2021

INSTRUCTIONS: *Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.*
Note: *Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.*

1a. Full name of party filing Statement of Position	1c. Business Phone:	1e. Fax No.:
1b. Address *(Street and number, city, state, and ZIP code)*	1d. Cell No.:	1f. e-Mail Address

2. Do you agree that the NLRB has jurisdiction over the Employer in this case? [ ] Yes [ ] No
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate? [ ] Yes [ ] No *(If not, answer 3a and 3b)*

a. State the basis for your contention that the proposed unit is not appropriate. (*If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)*

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.

Added	Excluded

4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.

5. Is there a bar to conducting an elec ion in this case? [ ] Yes [ ] No *If yes, state the basis for your position.*

6. Describe all other issues you intend to raise at the pre-election hearing.

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at **www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.
(a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)
(b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be *added* to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be *excluded* from the proposed unit to make it an appropriate unit. (Attachment D)

8a. State your position with respect to the details of any election that may be conducted in this matter. Type: [ ] Manual [ ] Mail [ ] Mixed Manual/Mail

8b. Date(s)	8c. Time(s)	8d. Location(s)
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period [ ] Weekly [ ]Biweekly [ ] Other *(specify length)*

9. Representative who will accept service of all papers for purposes of the representation proceeding

9a. Full name and title of authorized representative	9b. Signature of authorized representative	9c. Date
9d. Address *(Street and number, city, state, and ZIP code)*		9e. e-Mail Address
9f. Business Phone No.:	9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U S C Section 151 et seq The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings The routine uses for the information are fully set forth in the Federal Register, 71 Fed 74942-43 (December 13, 2006) The NLRB will further explain these uses upon request Failure to supply the information requested by this form may preclude you from litigating issues under 102 66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court

FORM NLRB-5081
(3-11)

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER
	03-RD-271639

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

[ ] CORPORATION [ ] LLC [ ] LLP [ ] PARTNERSHIP [ ] SOLE PROPRIETORSHIP [ ] OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS *(Products handled or manufactured, or nature of services performed).*

7A. PRINCIPAL LOCATION:	7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:	B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT *(Check the appropriate box):* [ ] **CALENDAR** [ ] **12 MONTHS** or [ ] **FISCAL YEAR** *(FY DATES)*

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value. $_____		
B. If you answered no to 9A, did you **provide services** valued in excess of $50,000 to customers in your State who purchased goods valued in excess of $50,000 from directly outside your State? If no, indicate the value of any such services you provided. $_____		
C. If you answered no to 9A and 9B, did you **provide services** valued in excess of $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than $50,000, indicate amount. $_____		
D. Did you **sell goods** valued in excess of $50,000 directly to customers located outside your State? If less than $50,000, indicate amount. $_____		
E. If you answered no to 9D, did you **sell goods** valued in excess of $50,000 directly to customers located inside your State who purchased other goods valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
F. Did you **purchase and receive goods** valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
G. Did you **purchase and receive goods** valued in excess of $50,000 from enterprises who received the goods directly from points outside your State? If less than $50,000, indicate amount. $_____		
H. **Gross Revenues** from all sales or performance of services ***(Check the largest amount)*** [ ] $100,000 [ ] $250,000 [ ] $500,000 [ ] $1,000,000 or more If less than $100,000, indicate amount.		
I. **Did you begin operations within the last 12 months?** If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

[ ] YES [ ] NO *(If yes, name and address of association or group).*

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE *(Type or Print)*	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

FORM NLRB-506
(12-20)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
03-RD-271639	January 22, 2021

INSTRUCTIONS: *If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.*

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer	**An Intervenor/Union**

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone	1d. Cell No.	1e. Fax No.	1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative	Signature of Authorized Representative	Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

Download
NLRB
Mobile App

January 22, 2021

URGENT

cs2424@nau.edu

Courtney Susan Shelton
77 W Main St
Trumansburg, NY 14886

Re: Gimme Coffee, Inc.
Case 03-RD-271639

Dear Ms. Shelton:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest and the requirement that you complete and serve a Responsive Statement of Position form in response to each timely filed and served Statement(s) of Position; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner THOMAS A. MILLER whose telephone number is (716)398-7004. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Regional Attorney LINDA M. LESLIE whose telephone number is (716)398-7017. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Showing of Interest: If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM** on **Thursday, February 11, 2021 Via Zoom teleconference call**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by January 29, 2021 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Employer and the Union are required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Eastern Time** on February 3, 2021**.** The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Required Responsive Statement of Position (RSOP): In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of a Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing issues raised in any Statement(s) of Position. The petitioner must file a complete, signed RSOP in response to all other parties' timely filed and served Statement of Position, with all required attachments, with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time** on **February 8, 2021.** This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on the due date but after noon**

Eastern Time. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to Supply Information: Failure to supply the information requested by the RSOP form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Voter List: If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) The correct name of the Union as stated in its constitution or bylaws.

(b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

(d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site (www.nlrb.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance

for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

PAUL J. MURPHY
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)

Form NLRB-5492
(Rev: 12-2015)

National Labor Relations Board

NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that Courtney Susan Shelton has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 03-RD-271639 seeking an election to determine if the employees of Gimme Coffee, Inc. in the unit set forth below wish to be represented by Workers United Local 2833 for the purposes of collective bargaining:

Included: All full-time, part-time, and variable hour employees with the job title "Barista" including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg Excluded: Store managers, confidential employees, professional employees, and supervisors as defined in the National Labor Relations Act, and all other non-barista employees.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- **To self-organization**
- **To form, join, or assist labor organizations**
- **To bargain collectively through representatives of your own choosing**
- **To act together for the purposes of collective bargaining or other mutual aid or protection**
- **To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).**

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. NO FINAL DECISIONS HAVE BEEN MADE YET regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- **Threatening loss of jobs or benefits by an employer or a union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return**
- **Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a union or an employer to influence their votes**

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlrb.gov or contact the NLRB at (716)551-4931.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.

National Labor Relations Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

Gimme Coffee, Inc. **Employer** **and** **Courtney Susan Shelton** **Petitioner** **and** **Workers United Local 2833** **Union**	**Case 03-RD-271639**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Thursday, February 11, 2021** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located Via Zoom teleconference call, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Gimme Coffee, Inc. and Workers United Local 2833 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Eastern time on February 03, 2021**.** Following timely filing and service of a Statement of Position by Gimme Coffee, Inc. and Workers United Local 2833, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on February 08, 2021.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlrb.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents 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. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: January 22, 2021

/s/Paul J. Murphy

PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Gimme Coffee, Inc. **Employer** **and** **Courtney Susan Shelton** **Petitioner** **and** **Workers United Local 2833** **Union**	**Case 03-RD-271639**

AFFIDAVIT OF SERVICE OF: Petition dated January 22, 2021**, Notice of Representation Hearing dated** January 22, 2021**, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 22, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Ian Hayes, ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209
ihayes@cpjglaborlaw.com
Fax: (716)854-0004

Gary J. Bonadonna JR.
Rochester Regional Joint Board
750 East Ave
Rochester, NY 14607-2100

Workers United Local 2833
115 E State St.
Ithaca, NY 14850

PAUL E. WAGNER, ESQ.
Stokes Wagner
One Atlantic Center, Suite 2400
1201 West Peachtree Street NW
Atlanta, GA 30309
pwagner@stokeswagner.com
Fax: (607)257-6293

Colleen Anunu, CEO
Gimme Coffee, Inc.
3201 Krums Corners Rd. Ithaca, NY 14850
Ithaca, NY 14850
colleen.anunu@gimmecoffee.com

Courtney Susan Shelton
77 W Main St
Trumansburg, NY 14886
cs2424@nau.edu

January 22, 2021	Andrea Seyfried, Designated Agent of NLRB
Date	Name
	/s/ Andrea Seyfried
	Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DESCRIPTION OF REPRESENTATION CASE PROCEDURES IN CERTIFICATION AND DECERTIFICATION CASES

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlrb.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlrb.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

***Purpose of Hearing*:** The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

***Issues at Hearing*:** Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

***Preclusion*:** At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

***Conduct of Hearing*:** If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

***Official Record*:** An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

***Motions and Objections*:** All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

***Election Details*:** Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

***Oral Argument and Briefs*:** Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlrb.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election 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 cellular (''cell'') telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

> **Note:** ***Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.***

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

FORM NLRB-505
(12-20)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
03-RD-271639	January 22, 2021

INSTRUCTIONS: *Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.*
Note: *Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.*

1a. Full name of party filing Statement of Position	1c. Business Phone:	1e. Fax No.:
1b. Address *(Street and number, city, state, and ZIP code)*	1d. Cell No.:	1f. e-Mail Address

2. Do you agree that the NLRB has jurisdiction over the Employer in this case? [ ] Yes [ ] No
(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)

3. Do you agree that the proposed unit is appropriate? [ ] Yes [ ] No *(If not, answer 3a and 3b)*

a. State the basis for your contention that the proposed unit is not appropriate. (*If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)*

b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.

Added	Excluded

4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.

5. Is there a bar to conducting an elec ion in this case? [ ] Yes [ ] No *If yes, state the basis for your position.*

6. Describe all other issues you intend to raise at the pre-election hearing.

7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at **www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx**.
(a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B)
(b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be *added* to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be *excluded* from the proposed unit to make it an appropriate unit. (Attachment D)

8a. State your position with respect to the details of any election that may be conducted in this matter. Type: [ ] Manual [ ] Mail [ ] Mixed Manual/Mail

8b. Date(s)	8c. Time(s)	8d. Location(s)
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period [ ] Weekly [ ]Biweekly [ ] Other *(specify length)*

9. Representative who will accept service of all papers for purposes of the representation proceeding

9a. Full name and title of authorized representative	9b. Signature of authorized representative	9c. Date
9d. Address *(Street and number, city, state, and ZIP code)*		9e. e-Mail Address
9f. Business Phone No.:	9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U S C Section 151 et seq The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings The routine uses for the information are fully set forth in the Federal Register, 71 Fed 74942-43 (December 13, 2006) The NLRB will further explain these uses upon request Failure to supply the information requested by this form may preclude you from litigating issues under 102 66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court

FORM NLRB-5081
(3-11)

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER
	03-RD-271639

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

[ ] CORPORATION [ ] LLC [ ] LLP [ ] PARTNERSHIP [ ] SOLE PROPRIETORSHIP [ ] OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS *(Products handled or manufactured, or nature of services performed).*

7A. PRINCIPAL LOCATION:	7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:	B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT *(Check the appropriate box):* [ ] **CALENDAR** [ ] **12 MONTHS** or [ ] **FISCAL YEAR** *(FY DATES)*

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value. $_____		
B. If you answered no to 9A, did you **provide services** valued in excess of $50,000 to customers in your State who purchased goods valued in excess of $50,000 from directly outside your State? If no, indicate the value of any such services you provided. $_____		
C. If you answered no to 9A and 9B, did you **provide services** valued in excess of $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than $50,000, indicate amount. $_____		
D. Did you **sell goods** valued in excess of $50,000 directly to customers located outside your State? If less than $50,000, indicate amount. $_____		
E. If you answered no to 9D, did you **sell goods** valued in excess of $50,000 directly to customers located inside your State who purchased other goods valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
F. Did you **purchase and receive goods** valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $_____		
G. Did you **purchase and receive goods** valued in excess of $50,000 from enterprises who received the goods directly from points outside your State? If less than $50,000, indicate amount. $_____		
H. **Gross Revenues** from all sales or performance of services ***(Check the largest amount)*** [ ] $100,000 [ ] $250,000 [ ] $500,000 [ ] $1,000,000 or more If less than $100,000, indicate amount.		
I. **Did you begin operations within the last 12 months?** If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

[ ] YES [ ] NO *(If yes, name and address of association or group).*

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE *(Type or Print)*	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

FORM NLRB-506
(12-20)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
03-RD-271639	January 22, 2021

INSTRUCTIONS: *If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.*

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer	**An Intervenor/Union**

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone	1d. Cell No.	1e. Fax No.	1f. E-Mail Address

1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative	Signature of Authorized Representative	Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and 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.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

FORM NLRB-506
(12-20)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
03-RD-271639	January 22, 2021

INSTRUCTIONS: *If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.*

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1b. Address (Street and Number, City, State, and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

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Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

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Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

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Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

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Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

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Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

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Response to Statement of Position:

Full Name and Title of Authorized Representative	Signature of Authorized Representative	Date

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Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

STOKES WAGNER
ATTORNEYS AT LAW
ATLANTA • ITHACA • LOS ANGELES • PITTSBURGH • SAN DIEGO • SAN FRANCISCO

February 4, 2021

By E-Filing and E-Mail

Paul Murphy, Regional Director
National Labor Relations Board, Region 3
130 S. Elmwood Ave., Ste. 630
Buffalo, NY 14202-2465

Attn: Thomas Miller, Field Examiner

Re: ***Gimme Coffee, Case No. 03-CA-271639***

Dear Mr. Murphy:

This firm represents the Employer in the above-referenced case. I am writing to respectfully request that the hearing, currently set for February 11, 2021, be adjourned until either February 12 or February 17, 2021.

I am a Professor at Cornell University, and I am teaching two classes this Spring. Classes start on Monday, February 8, 2021. I am scheduled to teach every Tuesday and Thursday from 9:40 to 10:55 AM and again from 11:25 AM to 12:40 PM. The hearing as currently scheduled would interfere with those classes. It is for this reason that I am requesting an adjournment until the next day (or the following week depending on the schedules of the other parties).

I informed the Union's counsel and Petitioner of my intended request by e-mail yesterday and I have received no objection from either one. Thank you for your consideration.

Sincerely yours,
STOKES WAGNER, ALC.

/s/ Paul E. Wagner

Paul E. Wagner

903 Hanshaw Road • Ithaca, NY 14850
607.257.5165 • stokeswagner.com

Cc (by e-mail):

Petitioner Susie Shelton
Ian Hayes, Esq.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATED ELECTION AGREEMENT

Gimme Coffee, Inc. **Case 03-RD-271639**

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Gimme Coffee, Inc., a New York State corporation with its principal offices located at 3201 Krums Corners Rd., Ithaca, NY 14850, and facilities located at 430 N Cayuga St., Ithaca, NY 14850, 903 Hanshaw Rd., Ithaca, NY 14850, 5016 W. State St., Ithaca, NY 14850, 7 E. Main St., Trumansburg, NY 14886, Bill and Melinda Gates Hall, Campus Road, Cornell University, Ithaca, NY 14853, the sole facilities involved, is engaged in the retail sale of coffee, food and beverages. In the past 12 months, a representative period of time, the Employer derived gross revenue in excess of $500,000 and purchased and received at its Ithaca and Trumansburg, New York facilities, goods valued in excess of $5,000, which goods were shipped directly to the Employer's Ithaca and Trumansburg, New York facilities directly from points located outside the State of New York.

3. LABOR ORGANIZATION. Workers United Local 2833 is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 3, at **4:30 p.m.** on **Tuesday, February 23, 2021**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 3 office by close of business on **Tuesday, March 16, 2021**. The mail ballots will be counted by videoconference at the Region 3 office located at 130 S. Elmwood Ave. Ste 630, Buffalo, NY 14202-2465 at **2:00 p.m.** on **Wednesday, March 17, 2021**.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 03 office by no later than **5:00 p.m.** on **Tuesday, March 2, 2021** in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **Included:** All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by the Employer at its Ithaca and Trumansburg, New York facilities.

Initials: CSS

Excluded: Store managers, confidential employees, professional employees and supervisors as defined in the Act, and all other non-barista employees.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending January 31, 2021**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective-bargaining by Workers United Local 2833?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: Colleen Anunu.

Initials: CSS

CEO, Gimme! Coffee, 3201 Krums Corners Road, Ithaca, NY 14850; (607) 273-0111; colleen.anunu@gimmecoffee.com

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

Gimme Coffee, Inc.
(Employer)

By: _____
(Signature) (Date)

Print Name: _____

Courtney Susan Shelton
(Petitioner)

By: CSShelton 2/9/21
(Signature) (Date)

Print Name: Courtney Shelton

Workers United Local 2833
(Union)

By: _____
(Signature) (Date)

Print Name: _____

Recommended: _____
Thomas A. Miller, Field Examiner (Date)

Date approved: _____

_____
Regional Director, Region 3
National Labor Relations Board

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATED ELECTION AGREEMENT

Gimme Coffee, Inc. **Case 03-RD-271639**

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Gimme Coffee, Inc., a New York State corporation with its principal offices located at 3201 Krums Corners Rd., Ithaca, NY 14850, and facilities located at 430 N Cayuga St., Ithaca, NY 14850, 903 Hanshaw Rd., Ithaca, NY 14850, 5016 W. State St., Ithaca, NY 14850, 7 E. Main St., Trumansburg, NY 14886, Bill and Melinda Gates Hall, Campus Road, Cornell University, Ithaca, NY 14853, the sole facilities involved, is engaged in the retail sale of coffee, food and beverages. In the past 12 months, a representative period of time, the Employer derived gross revenue in excess of $500,000 and purchased and received at its Ithaca and Trumansburg, New York facilities, goods valued in excess of $5,000, which goods were shipped directly to the Employer's Ithaca and Trumansburg, New York facilities directly from points located outside the State of New York.

3. LABOR ORGANIZATION. Workers United Local 2833 is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 3, at **4:30 p.m.** on **Tuesday, February 23, 2021**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 3 office by close of business on **Tuesday, March 16, 2021**. The mail ballots will be counted by videoconference at the Region 3 office located at 130 S. Elmwood Ave. Ste 630, Buffalo, NY 14202-2465 at **2:00 p.m.** on **Wednesday, March 17, 2021**.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

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If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **Included:** All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by the Employer at its Ithaca and Trumansburg, New York facilities.

Initials: IH

Excluded: Store managers, confidential employees, professional employees and supervisors as defined in the Act, and all other non-barista employees.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending January 31, 2021**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

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9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: Colleen Anunu,

Initials: IH

CEO, Gimme! Coffee, 3201 Krums Corners Road, Ithaca, NY 14850; (607) 273-0111; colleen.anunu@gimmecoffee.com

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

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Gimme Coffee, Inc.
(Employer)

Courtney Susan Shelton
(Petitioner)

By: _____
(Signature) (Date)

By: _____
(Signature) (Date)

Print Name: _____

Print Name: _____

Workers United Local 2833
(Union)

By: Ian Hayes 2/9/21
(Signature) (Date)

Print Name: IAN HAYES, ATTORNEY

Recommended: _____
Thomas A. Miller, Field Examiner (Date)

Date approved: _____

_____
Regional Director, Region 3
National Labor Relations Board

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATED ELECTION AGREEMENT

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1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Gimme Coffee, Inc., a New York State corporation with its principal offices located at 3201 Krums Corners Rd., Ithaca, NY 14850, and facilities located at 430 N Cayuga St., Ithaca, NY 14850, 903 Hanshaw Rd., Ithaca, NY 14850, 5016 W. State St., Ithaca, NY 14850, 7 E. Main St., Trumansburg, NY 14886, Bill and Melinda Gates Hall, Campus Road, Cornell University, Ithaca, NY 14853, the sole facilities involved, is engaged in the retail sale of coffee, food and beverages. In the past 12 months, a representative period of time, the Employer derived gross revenue in excess of $500,000 and purchased and received at its Ithaca and Trumansburg, New York facilities, goods valued in excess of $5,000, which goods were shipped directly to the Employer's Ithaca and Trumansburg, New York facilities directly from points located outside the State of New York.

3. LABOR ORGANIZATION. Workers United Local 2833 is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 3, at **4:30 p.m.** on **Tuesday, February 23, 2021**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 3 office by close of business on **Tuesday, March 16, 2021**. The mail ballots will be counted by videoconference at the Region 3 office located at 130 S. Elmwood Ave. Ste 630, Buffalo, NY 14202-2465 at **2:00 p.m.** on **Wednesday, March 17, 2021**.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 03 office by no later than **5:00 p.m.** on **Tuesday, March 2, 2021** in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by the Employer at its Ithaca and Trumansburg, New York facilities.

Initials: _____

Excluded: Store managers, confidential employees, professional employees and supervisors as defined in the Act, and all other non-barista employees.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending January 31, 2021**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective-bargaining by Workers United Local 2833?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: Colleen Anunu,

Initials: _____

CEO, Gimme! Coffee, 3201 Krums Corners Road, Ithaca, NY 14850; (607) 273-0111; colleen.anunu@gimmecoffee.com

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

Gimme Coffee, Inc.	Courtney Susan Shelton
(Employer)	(Petitioner)
By: (Signature) 2/9/21 (Date)	By: (Signature) (Date)
Print Name: Colleen Anunu	Print Name:

Workers United Local 2833
(Union)

By: (Signature) (Date)

Print Name:

Recommended:
Thomas A. Miller, Field Examiner (Date)

Date approved:

Regional Director, Region 3
National Labor Relations Board

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:30 p.m. on Tuesday, February 23, 2021, ballots will be mailed to voters from the National Labor Relations Board, Region 03, 130 S Elmwood Ave Ste 630, Buffalo, NY 14202-2465. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Ballots are due in the Regional Office by close of business on Tuesday, March 16, 2021.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, March 2, 2021, should communicate immediately with the National Labor Relations Board by either calling the Region 03 Office at (716)551-4931 or our national toll-free line at 1-844- 762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the Region 03 Office on Wednesday, March 17, 2021 at 2:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 03 Office prior to the counting of the ballots.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Included: All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by the Employer at its Ithaca and Trumansburg, New York facilities **who were employed by the Employer during the payroll period ending January 31, 2021.**

EMPLOYEES NOT ELIGIBLE TO VOTE:

Excluded: Store managers, confidential employees, professional employees and supervisors as defined in the Act, and all other non-barista employees

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

UNITED STATES OF AMERICA

National Labor Relations Board

03-RD-271639

OFFICIAL SECRET BALLOT

For certain employees of

GIMME COFFEE, INC.

Do you wish to be represented for purposes of collective bargaining by

Workers United Local 2833?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES	NO
☐	☐

DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY.

If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- **Threatening loss of jobs or benefits by an Employer or a Union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (716)551-4931 or visit the NLRB website www.nlrb.gov for assistance.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

FORM NLRB-4175
(5-20)

United States of America
National Labor Relations Board

Instructions to Eligible Employees Voting By United States Mail

INSTRUCTIONS

1. MARK YOUR BALLOT IN SECRET BY PLACING AN X IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at:
   (716)551-4931

TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICE

BY **Tuesday, March 16, 2021**

RIGHTS OF EMPLOYEES

Under the National Labor Relations Act, employees have the right:

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for non representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both employers and unions to know what is expected of them when it holds an election.

If agents of either unions or employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. Where appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in the setting aside of the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes.

The National Labor Relations Board protects your right to a free choice

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.

NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT

FORM NLRB-760
(7-10)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Gimme Coffee, Inc.
Employer

and

Courtney Susan Shelton
Petitioner

and

Workers United Local 2833
Union

Case No. 03-RD-271639

Date Filed 1/22/21

Date Issued 3/17/2022

City Buffalo

State New York

Type of Election:
(Check one:)

☒ Stipulation
☐ Board Direction
☐ Consent Agreement
☐ RD Direction Incumbent Union (Code)

(If applicable check either or both:)

☐ 8(b) (7)
☒ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 31
2. Number of Void ballots 0
3. Number of Votes cast for Workers United Local 2833 — 4
4. Number of Votes cast for
5. Number of Votes cast for
6. Number of Votes cast against participating labor organization(s) — 7
7. Number of Valid votes counted (sum 3, 4, 5, and 6) — 11
8. Number of challenged ballots — 10
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) — 21
10. Challenges ***are*** sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Gimme Coffee, Inc.
Paul E. Wagner Esq. participated by video conference due to pandemic.

For Courtney Susan Shelton
Did not participate

For Workers United Local 2833
Ian Hayes Esq. participated by video conference due to pandemic.

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

In the Matter of:

GIMME COFFEE, INC.

Employer,

-and- Case No. 03-RD-271639

COURTNEY SUSAN SHELTON,

Petitioner,

-and-

WORKERS UNITED LOCAL 2833,

Union.

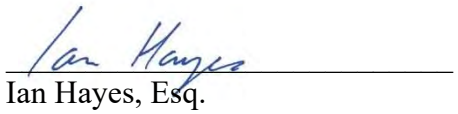
OBJECTION

Workers United Local 2833 (herein "Union") hereby files the following Objection to conduct in the above-captioned decertification election held by mail ballot and tallied on March 17, 2021:

On or around November 30, 2020 and/or thereafter, following an unsuccessful decertification filed by Petitioner Courtney Susan Shelton, Gimme Coffee, Inc. (hereinafter "Employer") terminated the recall rights of fourteen (14) employees who were on temporary layoff and who had placed themselves on a waitlist to be recalled to work, pursuant to the parties' collective bargaining agreement and an agreement between the parties entitled Effects Bargaining and COVID-19 Agreement, and the Memorandum of Agreement August 27, 2020. In terminating the waitlisted employees' recall rights, the Employer attempted to prevent employees on the waitlist from being able to vote in the decertification election, knowing that the majority of employees on the waitlist were supporters of the Union. By these same actions, the employer knowingly and deliberately fostered division between employees who had already been recalled to work, and employees who were on the waitlist, the majority of whom were Union supporters. Furthermore, the Employer's actions further

entrenched the impression that being on the waitlist meant supporting the Union, and discouraged actively working employees from voting for the Union in the instant election.

Dated: Buffalo, New York
March 23, 2021



Ian Hayes, Esq.
Creighton, Johnsen & Giroux
Attorneys for the Petitioner
1103 Delaware Ave.
Buffalo, NY 14209
716-854-0007
ihayes@cpjglaborlaw.com

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

In the Matter of:

GIMME COFFEE, INC.

Employer,

-and- Case No. 03-RD-271639

COURTNEY SUSAN SHELTON,

Petitioner,

-and-

WORKERS UNITED LOCAL 2833,

Union.

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2021 a copy of the Objection to the election in the above-referenced matter, was served on the Petitioner and Employer by e-mail to the email address of Petitioner and Paul Wagner, attorney for the Employer.

Ian Hayes, Esq.

March 23, 2021

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME COFFEE, INC.

Employer

and **Case 03-RD-271639**

COURTNEY SUSAN SHELTON

Petitioner

and

WORKERS UNITED LOCAL 2833

Union

DECISION OVERRULING OBJECTION AND ORDER DIRECTING HEARING AND NOTICE OF HEARING ON CHALLENGED BALLOTS

Based on a petition filed on January 22, 2021[1] and pursuant to a Stipulated Election Agreement, an election was conducted on February 23, 2021 to determine whether a unit of employees of Gimme Coffee, Inc. (the Employer) wish to be represented for purposes of collective bargaining by Workers United Local 2833. That voting unit consists of:

> All full-time, part-time, and variable hour employees with the job title "Barista" including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg, excluding Store managers, confidential employees, professional employees, and supervisors as defined in the National Labor Relations Act, and all other non-barista employees.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 31 eligible voters, four votes were cast for and seven votes were cast against the Union, with 10 challenged ballots, a number that is sufficient to affect the results of the election.

THE CHALLENGED BALLOTS

The names of the challenged voters, the stated reason for each challenge, and the party or person who made the challenge are as follows:

NAME	CHALLENGED BY	REASON
Jenna Burger	Employer	Not employed/no reasonable expectation of recall
Brittany Cunha	Employer	Not employed/no reasonable expectation of recall

[1] All dates are in 2021 unless otherwise indicated.

NAME	CHALLENGED BY	REASON
Rachel Eginton	Employer	Not employed/no reasonable expectation of recall
Bart Feberwee	Employer	Not employed/no reasonable expectation of recall
Rebecca Lespier	Employer	Not employed/no reasonable expectation of recall
Brenden Lukosavich	Employer	Not employed/no reasonable expectation of recall
Ava Mailloux	Employer	Not employed/no reasonable expectation of recall
Samantha Mason	Employer	Not employed/no reasonable expectation of recall
Jesse Sanchez	Employer	Not employed/no reasonable expectation of recall
Ashley Yajko	Employer	Not employed/no reasonable expectation of recall

THE OBJECTION

On March 23, the Union timely filed one objection to conduct affecting the results of the election. The Union's objection states as follows:

> On or around November 30, 2020 and/or thereafter, following an unsuccessful decertification filed by Petitioner Courtney Susan Shelton, Gimme Coffee, Inc. (hereinafter "Employer") terminated the recall rights of fourteen (14) employees who were on temporary layoff and who had placed themselves on a waitlist to be recalled to work, pursuant to the parties' collective bargaining agreement and an agreement between the parties entitled Effects Bargaining and COVID-19 Agreement, and the Memorandum of Agreement August 27, 2020. In terminating the waitlisted employees' recall rights, the Employer attempted to prevent employees on the waitlist from being able to vote in the decertification election, knowing that the majority of employees on the waitlist were supporters of the Union. By these same actions, the employer knowingly and deliberately fostered division between employees who had already been recalled to work, and employees who were on the waitlist, the majority of whom were Union supporters. Furthermore, the Employer's actions further entrenched the impression that being on the waitlist meant supporting the Union, and discouraged actively working employees from voting for the Union in the instant election.

CONCLUSION AND ORDER

I have concluded that the evidence described in the offer of proof submitted by the Union in support of its objections cannot be grounds for overturning the election if introduced at a hearing. It is well established that "only conduct occurring after the petition's filing date may be the subject of an objection." *Flamingo Las Vegas Operating Co., LLC*, 360 NLRB 243, 246 (2014), citing *Ideal Electric & Mfg. Co.*, 134 NLRB 1275, 1278 (1961). The Board will only consider prepetition conduct "insofar as it lends meaning and dimension to related postpetition conduct." *Parke Coal Co.*, 219 NLRB 546, 547 (1975). In the instant case, the Union's objection relates solely to events occurring prior to the filing of the petition in the instant case. As such, I am overruling the Union's objection.

However, I have concluded that the challenged ballots raise substantial and material issues of fact that can best be resolved by hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised with respect to the challenges and objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the challenges and objections.

NOTICE OF HEARING

Starting at **10:00 a.m. on September 2, 2021**, via videoconference hearing, the hearing on challenges and objections as described above will be conducted before a hearing officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated: August 6, 2021.

/s/ Linda M. Leslie

LINDA M. LESLIE
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME COFFEE, INC.

Employer

and **Case 03-RD-271639**

COURTNEY SUSAN SHELTON

Petitioner

and

WORKERS UNITED LOCAL 2833

Union

DECISION OVERRULING OBJECTION AND ORDER DIRECTING HEARING AND NOTICE OF HEARING ON CHALLENGED BALLOTS

AFFIDAVIT OF SERVICE OF: Decision Overruling Objection and Order Directing Hearing, dated August 6, 2021.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 6, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Ian Hayes, ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209
ihayes@cpjglaborlaw.com
Fax: (716)854-0004

Gary J. Bonadonna JR.
Rochester Regional Joint Board
750 East Ave
Rochester, NY 14607-2100

Workers United Local 2833
115 E State St.
Ithaca, NY 14850

Paul E. Wagner, ESQ.
Stokes Wagner
903 Hanshaw Rd Ste 1
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Date: August 6, 2021

Vallana M. Harris
Designated Agent of NLRB
Name

/s/ Vallana M. Harris
Signature

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

Gimme Coffee, Inc., Case No. 03-RD-271639

Employer,

and

Courtney Susan Shelton,

Petitioner,

and

Workers United Local 2833,

Union.

Place: Buffalo, New York (Via Zoom Videoconference)

Dates: September 2, 2021

Pages: 1 through 175

Volume: 1

OFFICIAL REPORTERS
eScribers, LLC
E-Reporting and E-Transcription
7227 North 16th Street, Suite 207
Phoenix, AZ 85020
(602) 263-0885

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of: GIMME COFFEE, INC., Employer, and COURTNEY SUSAN SHELTON, Petitioner, and WORKERS UNITED LOCAL 2833, Union.	Case No. 03-RD-271639

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **NEALE K. SUTCLIFF**, Hearing Officer, before the National Labor Relations Board, Region 3, at the 130 South Elmwood Avenue, Suite 630, Buffalo, New York 14202-2465, on **Thursday, September 2, 2021, 10:29 a.m.**

1 **A P P E A R A N C E S**

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Claire Christensen	20,66 69	93	111		65,68
Mathew Roth	114	119	121		
Maggie Lapinski	126,141	153	163	164	140
Molly "Jaime" Baird	167	169	172	173	

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2

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1 **E X H I B I T S C O N T I N U E D**

2

3 **Union:**

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5 U-2	149	153
6 U-4	143	Not Admitted
7 U-10	104	105
8 U-11	109	110
9 U-12	135	138
10 U-13	106	113
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1 **P R O C E E D I N G S**

2 HEARING OFFICER SUTCLIFF: Okay. On the record. The
3 hearing will be in order. This is a formal hearing in the
4 matter of Gimme! Coffee, Inc., case 03-RD-271639 before the
5 National Labor Relations Board, pursuant to the order of the
6 acting Regional Director, dated August 6th, 2021. The hearing
7 officer conducting this hearing is Neale K. Sutcliff. This
8 hearing is being conducted by videoconference using the Zoom
9 for Government platform.
10 I wish to inform all parties that the official reporter
11 makes the only official transcript of these proceedings, and
12 all citations and briefs and arguments must refer to the
13 official record. I wish to stress the fact that all matter
14 that is spoken in the virtual hearing room is recorded by the
15 official reporter while the hearing is in session. In the
16 event that any of the parties wish to make off-the-record
17 remarks, requests to make such remarks should be directed to
18 the hearing officer and not to the official reporter. Only the
19 court reporting service is permitted to record the hearing.
20 Parties should be prepared to state reasons in support of
21 any motion or objection in as concise a manner as possible.
22 Exceptions automatically follow adverse rulings. Objections
23 and exceptions may, on appropriate requests, be permitted to an
24 entire line of questioning. It appears, from the Acting
25 Regional Director's order, dated August 6th, 2021, that this

hearing is held for the purpose of taking evidence concerning the challenged ballots of Jenna Burger, Britney Cunha, Rachel Egin -- Eginton, Bart Feberwee, Rebecca Lespierre, Brenden Lukosovich, Eva Mailloux, Samantha Mason, Jesse Sanchez and Ash -- Ashley Yajko. Sorry if I did not pronounce those names correctly, the spelling of these names will be included in a Board exhibit which will be entered into the record shortly, and that's for the benefit of our court reporter.

In due course, the hearing officer will prepare and file with the acting Regional Director her report and recommendations in this proceeding and will cause a copy, thereof, to be served on each of the parties. The procedure to be followed from that point forward is set in section 102.69 of the Rules and Regulations.

Will the parties please state their appearances for the record? And I'd like them to state whether they are alone in their respective location or if there are others present who are listening off camera.

For the Employer.

MR. WAGNER: Paul Wagner. Attorney for the Employer. My law firm is Stokes Wagner. With me in the room are the two comanaging directors of Gimme!, Claire Christensen and Colleen Anunu, whom you see on your video screen to my left and right. Off the camera is Lynn Ingel who is a paralegal in my firm, will not be a witness and is here to assist with the exhibits

and witnesses.

HEARING OFFICER SUTCLIFF: Okay. And for --

THE COURT REPORTER: Could I just ask --

HEARING OFFICER SUTCLIFF: -- the Union?

I'm sorry, what?

THE COURT REPORTER: No. Mr. Wagner, are you using an overhead microphone, or is that --

MR. WAGNER: I am.

THE COURT REPORTER: -- you sound like you're far away.

MR. WAGNER: Yeah. We're -- we're actually just using the speaker on the laptop and then on the big screen, which is why we needed it for the wide angle. Can you not hear me well?

THE COURT REPORTER: Yeah. You're like all the -- you sound far away. I -- I can hear you. It's just sounds really far. I -- I kind of figured that's what was going on, but.

MR. WAGNER: Let me try to turn the up volume on the laptop, and maybe that'll pick it up a bit better.

We could -- we could go on -- we could call in to a phone here and then -- and then silence the screen; would that be better?

HEARING OFFICER SUTCLIFF: Let's go off the record.

(Off the record at 10:33 a.m.)

HEARING OFFICER SUTCLIFF: Okay. We're back on the record. We just had some off-the-record technical stuff to make sure that we could hear the Employer better. So we were

entering appearance's. The Employer has done so.

For the Union, who is your appearance, please?

MR. HAYES: Ian Hayes; Creighton, Johnson, & Grioux. And I -- for the Union, I'm alone in this room.

HEARING OFFICER SUTCLIFF: Okay. I think you cut out at first, Ian. Can you say your -- your name again, please, Mr. Hayes?

MR. HAYES: Sure. Sorry. Let me know if that happens again. My name is Ian Hayes; Creighton, Johnson, Giroux for the Union, and I'm alone in this room.

HEARING OFFICER SUTCLIFF: Okay.

For the Petitioner?

Let the record reflect that the Petitioner, Courtney Susan Shelton, is not present for this proceeding.

Are there any other appearances?

MS. WOLKOFF: And I am, Hearing Officer, yes. I am, first of all, alone in the room. And I am here as a representative for the Regional Director to see that the evidence of this investigation is made available to you. In this function, I may ask some questions and, if necessary, call witnesses. I'm not here to advocate on behalf of any party to this proceeding. My services are equally available to you and to the parties.

I would note, however, that I am appearing today in a limited capacity as the keeper of affidavits. I may not be present for the entire hearing and do not plan to call or

cross-examine witnesses. I may, however, briefly question a witness, as necessary, if there is an issue regarding their affidavit. As a result, I ask Madam Hearing Officer to notify me if and when I am needed.

HEARING OFFICER SUTCLIFF: Okay. And I don't -- I don't recall; did you state your name for us?

MS. WOLKOFF: Oh, I'm sorry. Caroline Wolkoff, counsel for the Regional Director.

HEARING OFFICER SUTCLIFF: Okay, thank you, Ms. Wolkoff.

Are there any other appearances? Let the record show no further response.

During off-the-record conversations, the Employer and the Union indicated that they agree that at all material times Brittany Cunha did not possess a reasonable expectation of recall and is, therefore, not an eligible party -- pardon me -- is not an eligible voter.

Do the parties so stipulate?

MR. WAGNER: For the Employer, yes.

MR. HAYES: For the Union, yes,

HEARING OFFICER SUTCLIFF: Thank you. That stipulation is received.

Mr. Wagner, what is the Employer's position on the remaining challenges?

MR. WAGNER: The Employer's position is the Employer continues to challenge the remaining, I believe, nine

1 challenged ballots as not having a reasonable expectation of
2 rehire. All nine were not employed on the payroll period
3 ending date for the -- for the election, nor did they have a
4 reasonable expectation of being rehired under the
5 circumstances.
6 HEARING OFFICER SUTCLIFF: Okay.
7 Mr. Hayes, what is the Union's position on the remaining
8 challenges?
9 MR. HAYES: The Union's position on the remaining nine
10 challenge ballots is that all of them had a reasonable
11 expectation of being recalled to the company, as that term is
12 used by the Board, during the relevant time period. That --
13 those nine challenge ballots are not including Brittany Cunha,
14 as we just noted on the record, because Brittany had placed
15 herself on the list of workers who were not returning to
16 Gimme!, unlike the -- the nine employees who -- whose ballots
17 are being challenged.
18 There are two primary reasons the Union takes this
19 position. I'd like to briefly outline that.
20 HEARING OFFICER SUTCLIFF: Sure.
21 MR. HAYES: First, the Union and the Employer negotiated a
22 memorandum of agreement regarding the effo -- the effects of
23 COVID layoffs that had happened around the same time. All
24 COVID layoffs happened in March of 2020. In the months after
25 that, leading up to the end of August of 2020, the Union and

1 the company negotiated the MOA, which they call the effects
2 MOA, in which I will just refer to as the MOA throughout this
3 hearing.
4 In it, the parties created three lists: an active recall
5 list, a wait list, and a not returning to Gimme! me list. The
6 active recall list consisted of people who were willing to come
7 back to the company immediately as of the time the MOA was
8 finalized in August of 2020. The people on that list are not
9 at issue in this case.
10 In addition to that, the MOA created a system where when
11 there would be further reopening of stores, which the MOA calls
12 a phase, everyone on the wait list, the second list, would be
13 offered a chance to come back and work at Gimme!. And again,
14 the nine challenge ballots were people in this category. The
15 third list, which is literally called not returning to Gimme!,
16 consisted of anyone who didn't want to come back to work ever.
17 At least, three people put themselves on that list. The
18 language of the MOA as well as the actual distinction between
19 the wait list and the not returning to Gimme! list made it
20 clear that the wait list people expected to come back to
21 Gimme!, and that expectation was reasonable, as the facts will
22 show.
23 Critically, the MOA did not put an expiration on these
24 recall rights as long as the broader reopening process was
25 still ongoing. In other words, as Gimme! was recovering from

1 COVID and -- and slowly reopening its stores. And that
2 process, there's no dispute, I believe, cover the entire time
3 period that's in question here, which ends at the end of
4 January of 2021. The company was still reopening from COVID
5 then. Therefore, under the MOA, the nine people who are being
6 challenged still had recall rights under the MOA. As a result
7 of that, everyone had a reasonable expectation that they would
8 be coming back to work.
9 Second, there were communications by the company to the
10 workforce and the Union, about two of the stores that were
11 closed, the Cayuga and Gates stores reopening, which further
12 solidified a reasonable expectation that the people on the wait
13 list would have a chance to come back to work imminently. At a
14 bargaining session in December of 2020, members of management
15 clearly made comments and predictions about this, as you'll
16 hear from the Union's witnesses. And then indeed, the company
17 followed up on that prediction by announcing at the end of
18 January that the Gates store would be reopening in early
19 February, like a week and a half after the announcement. So
20 that further solidified that expectation being reasonable.
21 Either of those two reasons I just named would
22 independently create a reasonable expectation of recall for
23 people on the wait list, which includes the nine people whose
24 ballots are being challenged. And together, those two reasons
25 create no doubt on -- on the question. And because of that,

the company cannot meet its burden of showing that there was no reasonable expectation of recall for these nine people at issue. As a result, the Union requests that the nine challenge ballots be opened and counted. Thank you.

HEARING OFFICER SUTCLIFF: Okay.

Mr. Wagner, would you like to provide essentially what was an opening statement? I'll give you opportunity since Mr. Hayes did that.

MR. WAGNER: I'll -- I'll reserve.

HEARING OFFICER SUTCLIFF: Okay. Thank you.

So I just want to identify that Mr. Wagner, as the Employer, is seeking to challenge these voters' eligibility. The Employer bears the burden of proving these voters are ineligible. The Employer must provide specific, detailed evidence in support of your position. General conclusionary statements by witnesses will not be sufficient.

The parties are asked to speak loudly and clearly. The parties will be asked to spell the names of persons and places upon their first mention for the convenience of the court reporter and accuracy of the record. The parties are encouraged to attend this hearing in a space that is free from distracting background noises.

I request that all persons set the angle of their camera, so that I can see their wrists and hands. When you're not speaking on the call, please keep your microphone muted to cut

down on distractions. This request does not apply to the witness who is testifying or to legal representatives who may keep their microphones on to make objection.

In the event there are witnesses who will be testifying, the witnesses are reminded to wait two to three seconds before responding to questions to allow for the potential for an objection. This is really important, especially through the Zoom proceeding. You can't necessarily see the people in the room. So please make a -- make a point to -- to reserve speaking right away, to ensure that there's time in case there's an objection.

In the event an objection is raised, witnesses should not respond to the question until a ruling is made on the objection. Parties are reminded that there should be no communication or coaching of witnesses, while testimony is ongoing. Witnesses should not have any extraneous documents or other notes present with them while they are testifying.

We have been encouraging the parties to circulate exhibits by email, and that has occurred. Any party who will be reviewing exhibits should be accessing them through the high speed internet connection or a wired connection. Parties are encouraged to keep exhibits open on their screen once the exhibit has been introduced, so that time is not wasted reopening exhibits if an exhibit is referenced later. After the exhibit is circulated, all parties who are listed as email

1 recipients confirm that they have received the exhibit before
2 the hearing may continue. It's my understanding everybody has
3 received all of the exhibits, so we're good there.
4 Are there any motions to be made by any party that need to
5 be addressed at this time?
6 MR. WAGNER: Yes, Madam Hearing Officer, for the Employer.
7 Per our off-the-record conversation, we move for a
8 sequestration -- a modified sequestration order for the
9 witnesses in this case, that each party with the exception of
10 two representatives of the party's choosing shall be -- all
11 other witnesses sequestered until the time of their testimony.
12 HEARING OFFICER SUTCLIFF: Okay. I will grant that motion
13 for sequestration. Having granted the request, this means that
14 all persons who are going to testify in this proceeding, with
15 specific exceptions, may only be present in the virtual hearing
16 room when they are giving testimony. The parties have agreed
17 to allow two people to remain in the virtual hearing room to
18 assist it in the presentation of its case. They may remain in
19 the hearing room even if they are going to testify or have
20 testified.
21 The order also means that from this point on, until the
22 hearing is finally closed, no witness may discuss with other
23 potential witnesses either the testimony that they have given
24 or that they intend to give. The best way to avoid any
25 problems is simply not to discuss the case with any other

potential witness until after the hearing is completed.

Under the rule as applied by the board, with one exception, counsel for a party may not in any manner, including by showing of transcripts the -- of testimony, inform a witness about the content of testimony given by a preceding witness without express permission of the hearing officer. However, counsel for a party may inform counsel's own witness of the content of testimony and may show to a witness a transcript of testimony given by a witness for the opposing side in order to prepare for rebuttal of such testimony.

I expect counsel to police the seweshor -- sequestration order and to bring any violation of it to my attention immediately. Also it is the obligation of counsel to inform potential witnesses of their obligations under this order. It is also recommended that as witnesses leave the witness stand upon completion of their testimony they be reminded that they are not to discuss their testimony with any other witness until the hearing is completed.

I now propose to receive the formal papers. They have been marked for identification as Board's Exhibit 1(a) through 1(c), inclusive, with 1(c) being an index and description of the entire exhibit. The exhibit has already been shown to the parties.

Are there any objections to the receipt of this exhibit into the record?

MR. HAYES: No objection.

MR. WAGNER: No objection from the Employer.

HEARING OFFICER SUTCLIFF: Hearing, no objections, the formal papers are received in evidence.

(Board Exhibit Number 1(a) through 1(c) Received into Evidence)

HEARING OFFICER SUTCLIFF: I now propose to receive the conformed stipulated election agreement in this case. It has been marked for identification as Board Exhibit 2.

Are there any objections to the receipt of Board Exhibit 2?

MR. HAYES: No objection.

MR. WAGNER: No objection from Employer.

HEARING OFFICER SUTCLIFF: Thank you.

Hearing no objection, Board Exhibit 2 is received in evidence.

(Board Exhibit Number 2 Received into Evidence)

HEARING OFFICER SUTCLIFF: I now propose to receive the tally of ballots for this case. It has been marked for identification as Board Exhibit 3.

Are there any objections to the receipt of Board Exhibit 3?

MR. HAYES: No objection.

MR. WAGNER: No objection from Employer.

HEARING OFFICER SUTCLIFF: Hearing no objection, Board Exhibit 3 is received in evidence.

(Board Exhibit Number 3 Received into Evidence)

HEARING OFFICER SUTCLIFF: The parties have been advised that the hearing will continue from day-to-day as necessary, until completed, unless I conclude that extraordinary circumstances warrant otherwise. I'm also advising the parties that they will have the right to file post-hearing briefs. In addition, a party can offer into evidence a brief, memo of points and authorities, case citations, or other legal arguments during the course of the hearing and before the hearing closes.

At this point, we're ready to begin with testimony. So it is my understanding that the individuals who will need to leave the virtual hearing room in order to comply with the sequestration order are Jamie Baird and Jazz Brizak (phonetic throughout). So I would ask you individuals, I can either send you to the hearing room or we can just have you exit the premises just to ensure that you're not in the hearing room. How would you like that handled?

MR. HAYES: I think they're both just going to sign off for now.

HEARING OFFICER SUTCLIFF: Okay, very good.

Then we'll have you go ahead and sign off and confirm that before we begin with testimony.

Okay. Ms. Wolkoff, you are free to leave the premises if you believe that -- that you need to do so. Okay?

MS. WOLKOFF: Thanks, Madam Hearing Officer.

HEARING OFFICER SUTCLIFF: Thank you.

Everybody else, if you're here to witness, then that's fine.

So Mr. Wagner, please present your first witness.

MR. WAGNER: Thank you, Madam Hearing Officer. The Employer calls as its first witness Claire Christensen.

HEARING OFFICER SUTCLIFF: Okay.

Ms. Christiansen, can you please raise your right hand?

Whereupon,

CLAIRE CHRISTENSEN

having been duly sworn, was called as a witness herein and was examined and testified as follows:

HEARING OFFICER SUTCLIFF: Okay. Please state your name and spell it for the record and speak clearly, please.

THE WITNESS: Claire Christensen, C-L-A-I-R-E C-H-R-I-S-T-E-N-S-E-N.

HEARING OFFICER SUTCLIFF: Okay.

Mr. Wagner, go ahead.

MR. WAGNER: Thank you, Madam Hearing officer.

DIRECT EXAMINATION

Q BY MR. WAGNER: Ms. Christensen, could you please just give us a quick background of your experience with Gimme! Coffee?

A Yes. I started at Gimme! Coffee in April of 2014 as an

admin assistant. And then I was promoted through a series of different roles, to COO which I began in September of 2019, and then comanaging head of operations, which is my current role as of January this year.

Q And between admin assistant and COO, what other positions did you hold?

A Purchasing and AR specialist, and financial operations manager.

Q Thank you. I want you to just describe generally for the hearing officer the physical locations and general business operations of Gimme! Coffee prior to the COVID-19 closure that occurred in the spring of 2020.

A Gimme! Coffee had seven cafes total prior to the COVID closures, two in the New York City area and five in the Ithaca area. We also have a separate grocery bakery facility. The five locations in the Ithaca area include Cayuga, C-A-Y-U-G-A, MLK Street, Martin Luther King Jr. Street. Those are our two downtown locations and they're a little less than three-quarters of a mile apart. We have a location out in Trumansburg, about 25 minutes outside of town, a sort of small town location; a location in Community Corner, which we call Coco C-O-C-O, which is up the hill by the university; and we have one location in Gates Hall which is a university building. It's a kiosk within Cornell University's CIS building.

Q And two locations in New York City?

A That's right. Two locations in New York City, one in Nolita and one in Brooklyn.

Q And is it fair to say that all of the locations prior to COVID closure were -- were a dine-in coffee shop with food service?

A Yes. Our location Gates Hall location is somewhat complex for that because it is a kiosk. So we just had a small location, but the university had a lot of seating in the lobby, and upstairs as well.

Q Okay. So with the exception of the Gates Hall at Cornell University, were the other four Ithaca locations dine in, sit-downs, counter sits?

A Yes, that's correct.

Q Okay. And how were -- and focusing just on the baristas, what was the -- the ratio of full-time to part-time barista's prior to the COVID closure?

A We had about 66 percent of baristas were part time, which we defined as under 30 hours a week, and about 33 percent of baristas were full time, over 30 hours a week.

Q Okay. And -- and do -- do you know as you sit here today, approximately, what the full-time equivalent barista positions were at the five Ithaca stores prior to COVID?

A Yes. It was just under 20 FTEs. It's about 19.9.

Q And how many total baristas, if you include the human beings that worked in the same position?

A 32 active baristas.
Q At the time of the COVID closure?
A At the time of the COVID closure.
Q Okay. Thank you. Tell us, if you would, the -- that management analysis or thought process once the COVID pandemic hit, before you closed, what were the considerations that were -- were made and discussed?
A Before we close down for COVID, we've been keeping up with a bunch of information about the COVID pandemic, especially flatten the curve and other websites that were talking about ways to reduce the effect of the pandemic locally. And Colleen and I had a conversation that basically was agreeing that if we -- we -- the only way we could operate under COVID was if we were confident that our employees would be protected and wouldn't have transmission between employees, and if we were also confident that we would not have transmission to the public.
Q And what did you conclude that caused you to then close all the stores in March of 2020?
A We closed all of the cafes in March of 2025 -- March 25th of 2020, because we -- we've been having daily updates with baristas. We've been talking about the current operation. We tried a bunch of different door-service things, and we just realized that we could not continue to operate the way we were operating in a safe way. So we decided to close the entire

retail business, which we did downstate in -- in our New York City cafes first and then a week or two later up in Ithaca.

Q And focusing on the barista position, did you -- did you make the decision as to whether those baristas would be temporary furloughed -- temporarily furloughed or permanently have their employment terminated?

A We did. We talked about it together and also with our HR consultant about the various options. And we decided to terminate everyone because we were legitimately not sure about the future of the business. And we wanted it to be very clear to everyone the situation that we were in. And that it wasn't a situation where we could say, we're going to furlough you and we're going to come back in -- in four weeks for sure, or anything like that. We felt pretty -- pretty unsure about the future at the end of March. And at that point, we basically had to have a conversation that said we have a week or two in which we can figure out if we can keep this business operable, going forward. We went -- everyone who remained went down to the Tompkins County living wage and tried to -- to make something that we could actually, you know, have a functioning business left.

Q And was the decision ultimately made then to permanently terminate the employment of the baristas and other employees?

A Yes. We permanently terminated all of the baristas as well as some other employee.

1 Q Turning you attention to the notebook in front of you,
2 which is --
3 MR. WAGNER: For the record, Madam Hearing Officer,
4 Employer's exhibits that are in a binder marked with an
5 indexing tab. We provided electronic copies to Mr. Hayes as
6 well as you, Madam Hearing Officer.
7 Q BY MR. WAGNER: And I'd like to turn your attention to
8 Employer's Exhibit 3 that is marked. What are -- what are --
9 what is this stack of documents, Employer 3?
10 A The Employer 3 stack of documents is the termination
11 letters that Janet Levine, our director of administration
12 prepared and sent out to all Upstate baristas.
13 Q Okay. And in these -- and did this include all of the
14 baristas that were then employed by Gimme!?
15 A It includes all the baristas in the Ithaca area that were
16 then employed by Gimme!.
17 Q So not including the New York City cafes?
18 A Correct. They were -- they received their termination
19 letters a couple of weeks earlier.
20 Q And if I could just run through the -- the top letter of
21 Employer's Exhibit 3 -- by the way, is this a form letter
22 that's identical for everyone except their name and address?
23 A Yes, it's a form letter.
24 Q Okay. Is -- the first bullet point mentions the final
25 paycheck. The second bullet point mentions COBRA notice --

1 was -- was employee's ability to elect COBRA also a motivator
2 in -- in terminating their employment?
3 A Yes. We wanted to have the COBRA option and we also
4 wanted to give people their PTO that was the remaining.
5 Q And that's the fourth bullet point?
6 A That is the fourth bullet point.
7 Q Okay. And how were these termination notices delivered?
8 A Janet Levine, I think, emailed them to everyone.
9 Q Okay.
10 MR. WAGNER: We would offer Employer 3.
11 HEARING OFFICER SUTCLIFF: Any objection?
12 MR. HAYES: No objection.
13 HEARING OFFICER SUTCLIFF: Okay. Employer's 3 is received
14 into the record.
15 **(Employer Exhibit Number 3 received into evidence)**
16 MR. WAGNER: Thank you.
17 Q BY MR. WAGNER: So on -- this -- this is March 30th, the
18 date of the letters in Employer 3, but the decision to close
19 was made slightly earlier, correct?
20 A Correct. It was made on March 26th.
21 Q Okay. And based on your prior testimony, is it fair to
22 say that a total closure of all Gimme! cafes was a serious
23 consideration at that time?
24 A Absolutely.
25 Q Did there come a time when you as comanaging director and

other management at Gimme! started to look at the possibility of a limited-partial reopening?

A Yes. In early April, we were looking at a delivery and online-order-only program, which we were piloting.

Q Okay. And after doing that pilot, was there further consideration given to actually a limited opening of the cafes with live baristas at the cafes?

A There was -- we had -- we were very confident in our model as we continue through the pilot phase in terms of how it was working. So by the summer, we had decided to open or to try to open two other cafes on the same model, which was a door-service model. And the interior of the cafe was a very different space than it had been before COVID. So we were working on a team system at the time where everyone had a pod of people that they saw to reduce exposure and we were also, as I said, operating entirely door service. So we sort of flipped the insides of our cafes around and had very different roles.

Q And we you say entirely door service, can you describe that physically for the hearing officer?

A Yes. So we were very concerned about customers coming inside the cafes. And so we had blocked off the doors with tables at that time. And we put in online-only orders. So you -- you could not order at the door at that point. So people would order online. They'd get to the cafe; they would phone the baristas inside the cafe, and say, "Hello, I'm

Claire. I'm here to pick up my order." And then they'd pick up their order at the open door.

Q Was there in the pilot, say, before you went to more sophisticated door module, and we'll get there in a moment, was there also a process by which the -- the -- the -- the actual coffee or whatever the order was was left and then the customer approached so that -- to -- to avoid any close proximity between baristas and customers?

A Yes. So we had a bunch of times, that's asking people to keep their distance. And we also had -- by how we had the table placed and where the baristas were in the inside, they were able to sort of walk forward to put the -- the drink out on the table and then step back out with the six-foot distance. So at this time, we were -- we were pretty aware that COVID was spread by aerosol. So following the work (audio interference) and a bunch of other people that we were reading. And so we were very, very careful about baristas, who they were working with, and who -- who they spent time with, and making their -- a pod. In our pilot program, we had two separate pods of -- of people working. And we were very careful about how they were able to interact inside the cafe. So we had -- we tried it at one location first. We tried at our key district location for, I think, a week and a half, which is a sort of walking neighborhood, neighborhood-favorite cafe. But there was too much cross. People kept having to cross past each other in the

1 process of making drinks. And we couldn't fit everyone inside
2 the cafe safely, so we moved it to a much larger MLK location,
3 where we taped off distances. We brought in extra equipment we
4 sold from every other cafe that we had, so that we could add in
5 like a second grinder, so nobody had to cross each other.
6 We just stopped allowing double-barring, which is a practice
7 where one barista stand right next to each other, and they work
8 on the same espresso machine. And because we knew it was
9 aerosol and because you have to dial an espresso and taste it,
10 so you have to take your mask off, we had just one person
11 working there. We had a second espresso machine, I don't know,
12 like 50 feet away, which is what people would do if there was
13 additional service needs.
14 Q After that initial pilot, and -- and you -- I think you
15 described it as a successful pilot in terms of the online order
16 only and door service with social distancing and all the --
17 the -- the distancing between people working inside, did there
18 come a time where you notified the former baristas and the
19 Union that Gimme! was going to explore a partial reopening of a
20 number of stores?
21 A Yes. We'd been talking about how well the pilot had been
22 doing in effect bargaining generally. We had a couple of
23 effect bargaining meetings. And then in early July, we put
24 together an operations update, which we invited all the
25 baristas to, in order to talk about what the COVID situation

1 looked like and what we were planning to do with reopening.
2 So we talked to the negotiations team about that in effect
3 bargaining. But then we had -- the meeting that we had
4 actually everyone was invited to. It wasn't just the
5 negotiations team. Colleen actually called every single person
6 in the bargaining unit to make sure that they knew it was
7 happening, so that we could describe to them what reopening --
8 what the limited reopening would look like and what the job was
9 like under COVID conditions.
10 Q And was that meeting well-attended?
11 A It was. We did not take attendance, but we saw a whole
12 bunch of people we hadn't seen in a long time on that Zoom
13 call.
14 Q And so it was by Zoom?
15 A It was by Zoom.
16 Q Was that by design for safety reasons?
17 A Yes. Part of our whole pod system was that we only had
18 meetings via Zoom as well. So the various teams were separated
19 by both space and time. And we had biweekly meetings then
20 about our -- our pilot program and how it was going. And we
21 exclusively had them by Google Meet.
22 Q I'm showing you what's been marked for identification as
23 Employer Exhibit 6. Could you take a look at that, please?
24 And if you can just flip through that. Familiarize yourself
25 with the document and I have some questions.

A Okay.

Q What is Employer's 6?

A Employer's 6 is the PowerPoint presentation that we presented to the bargaining unit and then that we also emailed out to everyone in the bargaining unit after that meeting.

Q So it was presented on the Zoom call first and then emailed subsequent?

A Correct. It was emailed subsequently to every barista.

Q Okay. And if you could just quickly look for me at Employer 7, is that the email that you just referenced?

A Yes.

Q Okay.

MR. WAGNER: So the -- for the record, the email was sent out on Friday, June 10th -- July 10th, sorry, three days after the meeting.

Q BY MR. WAGNER: Is that accurate?

A That is correct.

Q Okay.

MR. WAGNER: We -- we would -- we'd offer both 5 (sic) and 6.

HEARING OFFICER SUTCLIFF: 6 and 7?

MR. WAGNER: 6, 7. Thank you, Madam Hearing Officer.

HEARING OFFICER SUTCLIFF: Any objection?

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Okay. Employer's 6 and 7 are

received into the record.

(Employer Exhibit Numbers 6 and 7 received into evidence)

Q BY MR. WAGNER: So let's go back to 6, Ms. Christensen. The first substantive page has an agenda on it. Can you just describe what -- we -- we -- you know, the document obviously shows us what the agenda is, but from your perspective, what -- what were you trying to accomplish here?

A We had two main things that we wanted to accomplish. When we'd shut down in March, when we told the bargaining unit in one of our then daily meetings about COVID, everyone had been really happy or at least that's the reaction we had in our meeting that we were shutting down for the safety reasons. And so when we were talking about doing a limited reopen -- reopening and rehiring, we really wanted to make sure that we conveyed to everyone what the safety precautions were. And we also wanted them to know what the job looked like in the COVID reopening conditions since that was so different from what it had looked like before.

And then we also wanted to let everyone know what our tentative schedule was for reopening two additional cafes and about how many baristas we expected to bring back.

Q Okay. And did you also discuss the -- the -- a change in the staffing model from pre-COVID to this limited reopening?

A We did. The biggest change in the staffing model that we discussed was the transition to entirely full-time employment.

1 So we -- because of how the pod worked and because we wanted to
2 make sure that people were exposed to the smallest number of
3 people possible since your coworkers are the people who are the
4 most risk to you because you spent the most time together, we
5 wanted to keep those pods as small as possible. And so
6 everyone in them had to work full time on the same schedule.
7 So each pod was like a little group of people that worked -- it
8 was three days on, four days off, four days on, three days off.
9 Q And was the point of the pod that you never worked with
10 more than one other person to -- to avoid the -- the -- the
11 chances of -- of transmission?
12 A It depends on the cafe. So at our -- our -- our plan at
13 the time and what's in the PowerPoint is that we're going to
14 have pods of two at T-burg, our Trumansburg location, and at
15 either Cayuga or Coco. It would be a two person pod. And then
16 at MLK Street, which was the biggest cafe and also had the
17 delivery program operating out of it, we'd have a pod of three.
18 And then the fourth person was the delivery driver, who we'd
19 have coming in a separate door and sort of picking up also at a
20 table. So the biggest risk to everyone was their immediate pod
21 of baristas and then a little bit of what -- for the delivery
22 driver.
23 Q At the meeting, were there any baristas or any employees
24 that expressed concern or disagreement with the full time only
25 aspect of the COVID re -- reopening?

A There were not any at the meeting. Someone did just ask to confirm. I believe Wendell asked to confirm that it was full time only. And we said, yes.

Q And what's Wendell's last name?

A Oh, sorry. Wendell Roth. First name, W-E-N-D-E-L-L, last name, R-O-T-H.

Q And was Mr. Roth, prior to being terminated due to COVID, a part-time or full-time barista?

A I don't know the answer to that question. I would have to go back and look at that. I'm sorry.

Q No problem. If you could flip to the -- the ninth page of Employer Exhibit 6. It's -- the title of the document -- of the page is "Retail Phase Reopening, Our Best Guess at Day Timeline." See that document?

A I do.

MR. WAGNER: And Madam Hearing Officer and Mr. Hayes, do you -- you want -- do you want me to wait until you get there or you -- you guys there?

HEARING OFFICER SUTCLIFF: I'm there.

MR. HAYES: I'm there.

MR. WAGNER: Okay. Cool.

Q BY MR. WAGNER: Tell me about this -- this slide.

A Sure. So we put together a slide that was sort of a look at where we'd just been, so it has marked here as a pilot program at our MLK location. And then looking at when we hoped

to open two additional location time. At the time, we were calling them phase 1 and phase 2, our Trumansburg's store for sure.

So part of the reason we knew for sure that we were going to open our Trumansburg store is because it was the one that we had the most social-media feedback about. Our social-media person forwarded us comments every day from Trumansburg saying, "When are you reopening Gimme!?" So that's why we chose T-burg. And then either Cayuga Street or Community Corners. We weren't sure which of those two we'd be opening, so that's why they're both marked there.

Q And -- and in that phase 2 that's shown in August, "Coco/Cayuga," why is it either or why did you put it -- why -- why did you present it that way at the meeting on July 7th of 2020?

A There were a couple of different reasons that had to do with bandwidth of how many stores we thought we could open. But the -- and the second biggest thing that we were thinking about was about demand because in Ithaca in that summer, we were still seeing really reduced demand. So people were out and about as much. Coffee business depends on -- it -- it's the -- it's exactly the right kind of luxury that you don't do it if -- it's kind of annoying. So we didn't have the people-going-to-work traffic in the morning, and we didn't have a whole bunch of -- of students in town. So one of the things we

also talked about at this meeting was what it means to be Ithaca without -- without students. And so we didn't think that we could support full cafe.

Q And -- and when you say without Cornell students, what -- why do you -- why -- why is that relevant?

A So Cornell students are a huge impact on the economy of Ithaca. One of our -- our fellow sort of student services is here in -- at Purity Cafe, which is an ice-cream shop, did a CNN presentation that we referred to actually in this -- this meeting in which we talked about what it would mean that Cornell was doing very limited in person, and what it meant that those -- that something like 30,000 students, the population of the City of Ithaca is itself is 30,000 people. And the metro area is about 100,000. So the students coming in with the money makes a huge impact on what sales look like for us. And our lowest periods are always when students aren't in Ithaca.

Q And did you know as of July 7th of 2020 that Cornell for the fall semester of 2020, had already announced that it would be all virtual?

A We did know that. We were keeping up with the Cornell operational updates. And it's part of why dates were such a question mark for us here because Gates Hall being in a -- a university building was dependent on student presence and staff presence. And the Cornell staff had also moved entirely to

work from home.

Q So looking at -- back on that -- the same slide on Employer's Exhibit 6, what did you ultimately decide with regard to whether to open either Coco or Cayuga?

A We decided to open Coco rather Cayuga. A little bit of that was because of social-media requests, so as soon as we opened our Trumansburg store, the instant it -- it opened, everyone stopped commenting and asking us to open T-burg. And they started commenting and asking us to open Community Corners instead. So that's part of why we opened at Community Corners. And we also learned a little bit more about COVID safety and aerosols that made us really reluctant to open Cayuga Street at that point.

Q Can you please describe that in more detail?

A Yes. So I had been reading some sort of HVAC journals as we learned that it was an -- an aerosol disease spread. And the journal, as I was reading it, also some of the guides coming from the state at that time, it wasn't for employees -- stores of our scale, but the state did start talking about the importance of filtration in your HVAC system for keeping people safe.

So I asked our equipment guy to look into getting those kinds of filters for all of our HVAC systems. And he investigated and he found out that our -- our Community Corners store already had them. And we were just going to start changing

them more frequently. And he could get them for our MLK store and our T-burg store. But our Cayuga Street store actually has our best HVAC system. It's a ductless mini-split system. And because it is ductless, there's no way to put a filter on it. And so, you know, like -- that -- I'm not an expert in that. And Thom Cooper, who is the person who I was talking to about it. You know, I asked a bunch of questions about like, can you you know, stick one on top. Like, if someone has a duct, what are the options? And we couldn't think of a good solution at the time and really wanted to go and do more reading. And we didn't want to put two people in a small cafe until we solved that problem. And so that's part of -- the other part of why we opened the Community Corners.

Q Was there also a geographic-proximity reason to open Coco over Cayuga in the -- in the second phase as set forth on this -- this slide in Employer 6?

A Yes. So our Cayuga Street store and our MLK Street store because they're so close to each other, have a customer base that moves from one to the other, which we can track in our point-of-sale software. And we also know previously that we have -- we have people who will shop at one for six months and then we'll at the other one for six months. We closed one before for maintenance. People just jump to the other cafe. And so we were concerned that if we opened up our Cayuga Street store at that time, that it would cannibalize a lot of the

sales from our MLK Street store and that -- and that we wouldn't be able to support both of them at once. We -- we actually talked briefly about moving operations entirely from one to the other if we could figure out, you know, some solutions for the HVAC problem. But we definitely didn't think it was possible to keep both of those cafes open at the same time in the COVID-economic condition.

Q Simply because of demand?

A Simply because of demand.

Q And contributed to the Cornell-student issue you raised --

A Right.

Q -- before? Okay. And then if -- if we look at the last two lines, horizontal lines here, Coco, Cayuga with question marks through the end of 2020 and Gates, question marks through the end of 2020. What -- what did you mean there?

A We meant largely that we didn't have any definitive plans to open those locations. We didn't have, like a timeline or an idea of who'd be working there or a solution to the HVAC problem or anything like that. So you know, we -- we did want to make it clear that, like we -- we didn't know anything about the future of potentially opening both of those cafes.

Q And with -- and we'll get to this a little bit later on, but just contextualize it for the hearing officer, in the month of January of the following year, 2021, that question mark with regard to Gates Hall did change slightly --

A Um-hum.

Q -- didn't it?

A It did. We had some conversations with people at Cornell that made us very concerned that they were going to cut our lease if we didn't do a pilot program there. So at the very end of January 2021, we announced that you're going to do a pilot at our Gates Hall location. Because of the kiosk, it was going to be a single-person, online-ordering only. And we were going to put a completely different kind of espresso machine in there called an Eversys, and E-V-E-R-S-Y-S. And it is a fully-automatic espresso machine. So it's basically a -- in the rest of our cafes, you dial in your espresso. You steam the milk yourself. The way the Eversys works is you push a button. It's like, you say, cappuccino, you push the cappuccino button. And we happen to have one of those fully-automatic espresso machines around. And so we thought it would be a good solution to a space in which we could only reasonably fit one person in the COVID condition. We used to staff Gates Hall with four people at a time. And in the tiny kiosk space, we knew that was not safe. So we were going to try this new espresso machine, which we didn't have SOPs for and we didn't have any directions for, so our pilot program is sort of to figure out if any of those things were reasonable using that espresso machine, making people only order online. Again, we are at our cafes by then. We -- we

1 started accepting orders at the door, like using the QR code
2 ordering system, whether people would do that and a whole, you
3 know, like whether it was functionally possible to -- to be a
4 single person in that space.
5 Q And because of -- and -- and in January, not going beyond
6 January --
7 A Um-hum.
8 Q -- of 2020 (sic), but in January when you decided instead
9 of the pilot with one-person staffing there was -- did you
10 decide what -- what position you would be the one person
11 staffed there?
12 A We decided it was going to be a store manager. And the
13 reason we decided that is kind of a bunch of the things that
14 I've -- I've already pointed to. We didn't have an sop for
15 using the Eversys espresso machine. And our store managers are
16 responsible for writing SOPs and as well, the entirely-online
17 ordering and QR-code system with a QR code was something we
18 hadn't done before required backend access into our point of
19 sale.
20 So at our other cafes, baristas can adjust like inventory of
21 one item. But doing the online only system meant that they
22 were going to -- to the full items. They need all the
23 privileges -- the person working there needed all the
24 privileges and kind of self-system in order to get (audio
25 interference) and troubleshoot problems.

Q Thank you. Let me turn your attention to -- and -- and oh, by the way, through the end of the year, 2020, and through January of 2021, had you made any decisions and/or announcements to the public or to the former employees or current employees about a decision to reopen Cayuga?

A We had not. We occasionally said that we loved Cayuga Street. It was Colleen's first cafe and that we missed Cayuga Street. But we repeatedly said there's an issue with demand and there's an issue with HVAC. We haven't solved either of those problems.

Q All right. Thank you. In this July 7th, 2020 meeting that -- where -- where the PowerPoint was -- was presented, did you go through a detailed proposal projection of how many union baristas would be offered rehire the staff, the COVID reopening as set forth in that timeline that we just discussed?

A Yes. We went through the training, what the training process would be, and overtime, how many baristas we'd rehire. And we indicated we'd rehire ten baristas --

Q Total?

A -- total. All of them full time and all of them in those little pods.

Q And so that would be ten baristas full time at the three stores through the first two phases?

A That's correct.

Q So that would include MLK, T-burg, and Coco?

A That's right.

Q Okay. And at the time, you -- you weren't sure whether it would be Coco or Cayuga. But it became Coco, correct?

A It became Coco. And it would have been the same number of baristas either way.

Q Okay. You mean Cayuga versus Coco?

A Right.

Q And was that -- were -- were those numbers of a total of ten clearly described in this meeting?

A Yes. We very clearly indicated how many baristas we would need to staff the -- the reopening and in addition to what the job looked like now. So we were trying to make it very clear to everyone.

Q And after July 7th and up -- up until August 27th of the same year, where the MOA -- COVID MOA was -- was finally signed between Gimme! and the Union, did your estimate of staffing baristas for COVID reopening change?

A So by the end of August, we were thinking we'd added a couple of ne -- additional people. So our productions at the end of August, early September was more like 14. But still just the staff, the three cafes. Part of why that happened is because we had been operating in summer conditions, in which you steam a lot less milk than you do in the fall and winter. So you can make the same number of drinks, but you're just pouring those in a glass. As the weather gets cooler,

suddenly, you need an extra cushion because you're -- you're steaming milk instead of just pouring it in.

Q And as you added to the estimate before you actually started rehiring the baristas who in -- indicated an interest, did -- did the -- did the model stay the same in terms of pods and --

A Yes.

Q -- full time?

A The model stayed the same in terms of pods and full time.

Q And if you could just describe -- and -- and I apologize for everyone that I didn't the number the pages of the PowerPoint, but if you go from the -- the -- the -- the timeline slide that we just discussed, and go one, two, three, four, five, six more, it's called phase 1, MLK order at door on -- online. Do you see that document?

A I do.

Q Was this part of the presentation of -- of how many baristas would be offered rehire?

A Yes. So this was a description of how baristas would be offered rehire and also the order in which we would train them.

Q And then the next page, also says phase 1, but is applied to T-burg?

A That's right.

Q And same thing, information that -- that's included here?

A That's right.

Q Okay. And then we get to the next phase, which is phase 2. And then the following page, phase 2, MLK. What was -- what was phase 2 of MLK?

A Phase 2 of MLK is bringing some additional baristas on. So just talking about how many weeks it would train -- take to train the first set of people in the new COVID operations. And then as those people became comfortable, we bring in two additional people at this point in phase 2. So we were calling all of this sort of the same reopening phase or the same -- the same rehire phase. It's just that it took a -- a couple of weeks between everyone because everyone had to go through the like, here's the mask protocol. How do you clean the masks? what's the new glove policy? What is the job as an expediter in the current sit -- situation and all of that kind of thing.

Q And then the next page, phase 2, T-burg?

A That's bringing in a third barista to T-burg.

Q Okay. And then the next phase, Coco or Cayuga, phase 2?

A And that's bringing in the first two baristas at Cayuga or Coco.

Q Okay. And -- and so you know, both -- both on the timeline and in the -- the slides we just discussed, you -- you -- you denominated or designated phase 1 and phase 2. In reality when you implemented this plan, did it -- did it -- was it separated into two distinct phases?

A No. By the time we had the MOA signed at the end of

1 August, we were really anxious to get both of the two new
2 locations opened. And people were really anxious to come in
3 and return to work, so -- so we -- we essentially did the two
4 phases in incredibly quick succession. And it was all sort of
5 one reopening.
6 Q And when you say the two phases, would that be inclusive
7 of the expanded service at MLK, the -- the -- the new door
8 service at T-burg, and then the new door service at Coco?
9 A That's right. So we still did them in the order that we
10 had said in this document. But there was no pause between
11 them. So we -- we brought our baristas -- we rehired baristas
12 for our MLK location. And then we sent everyone up to
13 Trumansburg to reopen Trumansburg next. And we rehired the
14 baristas for that location. And then we sent our --
15 everyone -- our facilities people (audio interference), et
16 cetera, to go open our Community Corners' location and recall
17 those baristas.
18 Q Thank you. And did you take notes at the July 7th, 2020
19 meeting?
20 A We did. I took the notes.
21 Q And showing you what's been marked as Employer 8. Can you
22 identify that document?
23 A These are the notes I took at that July 7th meeting.
24 MR. WAGNER: We would offer Employer 8.
25 MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Okay. Employer 8 is received into the record.

(Employer Exhibit Number 8 received into evidence)

Q BY MR. WAGNER: When your estimate through -- from 10 baristas to be rehired to approximately 14 baristas, did you communicate that to the prior baristas and the Union?

A We did. We -- we talked about our hiring phases. And we also talked about who was coming back in to the cafe in a very broad way and as we were going through that list.

Q And so by the time that the COVID MOA was executed by Gimme! and the Union on Aug -- August 27th, based on your recollection, do you believe that the baristas who attended the meeting, the negotiation in the bargaining committee understood that the -- the total number of retired barista -- full-time baristas would be approximately 14?

A I'd say --

MR. HAYES: I'm going to object to this question because it's asking for testimony about the state of mind of other people.

HEARING OFFICER SUTCLIFF: Sustain that. So please ask a different question.

MR. WAGNER: You bet.

Q BY MR. WAGNER: Do you believe you clearly communicated to the bargaining committee and the baristas in attendance that the total number would not exceed 14 in the -- in the COVID

reopening?

A Yes. I think that we -- we definitely conveyed that it would be ten people at that initial meeting and then we conveyed that we'd be -- would be recalling a few more.

Q Okay. Describe for me the effect bargaining process, the bargaining process, that lead to the COVID MOA that was executed on August 27th of 2020?

A Yes. So the first period of our effects bargaining was largely about you know, things like the paid time off (audio interference), et cetera, so we didn't talk about rehiring much at the very beginning. As we proceeded through effects bargaining, we had a difference of opinion or difference of understanding with the negotiations team.

So Gimme! had historically in practice done -- think, recall or rehire our seniority on a store-by-store basis, treating all the stores differently. And we said that we thought what seniority meant. The negotiation team said no, they wanted company-wide seniority. So we had a couple of conversations about that.

And then we also talked about people who did not want to be rehired. So -- so initially in their conversation, the negotiations team mentioned that one of the things that they were very concerned about was that people be able to continue to receive unemployment. That is that they wouldn't have to turn down a job offer, which some people would have done if we

had offered the jobs to everyone in order, whether it was store seniority or bargaining-unit seniority. And so we had several conversations about ways to accomplish a solution where people would be rehired who wanted to be rehired.

Q And was the full-time, part-time issue also discussed?

A It was. Initially when we said there would be full time only, we had some objections from the negotiations team saying that some workers would not be included in that because they could only do part time. But when we explained our sort of health and safety rationale, that objection was dropped.

Q Okay. How was the bargaining-unit seniority versus store-seniority dispute resolved?

A The resolution to the dispute was we initially made a proposal where we'd make a list. We'd go through the list in order. And everyone would get an opt out of the list. So if we called someone and said we have a job for you, they get one -- one opt out and they could opt out. And the idea was when we got to the bottom of the list, that we start again at the top. And if you opted out a second time, then you sort of opted out entirely before we started posting positions to the street.

And the negotiations team objected to this for a couple reasons. They were really concerned that the two cycles to the whole -- through the whole list of people in seniority order, that they would -- they would get through two cycles too quick,

so that they were like, what if I get one job offer on Monday, you finish going through the list. You don't have anyone else to -- to rehire. And then I get the second job offer the following Thursday. So it wouldn't give people the ability to -- to do what they were concerned with, which was to stay on unemployment for as long as they wanted to. So --

Q Did they also -- did -- did the bargaining committee also request that if there was going to be an opt out, that that first opt out not be reported to unemployment?

A Yes. They did request that.

Q And what was your position on that?

A We were concerned about it. It was something that we wanted to talk to our -- our lawyer about because we were concerned about unemployment fraud. So we didn't know if that would be an option that we could actually do as it was that.

Q On the issue of -- putting aside unemployment for a second and -- and the opt out, the strict issue of bargaining-unit seniority versus store seniority, what did the -- Gimme! ultimately request from the Union in an attempt to resolve that dispute?

A So the negotiations team proposed an option where they would make a list of who was ready to return to work. And then they would make a waitlist of everyone who wasn't ready to return to work and wanted to stay on the unemployment. And so they -- they proposed that to us. And we said, well, we want

1 to see the list, so that we can see whether it's going to be in
2 seniority order or some or -- other order or anything like
3 that. And we also want to be able to double-check the list.
4 And then the negotiations team sent us the list, which they
5 called the ready-to-work list, available-to-work list,
6 something like that and the waitlist.
7 Q And did Gimme! accept those two lists as proposed by the
8 Union?
9 A We did accept those two lists with some minor confusion
10 about there were a couple of people who had said on the
11 original list, they would work at all cafes. And then when we
12 reached out them, they said, actually, I'd only work at this
13 one or something like that. So there was -- there was a little
14 bit of back and forth about some of those discrepancies. But
15 other than that, we accepted those lists as the Union proposed
16 them.
17 Q I'm showing you what's been marked for identification as
18 Employer 4. Can you tell me what that document is?
19 A This is the memorandum of agreement, the COVID-19
20 agreement.
21 Q Okay. And turning to page 2, with a bold heading,
22 memorandum of agreement, August 27th, 2020. Is -- is that --
23 and the following page is the -- the COVID rehire agreement?
24 A Yes.
25 Q Turning to page 3 and onto page 4, appendix B, active

recall list. Is this the active recall that was submitted by the bargaining committee?

A It's the active-recall list as it was after some of that back and forth that I discussed previously. So the initial list that we've see from the bargaining committee, I believe Tim Brogan was on the waitlist, and then moved to the active-recall list and so on. So this is the list after we had had those few conversations.

Q And what about the appendix B waitlist, was that also a list prepared by the Union?

A That's correct.

Q And if you take the two lists together, B, and C, is that in order of bargaining-unit seniority from top to bottom?

A It is not. The -- the -- some of the people with the most bargaining-unit seniority are in the middle of the waitlist. The person with the most bargaining-unit seniority at the time of our closure was Samantha Mason, who's listed three people down in the waitlist.

Q And are there other people on the waitlist that have higher bargaining-unit seniority than people on the active-recall list?

A Absolutely. Almost everyone on the waitlist has higher bargaining-unit seniority than the last person on the active-recall list. The last person here listed is 14, Jamie Baird, had been hired in March of 2020. I believe they had two weeks

of seniority. So everyone on that waitlist would have been above Jamie Baird.

Q Did the bargaining unit, the bargaining committee, rather, describe how they formulated the list in terms of whether they gave people with the most bargaining-unit seniority right of first refusal on, not only which list they wanted to be on, but where they wanted to be on the list?

A The -- the negotiations team talked to us a little bit about this, but -- but largely didn't give us any details. So we knew that they had done a survey and they had asked people who wanted to be on which list. And we observed that that first -- first list, everyone who's on it is in bargaining -- is in seniority order --

Q You mean that --

A -- within that particular list.

Q -- on the active-recall list?

A Correct. On --

Q Is that -- but is that true if you take -- see the waitlist standing alone, is that in bargaining-unit seniority?

A It is not.

Q And was that ever explained to you how -- how that was formulated such that it -- it was not according to any seniority or other -- or other objective factors?

A No.

Q Okay.

MR. WAGNER: And -- and -- and by the way, we would offer Employer 4. I know it's also a Union Exhibit.

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Okay. Employer 4 is received into the record.

(Employer Exhibit Number 4 received into evidence)

Q BY MR. WAGNER: Now, the -- the -- the active-recall list happens to be 14 baristas, correct?

A That's right.

Q Do you know whether that was intentional on a --

MR. WAGNER: Strike that. Withdrawn.

Q BY MR. WAGNER: Do you know whether from speaking to the bargaining committee that they kept 14 because they knew that 14 was going to be the extent of the phase 1 and phase 2 COVID rehire?

A We don't know anything about that. All we knew is that we got a list of exactly 14 people.

Q At that time before you received the list, had you communicated to the bargaining committee that it would be approximately 14?

A We said it would be more than ten. But I don't think we said 14 specifically.

Q Okay. Drawing your attention to page 3 of Exhibit 4 and looking at paragraph 4.

A Yes. Item 4?

Q Item 4. Yeah. That process then -- then continues into items 5 and 6. Was -- was it your understanding that that was to address the unemployment concern? Meaning that by notifying the Union of additional open positions in each phase or the open positions in each phase, if insufficient baristas were on the active-recall list, that it would give the Union the ability to first check with people and not have someone decline an offer of employment, so as to not disrupt unemployment?

A Yes. That's -- we believe that that's definitely the intent of it, because that was written down in an -- some emails from the Union explaining why they didn't want us to just do recall in order. It was specifically to retain unemployment.

And we did at one point mention and in -- in here is referenced the additional rights afforded by the FFCRA and ADA because we did mention at one point that, of course, if you would be called an ADA accommodation, I believe, could be an appropriate accommodation for someone who is not working in the COVID situation for reasons of disability. And so we said that, oh, that is also an option that is open to you, but no one chose to do that. Everyone stayed on the waitlist.

Q So looking at the active-recall list, were, in fact, all 14 of the individuals on the active-recall list rehired by Gimme!?

A No. That same person, number 6 on this list, Tim Brogan,

who had initially been on the waitlist, and then said, oh, I want to be on the active-recall list, then subsequently had a conversation with us where he said, oh, actually, I don't want to come back to work right now at all. So we had tried to put him in on the schedule, but we ended up not rehiring him because he -- he declined. It was prior to us making an -- an official job offer. We were just trying to understand his scheduling and where he'd prefer to be.

Q Before making the formal offer?

A Right. Because we didn't know which cafe we'd be putting him at or when he'd be available to start.

Q And he had indicated "all" originally on the list, so you had the flexibility of putting him at any of the cafes where -- where a barista was needed?

A That's right.

Q So with the exception of Mr. Brogan, were the other 13 that are on the active-recall list, in fact, rehired?

A Yes. All 13 were rehired.

Q Okay. And anybody on the waitlist, as we see it here in Employer 4, were any of those people either -- well, let me -- let me go back.

MR. WAGNER: Strike that.

HEARING OFFICER SUTCLIFF: I -- can I just clarify something really quick, please? When you say --

MR. WAGNER: Yes.

HEARING OFFICER SUTCLIFF: -- that the other 13 were rehired, can you give me the time frame at which these individuals were rehired and what locations they were required to?

THE WITNESS: Absolutely. Charles Cook was rehired to our MLK location. He and James Byrne were actually rehired prior to the execution of this MOA. We had a separate document that let us rehire the two of them first a week early. So that was Charles Cook and number 3, James Byrne state that the other name for the three -- that our MLK location is on. So that's James Byrne is indicating he'll work at our MLK location.

HEARING OFFICER SUTCLIFF: Okay. And sorry. The --

THE WITNESS: And that's --

HEARING OFFICER SUTCLIFF: -- time frame of that would have been -- was -- was when?

THE WITNESS: August 23rd, I believe.

HEARING OFFICER SUTCLIFF: Okay. For both -- for both of them?

THE WITNESS: That's right.

HEARING OFFICER SUTCLIFF: Okay. Then go ahead.

THE WITNESS: And then we subsequently hired in -- in order on this list for the two teams at MLK. So sort of a funny thing that would happen is this. Someone who was higher on the list would end up coming back two or three days later because they wanted the end of the week schedule. So our two

pods were on Sunday through Wednesday -- every other Wednesday schedule or a Wednesday through -- through Saturday schedule. And so one of the things that we called everyone on this list about was whether they wanted to be on team 1 or team 2, which affected their recall. So also returning to MLK was number 4, Sarah Delett.

Q BY MR. WAGNER: Do you know what date?

A I don't --

HEARING OFFICER SUTCLIFF: Yeah.

A -- exact. I would have to look it up. It was early -- early September. So this is all early September. It happened within about a three-week period.

HEARING OFFICER SUTCLIFF: Okay.

THE WITNESS: Aaron Goodenough also returned to MLK. Jeneva Long to MLK. Maggie Lapinski to MLK. And Jamie Baird to MLK. At the same time that we were training the last people on that list, which would have been -- the last people on each of the two teams, which was Aaron on team 1 and Jamie Baird on team 2, were the last people recalled at MLK.

We had already started opening our Trumansburg location, where we called back number 2, Susie Shelton, number 5, Gregg Kearns, and number 13, Aidan Kaplan-Wright to our Trumansburg location.

While we were training Aidan at our Trumansburg location, we had already started reopening our Community Corners'

1 location, where we rehired, Tahera Rafia-Kassam, Rebecca
2 Coulter (phonetic throughout), and number 11, Adonaijah Sharp.
3 HEARING OFFICER SUTCLIFF: Okay. And we said --
4 THE WITNESS: And we also --
5 HEARING OFFICER SUTCLIFF: -- Tim -- Tim was not
6 rehired --
7 THE WITNESS: Tim was --
8 HEARING OFFICER SUTCLIFF: -- Brogan?
9 THE WITNESS: -- not rehired.
10 HEARING OFFICER SUTCLIFF: All right.
11 THE WITNESS: Correct.
12 HEARING OFFICER SUTCLIFF: Okay. Okay. Thank you. Go
13 ahead.
14 Q BY MR. WAGNER: Did you cover everyone, all 13?
15 A I believe I covered everyone, all 13.
16 Q I didn't hear Tahera.
17 HEARING OFFICER SUTCLIFF: You did.
18 Q BY MR. WAGNER: Was I not paying attention?
19 A Yep. Tahera and -- and Rebecca.
20 Q Oh, good. Yeah. Yep. Okay.
21 HEARING OFFICER SUTCLIFF: Yep. Coco --
22 Q BY MR. WAGNER: So -- and --
23 A Yes.
24 Q -- and is it -- by the end of September 2020, were all of
25 the 13, not including -- all of the active-recall list except

Tim Brogan rehired before the end of September?

A Yes. I believe it was by the last week in September.

Q Okay. Was anybody on the wait --

MR. WAGNER: Strike that.

Q BY MR. WAGNER: Was there a process in the MOA by which it was agreed that individual baristas on the waitlist could take themselves off the waitlist and -- and notify Gimme! of either through the Union or directly that they wished to go on the active-recall list?

A Yes. We had a conversation with the Union about -- and this specifically about how people who were on the waitlist at the time of the phased reopening could contact us and remove themselves from the waitlist and put themselves on the active-recall list.

Q And did anybody --

MR. WAGNER: Well, strike that.

Q BY MR. WAGNER: Before the end of September, when all 13 of the active-recall list, not including Mr. Brogan, had been retired, before all of those rehired, did anybody on the waitlist exercise their option to go on the active-recall list?

A Yes. Wendell Roth, who's about halfway down on the waitlist, emailed management in early September to put himself on the active-recall list.

Q Okay. And turning your attention to Employer Exhibit 20. If you'll identify that document?

A Yes. This is Wendell Roth's email to Colleen and Morgan for question to be put on the active list for recall.

Q And did Mr. Roth indicate in his communication a limitation on where he would work?

A Yes. He said he would only work at Community Corners. Prior to the shutdown, he had been a barista at our MLK Street location.

MR. WAGNER: We would offer 20.

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Okay. Employer 20 is received into the record.

(Employer Exhibit Number 20 Received into Evidence)

Q BY MR. WAGNER: Was Mr. Roth rehired?

A Yes.

Q Remember when?

A He was -- he was the -- the last person to receive his offer letter in the September rehire process. He actually did start working two days before Ms. Kassam and -- and Ms. Coulter, who both wanted a different schedule. And so they actually ended up starting two days later.

HEARING OFFICER SUTCLIFF: And so Mr. Roth was rehired to which location, please?

THE WITNESS: Community Corner.

HEARING OFFICER SUTCLIFF: Thank you.

Q BY MR. WAGNER: With the hiring of -- of Mr. Roth and you

said Ms. Kassam and Coulter?

A Yes.

Q Were they both hired at Coco?

A Yes.

Q Was that -- from Gimme's perspective, was that the end of the phase 2 COVID reopening as set forth in the July 7th PowerPoint?

A Yes. That was the end of that rehire process and the end of (audio interference) .

Q And from that point through the end of January of 2020, did the method of service and delivery remain the same at the three Gimme! cafes in Ithaca?

A It remained functionally the same. We did begin to take orders at the door in addition to online, but the practice by which we make them and how we delivered them out of the other door remained the same at our internal sort of zones of -- of work remained the same.

We did have one small, or I don't know, large functional improvement, which is as the weather got cold, we briefly spoke to an architect about putting in sliding windows to make it easier to continue door service. That didn't work out, so we ended up building parts that fit into the door with bolts to slide a window in them to permit us to continue to operate functionally the same way with door service all winter.

Q And did that require a capital investment to -- to

construct those window door modules?

A Yes. We spent about $5,000 on window door modules.

Q Was the intention when you did that to keep that at the -- the method of service?

A Yes.

Q And did that change between the time you put in the window module in the -- in the fall of 2020 through the end of January?

A No, it did not.

Q Did the staffing models change from the end of the COVID reopening phase 1 and phase 2 through the end of January 2021?

A Nope. The staffing mod -- model remained the same.

Q I just want to, for the record, refer to Employer 5. What's that document?

A Employer 5 is a separate document that permitted us to recall Charles Curtis (phonetic throughout) Cook, and James Byrne to work at MLK Street prior to final execution of the -- the MOA -- the COVID-19 MOA.

Q And -- and why was that necessary timing-wise?

A It was necessary because we were getting very anxious about being able to stack those two cafes, and trying to capture any remaining sort of good-fault business. And in the PowerPoint, we said that we wanted to start this recall process in July, and it was nearly the end of August.

So we were very anxious to bring them back, and in our

conversations with the Union it was very clear that, well, first a good -- of course Charles Cook and James Byrne would be the first two people recalled MLK, no matter which of our proposals we wanted -- we ended up going with. So we did a separate agreement to bring the two of them back while they continued to fine-tune the full list, and the negotiations team worked on taking it back to the bargaining unit.

Q Thank you.

MR. WAGNER: We would offer 5 -- Employer 5.

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Employer 5 is received into the record.

(Employer Exhibit Number 5 Received into Evidence)

Q BY MR. WAGNER: Turn, please, to Employer 15. What's this document?

A This document is a list of all the (indiscernible) in -- that were laid off in March 2020 in seniority order, which was requested by the negotiation team.

Q And I would just note that -- about a third of the way down, Matthew Roth, is that Wendell Roth?

A Yes. My apologies.

Q Yeah.

MR. WAGNER: Just for the record, I wanted to --

THE WITNESS: Yes.

MR. WAGNER: -- notify the hearing officer of that.

THE WITNESS: And there's an additional person on here who has second -- second -- separate name that they go by. So the last person on this list is the same person as Jamie Baird on the MOA.

MR. WAGNER: Thank you. We would offer 15.

MR. HAYES: Can I just ask one question as a --

MR. WAGNER: Oh --

MR. HAYES: -- voir dire.

HEARING OFFICER SUTCLIFF: Sure.

MR. HAYES: Just for clarification?

HEARING OFFICER SUTCLIFF: Yes.

VOIR DIRE EXAMINATION

Q BY MR. HAYES: So when exactly was this created?

A I do not recall the exact date when this was created, but we pulled it from the negotiations team while we were doing the effects bargaining agreement.

Q So while you were bargaining the -- the MOA itself, I mean?

A Yes. I believe one date on here is March 17th. So we -- we were already talking about effects bargaining (audio interference).

MR. HAYES: Okay, nothing further. Thanks.

HEARING OFFICER SUTCLIFF: Any objection to the receipt of the document?

MR. HAYES: No objection.

1 HEARING OFFICER SUTCLIFF: Okay. Employer's 15 is
2 received into the record.
3 **(Employer Exhibit Number 15 Received into Evidence)**
4 MR. WAGNER: Sure.
5 **RESUMED DIRECT EXAMINATION**
6 Q BY MR. WAGNER: Ms. Christensen, would you turn to 14,
7 Employer 14. Can you identify this two-page document?
8 A Yes. As we discussed with the Union negotiation team
9 while they were producing the active recall and the wait list,
10 we had Janet Levine , our director of administration, call
11 everyone on the list to confirm that they were in the right
12 place, and also to confirm the cafes that they could work at.
13 So this is how we had that initial conversation with Tim Brogan
14 in which we discovered that he would not work at all cafes, and
15 had all those conversations.
16 And so we created this in part because this was a large
17 schedule structure, to figure out who could work where, and in
18 what order we should recall. And we didn't want to do that
19 until, you know, we double-checked that everyone was going to,
20 in fact, be able to be rehired to those locations. So this
21 listing --
22 Q Okay.
23 A -- includes Janet Levine's notes on those phone calls, and
24 the cafes that they were going to work out at, if on the active
25 recall list, and whether they confirmed that they are correct

first.

Q And with respect to Mr. Brogan, the notes indicate that he was not available, correct?

A So the notes here indicate that he preferred to be at team one, and that he -- there's a little tiny note here at the end, sorry, the writings are small, but he thought he was on the active recall list, because that is how he filled out the survey, and that he wanted to come back. So that is why we had the conversation, initially, with the negotiations team to move Tim Brogan from the wait list to the active recall list.

Q But then it says, "But he's on a full-time job until November, so he won't be able to work till then." He said he was confused by the survey and it wasn't clear.

A Yes.

Q What did you understand after Ms. Levine reported that in the conversation?

A So Janet Levine indicated that -- here she wrote down a few details on November. We had a further conversation with them in which she said, "Oh, actually, it was early October." When we were initially looking at our scheduling, and we were thinking that our last recall, it could be the end of September, we thought the first week of October might work. That's, you know, why we pursued that conversation.

Q But did, in fact, a position -- was a position available when Mr. Brogan was going to be available on October?

Well, did a position open up on October 4th?

A No. And I believe he had already declined pre-October as well, so.

Q What's the second page refer to?

A The second page is Janet's notes of whether she reached someone, who had to leave a message, and then the gray spreadsheet here is trying to figure out which stores we could open given the cafe is the -- the people on that rehire list would work at. So essentially everyone who was put -- all on the list, we were trying to figure out, okay, but how are we going to be able to fit you in at MLK, or at Community Corners, or Trumansburg, who goes where.

Q The (indiscernible)?

A Right, this is the (indiscernible).

MR. WAGNER: We would offer 14, Employer 14.

MR. HAYES: I'd like a limited voir dire again.

HEARING OFFICER SUTCLIFF: Okay.

VOIR DIRE EXAMINATION

Q BY MR. HAYES: I just have the same question because I -- if you said it, Ms. Christensen, I missed it. When were these documents created?

A This document was created immediately after, and during the execution of the MOA, so it was the end of August 2020.

Q Okay. And that's true of both pages?

A That's right.

MR. HAYES: Okay, nothing further. No objection.

HEARING OFFICER SUTCLIFF: Okay. I'm going to add something. I'm going to ask that you redact the phone numbers out of this document before we enter it into the record. So can we have someone working on that to ensure that the court reporter enters a redacted document? And any phone numbers in --

MR. WAGNER: And (indiscernible, simultaneous speech) --

HEARING OFFICER SUTCLIFF: Yeah. I don't -- I don't know there are any phone numbers on any of these other ones. I didn't notice that. But I certainly noticed them on this one. Okay?

MR. WAGNER: Yeah. Okay. Thank you.

HEARING OFFICER SUTCLIFF: With that -- that Employer's -- this is Employer 14, Employer 14 is received into the record.

(Employer Exhibit Number 14 Received into Evidence)

MR. WAGNER: Thank you.

RESUMED DIRECT EXAMINATION

Q BY MR. WAGNER: Could you please turn to what's been marked for ID as Employer 9? What is Employer 9, Ms. Christensen?

A Employer 9 is a hire update as of September 8th, in terms of whether everyone has been sent their offer letter, or whether they've completed their onboarding paperwork, and

rehire paperwork, where they were in the operations training, and where they were in cert status, herein referred to Bar Certification, and indicates whether they had received their Bar Certification, or are able to prepare expresso drinks, which is part of our standard training requirement.

And this is something that we prepared in order to keep track of all of the necessary steps for the rehire, and it's also routinely prepared prior to a -- a meeting we had with the entire bargaining unit for -- which I believe was September 9th, it was a Wednesday.

Q And was the information contained in Employer 9 communicated at that meeting on September 9th of 2020?

A Yes. We didn't necessarily name every individual person, but we indicated how many people had returned to MLK, how many people were pending on -- here it's marked upcoming review. That's for anyone's annual overview date within the period between March 25th and August 27th, so we gave them an annual review on their return.

Q And subject to all the people on the list of Employer Exhibit 9, actually returning on the day specified -- well, let -- let me back up.

MR. WAGNER: Strike that.

THE WITNESS: Um-hum.

Q BY MR. WAGNER: That's in the one, two, three, fourth column is the start day. Do you see that?

A Yes.
Q And some of those start dates are obviously later than the document itself, correct?
A Correct.
Q So subject to those people actually showing up and taking the -- the -- the position, was this the end of, or would -- does this signify the end of the two phases of the CO -- COVID limited reopening?
A Yes. So this was indicate to everyone who -- every position that's part of that COVID reopening, would be filled, to mean that the people on that list showed up and completed their paperwork (indiscernible, simultaneous speech) --
Q And I see on the -- on the list Tim at T-burg, and then in -- in that fourth column: October, question mark. Is that Tim Brogan?
A That is Tim Brogan, and the confusing scheduling that we were trying to figure out. So we were on (audio interference) at the time.
Q Was Tim Brogan, in fact, offered a position -- a rehire position in October?
A He was not.
Q Why not?
A There were no positions open at that time. In September, as they were rehiring, and we were trying to keep track of -- of how much support we thought all of the cafes would need, and

at the time we thought that we might need an additional position, but it ended up not being necessary. And there was no position for him to be recalled into. And also he had at that point texted Colleen and said that he didn't want to return to work.

Q Do you remember when that occurred, would you say?

A I don't.

MR. WAGNER: We've already -- we would offer Employer 9, please?

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Employer 9 is received into the record.

(Employer Exhibit Number 9 Received into Evidence)

Q BY MR. WAGNER: We've already spoken about Mr. Roth who took his name -- permanently took his name off of -- off of the wait list, and just put it on the active recall list on September 7th. If -- do you -- did you communicate -- did anyone, to your knowledge at Gimme! that communicated -- with Mr. Roth, that did he take his name off the active recall -- the waitlist to the active recall list, and would likely not be a position in the COVID reopening?

A None of us spoke to Mr. Roth directly. However, he was on the negotiation team at the time, I believe, so he was also invited to the negotiation team meetings, and in addition to the meetings we were having that with bargaining unit-wise.

1 But we did not reach out to him specifically.
2 Q And I may have asked this already, but just to make
3 sure I covered it. Was he the last person rehired from the
4 bargaining unit?
5 A Yes. He was the last person to be sent an offer
6 letter.
7 Q After the end of September 2020, through the end of
8 January 2021, did other members of the bargaining -- of the
9 prior baristas in the bargaining unit ask that their names be
10 taken off the waitlist and put on the active recall list?
11 A Yes. Two members of the bargaining unit put their
12 names on the active recall list.
13 Q And who were they?
14 A They were Josh Martinez, and Brenden Luko -- [Luuko-
15 sovich]?
16 HEARING OFFICER SUTCLIFF: Lukosovich?
17 THE WITNESS: Lukosovich, thank you.
18 Q BY MR. WAGNER: And turning your attention to Exhibit
19 21 -- Employer 21. What's that document?
20 A This document is Josh Martinez's request to come off
21 the waitlist and go on the active recall list.
22 Q And did -- was he in fact rehired?
23 A No. He was not. There were no positions open in the
24 bargaining unit.
25 Q From the date of this email to the end of January?

A That's right.

MR. WAGNER: We'd offer 21.

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Employer 21 is received into the record.

(Employer Exhibit Number 21 Received into Evidence)

Q BY MR. WAGNER: And what's been marked 22. Can you identify that?

A 22 is the email from -- Brenden asking to be put on the active recall list just for Cayuga Street, if it were to reopen.

Q And after, on January 7th, was there any plans to reopen Cayuga?

A There were not?

Q And was that communicated to Mr. Lukosovich --

UNIDENTIFIED SPEAKER: Lukosovich?

MR. WAGNER: Thank you.

A Yes. So you -- here where it says, "I just got off the phone with Claire. Brenden had returned to Gimme!, not as a member of the bargaining unit, but as one of our delivery drivers," because he had been a delivery driver for several months beginning in September. And so I had a phone call with him when he left the delivery driver's position, in which he said he didn't want to be a delivery driver anymore. He asked whether it would be possible for him to return to work as a

1 barista.

2 And in that conversation, I said, there is a mechanism

3 where you can put yourself on the active recall list. Here's

4 how in your email. Victoria and Colleen (indiscernible) had

5 also stated, we were not intending to reopen Cayuga Street.

6 There were no positions available anywhere, so the fact that he

7 only wanted Cayuga is not -- and there wasn't anything anywhere

8 else, at that time.

9 Q Did he express any interest in any of other positions

10 at the stores that had limited reopening?

11 A No. He did not mention that at all when he spoke to

12 me. And then when we got the email, it did list just Cayuga

13 Street.

14 MR. WAGNER: We would offer 22.

15 MR. HAYES: No objection.

16 HEARING OFFICER SUTCLIFF: Employer 22 is received into

17 the record.

18 **(Employer Exhibit Number 22 Received into Evidence)**

19 Q BY MR. WAGNER: Now, turning your attention to Employer

20 19. Can you look at that please?

21 A Um-hum.

22 Q Can you identify that document?

23 A This is our email conversation about how recall was

24 going before we had our meeting, about the biweekly meeting

25 mentioned here in the subject line, which was, the first was

one was scheduled for September 9th.

Q And that's the meeting -- that the information set forth in Employer 14 was shared with those in attendance?

A It's -- it's the checklist, and I'm not sure -- I lost track of what number it was, and not 14 but the --

Q 9?

A Yeah.

Q Thank you.

A That was the meeting that -- in which we discussed (audio interference).

MR. WAGNER: We would offer 19.

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Employer 19 is received into the record.

(Employer Exhibit Number 19 Received into Evidence)

Q BY MR. WAGNER: The first paragraph of 19 refers to prospective or future meetings with former baristas on the -- that were on the waitlist, to update them on progress of MLK, T-burg and Coco, limited reopening and -- and whether there's new information on reopening Cayuga and Gates. Do you see that?

A Um-hum.

Q You just have to say yes or no for the court reporter.

A I'm sorry. Yes, I did.

Q And did you, in fact, have meetings after September

1 9th, or September 8th, the date -- the date of the email, with
2 such updates?
3 A Yes. We had the meeting on September 9th in which we
4 discussed the reopening, that we were letting in
5 (indiscernible) serving, and nearly done with -- we had sent
6 all those offer letters out. And -- and then subsequent to
7 that, we instituted a weekly retail operations update for
8 current employees, for -- for people who had already finished
9 their COVID training. So we had those weekly through the end
10 of January in which we discussed any plans to make any changes
11 or any information on rehire (indiscernible).
12 Q And from the date of this email, September 8, 2020,
13 through the end of January 2021, at any of these meetings, or
14 any other communication that you're aware, did you ever
15 indicate to the bargaining committee or any of the former
16 baristas that Cayuga Street was -- was there a plan to reopen
17 Cayuga Street and offer rehire?
18 A No. We did not.
19 Q And apart from the pilot program that you announced
20 at Gates Hall, in the kiosk, at the end of January of 2021, did
21 you ever, between September 8 of 2020 and the end January 2021,
22 indicate to the bargaining unit any of the prior baristas, that
23 there would be a -- a -- barista spot open at Gates Hall?
24 A We did not.
25 Q I'd like you to turn back to Employer 4, please.

1 With the exception of Mr. Roth, who appears on the wait list,
2 were any of these other wait-listed employees that's set forth
3 in Employer 4 ever rehired into a barista position, through
4 January -- end of January 2021?
5 A No, they were not.
6 Q And were any of the people on that waitlist, with the
7 exception of Mr. Roth, offered a barista position from the day
8 of this document of August 27th, 2020, through the end of
9 January 2021.
10 A No. We did not offer any of them a barista position.
11 We did not send them an offer letters.
12 Q Okay. And did you communicate that any barista positions
13 were open to the bargaining unit, or any of the former baristas
14 from the end of September 2020 through the end of January 2021?
15 A We did not.
16 Q Did you consider the two-phased COVID reopening as
17 referenced in Exhibit 4 -- Employer 4 to have been concluded at
18 the end of September 2020?
19 A Yes.
20 Q Okay. Can I have you look at Employer 11, please? What's
21 that?
22 A This is a list of all employees in the title of
23 barista or lead barista, and their termination dates beginning
24 in January 2018 through January 31st, 2021.
25 Q And does this document reflect the former baristas

1 that were terminated on 3/25/2020 because of the COVID closure,
2 as well as the ones on the active recall list, plus Mr. Roth,
3 that were then rehired or reoffered employment subsequently?
4 A Yes, this was everyone who was terminated on March
5 25th, some are baristas -- in the barista position, regardless
6 of whether they requested to be on the active recall list.
7 MR. WAGNER: We would offer 11.
8 MR. HAYES: No objection.
9 HEARING OFFICER SUTCLIFF: Employer 11 is received into
10 the record.
11 **(Employer Exhibit Number 11 Received into Evidence)**
12 Q BY MR. WAGNER: And I'd like to go back to 10. Can you
13 look at that? What's this document, Ms. Christensen?
14 A This document is a list of all baristas hired or
15 rehired between January 2018 and January 31st, 2021.
16 Q And does this document show those baristas that were
17 offered reemployment as part of the two-phase COVID reopening?
18 A Yes. So for example, Charles Cook on this list shows
19 his original hire date in 2015, and his rehire date for work --
20 work at MLK.
21 Q So if there's any question in the record and as -- as
22 passed by the hearing officer that would cite a rehire date for
23 COVID -- the two-phased COVID reopening, this document would
24 accurately reflect that?
25 A Yes.

MR. WAGNER: We offer 10.

MR. HAYES: No objection.

HEARING OFFICER SUTCLIFF: Employer's 10 is received into the record?

(Employer Exhibit Number 10 Received into Evidence)

Q BY MR. WAGNER: As of the end of January 2021, was there any -- to your knowledge, was there any change in the guidance you were following with regards to any outside agency, governmental authority, et cetera, with regard to -- you know, either recommendations or mandates with regard to dining service that would -- that caused you to consider a broader service model, including in -- inside dining and more robust staffing?

A No. New York forwarded guidance on -- their mandates changed frequently over the period until January 31st, 2020 (sic), with some -- frequently, but in very small ways, but we weren't following the -- the mandated guidance we were following the best precautions guidance, which remained the same.

Q Which was what?

A The best precautions guidance continued to recommend social distancing, mask wearing, sanitation, cleanliness, et cetera, but we were using as a basis for one to make sure that it (audio interference) service model.

Q And contactless service?

A And contactless service. Even when we did begin offering, in the fall, service where people could order at the door, we had a unit that had been two pieces -- the barista would be inside. The door and the customer-facing side was on a type of (indiscernible), but they would swipe their own credit card themselves. So we did not accept anything through the window, and had our contactless service. We did not have (audio interference).

Q And was the --

MR. WAGNER: Strike that.

Q BY MR. WAGNER: Did your anecdotal experience in terms of the way you staffed with full-time baristas created a more sanitary, spatial environment, contactless delivery, et cetera, by the end of January 2021, did you conclude that that had been successful or unsuccessful?

A We concluded that it had been successful. We had two times when someone brought a case of COVID into one of the cafes, so an employee got COVID somewhere else, and came in to work, in both of those occasions no one at Gimme! was infected. There was no transmission at Gimme!, and there was no transmission from us to the customers.

When we talked to the Department of Health about this, at the first of those cases, the Department of Health was very complimentary and very impressed by our precautions. So we did -- both of those occasions we did have to quarantine the

1 remainder of the infected persons' pods out for caution sake.
2 But we were very relieved to learn that there have been no
3 transmission between employees. And in fact, the Department of
4 Health considered there to be such a low risk for transmission
5 to customers that they didn't even put out any notices of it.
6 Q You mean in the two incidents where -- where customers had
7 come to the window and through contact tracing, you would learn
8 that they had COVID?
9 A Oh, no, sorry. It was two employees who were working at
10 the window, and through contact tracing, they learned that they
11 had COVID, they were isolated, the entire team was quarantined,
12 but no one else got sick. And the Department of Health said
13 that they thought there was no risk to the customers in those
14 occasions, even though the infected, contagious person was
15 working at the door.
16 So the Department of Health did not issue a statement. So
17 typically our local Department of Health, the Thompson County
18 Department of Health would be putting out statements that said:
19 If you shop at this particular grocery store between 10 and 2
20 p.m. on this day, you may have been infected, or exposed to
21 COVID, please go to the testing site and quarantine. But on
22 both of these occasions that an employee who brought COVID into
23 Gimme!, the Department of Health did not feel the need to issue
24 service statements because they thought our three model was
25 protected.

Q Did that cause you to conclude that no changes to the style of service in the local staff and to be made as of the end of January of 2021?

A Yes. We were dedicated to the Pod model, and to the door service model, and -- and we were really pleased by our door-to-service carts, and how well they were working during the winter, and we had no intention to change it. And we were actually very satisfied with the staff (audio interference).

Q You may have heard Mr. Hayes mentioned in his opening remarks that there were conversations with -- between Gimme! management and the Union before the end of January of 2021, where -- where questions were raised about the reopening of the Cayuga Street. Do you recall those conversations?

A I do, in negotiations meetings.

Q And what -- to -- to your recollection what, you know, information did you provide either in writing or verbally about your plans to reopen Cayuga Street?

A We were asked about it repeatedly on -- on different occasions, and what we said consistently was that we really like Cayuga Street, we like the space, we like the store. We don't want to say we're going to abandon Cayuga Street forever, but we also have no plans to reopen. We had no scheduling, no plans, nothing built, and also we were concerned about the HVAC issue in addition to the build and demand issue.

Q And the same question for Gates. Other than the

1 announcement at the very end of January 2021 that you would, in
2 order to not get your lease canceled to go to a single --
3 manager kiosk model of the pilot, did you ever provide
4 information in response to questions that -- that indicated
5 that you had plans to reopen Gates with more than a single
6 person, including baristas?
7 A No. And that's a similar situation where, you know,
8 when people asked about it especially people who listed Gates
9 Hall Cafe, we would say, yes, we indeed liked working at Gates
10 Hall, it was a good time, but -- but we have no plans, no
11 schedule, and frankly, could not see any way to staff the Gates
12 Hall Cafe safely with any more than one person, which
13 necessarily meant limited service.
14 MR. WAGNER: Did I offer Employer 10?
15 HEARING OFFICER SUTCLIFF: Yes. It's received.
16 MR. WAGNER: Thank you.
17 Q BY MR. WAGNER: Now, you mentioned that you were -- some
18 of those comments or questions from the bargaining committee
19 where the contract of -- contract negotiations, do you mean
20 negotiations for a -- a potential successor agreement?
21 A That's right, in the conversations about a successor
22 CBA.
23 Q Okay. So this was not a bargaining over the COVID
24 reopening, and the matters set forth in Employer 4?
25 A Right. It was separate conversations as we were

meeting fairly frequently to bargain over the success of CBA.

MR. WAGNER: If I could just have one moment.

HEARING OFFICER SUTCLIFF: Sure

Q BY MR. WAGNER: I'm showing you what's been marked for identification, Employer 16. What's this document?

A This document is a conversation with the negotiations team about when we would be reopening Trumansburg, and when baristas were being recalled.

Q And the second line of the top communication that cites the meeting on: next Wednesday at 4 p.m. Is this -- was that the September 9th meeting we talked about before?

A Yes. That's the September 9th meeting.

Q Okay. And the -- the email address, gimme.unionistas@gmail.com. What's your understanding of that email?

A That is an email address for stewards, or for the negotiations team. It's where we direct all union-related conversations.

Q And to your knowledge, on September 3rd, was Mr. Roth on the negotiating or the bargaining committee for the -- that -- that has negotiated the MOA in Employer 4?

A Yes -- or at least he was present at those meetings.

Q Okay. Was he ever identified as being on the bargaining committee?

A I ho --

1 Q To you?
2 A I honestly don't remember.
3 Q Okay. In the third paragraph, after the first two
4 sentences, paragraph that starts, "We have planned to recall
5 baristas on the active list by 9/20." You see that?
6 A Yes.
7 Q Was that consistent with the information that you then
8 shared at the September 9th meeting?
9 A Yes. Indicating that we were going to rehire all
10 baristas on the active list by the end of September.
11 Q Okay. So to the extent that Mr. Roth, who was privy
12 to this communication, he would have received this prior to
13 taking his name off the waitlist and putting it on the active
14 recall list as set forth in Exhibit 20, correct?
15 A Yes.
16 MR. WAGNER: We would offer Employer 16.
17 MR. HAYES: No objection.
18 HEARING OFFICER SUTCLIFF: Employer 16 is received into
19 the record.
20 **(Employer Exhibit Number 16 Received into Evidence)**
21 Q BY MR. WAGNER: If you can turn back to number 4 again,
22 please? I'm -- I'm just going to ask you about an individual
23 from the waitlist, and it's Appendix C, page 4. And all of the
24 questions are going to relate to January 31st, 2021, as of that
25 date.

A Okay.

Q Did Brenden Lukosovich -- did I get it right? Thank you. Did Brenden Lukosovich as of -- up until and as of January 31st, 2021, take his name off the waitlist and indicate that he was available for active employment.

A He did.

Q But --

A So he -- so he (indiscernible) only via email.

Q Okay. So -- and that was not available as you previously testified?

A Right. There was no -- there were no positions available anywhere, and Cayuga, in particular, was not open at all, so.

Q Right. Did Samantha Mason, between the date of this document and January 31st, 2021, take her name off the waitlist?

A No.

Q Did Rebecca Lespierre?

A No.

Q Did Eva Mailloux -- Mailloux?

A Oh, no, no.

Q Did Bart Feberwee?

A No.

Q Did Jenna Burger?

A No.

Q Did Rachel Eginton?

A No.

Q Did Ashley Yaj -- Yajko?

A No.

Q And did Jesse Sanchez?

A No.

Q Did you consider Exhibit 4 the -- or at least the COVID recall MOA portion of Exhibit 4, to have ended by the end of January 2021?

A We had some conversations about this, and we said that we had only opened those three cafes, and so there was -- there were no positions left for anyone to be rehired into.

MR. WAGNER: That -- that's all the questions I have.

HEARING OFFICER SUTCLIFF: Okay. Your direct is concluded?

MR. WAGNER: Yes, Madam Hearing Officer.

HEARING OFFICER SUTCLIFF: Okay. Mr. Hayes?

MR. HAYES: I'd like to take some time to sort of go through that and prepare cross. Do you want to combine that with a -- a lunch break?

HEARING OFFICER SUTCLIFF: Well, I mean, normally I -- I don't -- I don't know how comfortable I feel with that much time being given for cross. I'm -- I -- I think we probably -- there probably is some time to be had --

Let's go off the record.

(Off the record at 12:43 a.m.)

HEARING OFFICER SUTCLIFF: Back on the record.

Mr. Hayes, cross?

MR. HAYES: Madam Hearing Officer, before I begin my cross-examination, I'd like to make a motion.

HEARING OFFICER SUTCLIFF: Okay. What is the motion?

MR. HAYES: I'm moving to strike the last question and answer that were asked and answered on cross-examination of Ms. Christensen. Do you want me to make an offer of proof on that?

HEARING OFFICER SUTCLIFF: Yes, please.

MR. HAYES: Okay. So I'll -- I'll try not to get into excessive history here, but there -- it was a sequence of events where the Union filed a ULP charge against the company in January of this year, alleging that the company, by taking the position that employees on the waitlist no longer had recall rights, had violated the National Labor Relations Act.

That ULP was investigated, the Region found merit, and the parties eventually reached a settlement agreement. As part of that settlement agreement, the Company agreed not to violate or repudiate the MOA, including the fact that employees had -- or employees on the waitlist had recall rights under that MOA. That was the only reason the Union agreed to -- or -- or didn't challenge the entire settlement, it was so -- the Company could not raise the argument in this exact hearing that people no longer had recall rights under the MOA.

Until the last question on the record, it -- it doesn't seem like the Company was taking that position, but the -- the -- that position was certainly implicit in the question, and therefore, I think it's tainted and not appropriate. That's why I think the question and answer should be struck.

HEARING OFFICER SUTCLIFF: What was the -- the recollection? What was the question that was asked? Do you have it in your notes? Because I have -- I have I have some notes about it, but I don't have an exact -- I don't have an exact -- is there -- is there someone who has --

MR. HAYES: Yes --

HEARING OFFICER SUTCLIFF: -- has the record?

MR. HAYES: I mean, I can speak to the how -- oh, I mean -- sorry. I -- I -- I assume you're asking the court reporter.

HEARING OFFICER SUTCLIFF: Well, I -- I can -- I can ask -- I mean, I can ask -- ask you if you -- what -- what's your recollection of the question was that raised your -- your motion?

MR. HAYES: Yeah. The -- the question was something along the lines of, was the effects MOA still in effect or still relevant as of the end of January 2021.

HEARING OFFICER SUTCLIFF: Okay. And the answer was? No?

MR. HAYES: The answer was not yes or no, but I think it was designed to imply that the answer is yes, and I -- that's

1 not acceptable.

2 HEARING OFFICER SUTCLIFF: Okay. What is your position on

3 that on that -- on the motion?

4 MR. WAGNER: So I frankly don't remember the specific

5 question, but I -- very certain I did not use the term "recall

6 rights" there intentionally. I believe the question was

7 just -- was -- was more straightforward than that, simply

8 asking the witness, as at the end of January 2021 did -- from

9 the -- from the Employer's perspective, had the recall process,

10 as set forth in the MOA, concluded.

11 And the answer was that it had concluded at that point

12 with no -- with no plans for additional positions being open,

13 so that -- that -- we're -- we're not taking the position. I

14 agree with everything that Mr. Hayes said, except the motion

15 itself. We're not taking a position that had management opened

16 up new positions before the end of January that those people

17 would have had labor rights. We're -- we're on the record not

18 taking that position.

19 Our position is the MOA was tied to the COVID reopening,

20 and because as of the end of January there was absolutely no

21 plan to expand that opening, that recall -- the rehire process

22 from the Employer's perspective, was done. Tech -- now, had

23 they said at the end of December, oh, we've changed our mind,

24 we're going to open up another store, we're going to actually

25 enter into a lease at another place. Mr. Hayes is exactly

right that that MOA would have -- well, not a new store, because then they wouldn't have been able to reopen.

But if they had opened Cayuga Street, or planned to open Cayuga Street, and opened new positions, the MOA would apply. So we're -- we're not suggesting that recall rights were -- were extinguished in and of themselves, there is simply no plan to open any new position, so the recall was done in the mind of the Employer and communicating to the employee. That's all.

HEARING OFFICER SUTCLIFF: Let's -- let's go off the record.

(Off the record at 1:06 p.m.)

HEARING OFFICER SUTCLIFF: Okay. Back on the record. We had some off-the-record conversations to further discuss the motion that was placed before me by Mr. Hayes regarding the striking of recent testimony.

I'm going to deny the motion to strike, and I am going to further propose the stipulation that pursuant to the MOA dated August 27, 2020, the nine employees who cast ballots that were challenged and are the remaining subject of this proceeding, possessed recall rights as defined in the MOA as of January 31st, 2021.

MR. WAGNER: So stipulated from me.

MR. HAYES: So stipulated.

HEARING OFFICER SUTCLIFF: Okay. Thank you. That stipulation is received.

1 With that stipulation -- receiving that stipulation I
2 believe that the -- the -- that was the reason for denying the
3 motion to strike that testimony. I believe this stipulation
4 clarifies the issue that was raised by that motion.
5 So let's continue on with cross-examination, Mr. Hayes.
6 MR. HAYES: Thank you.
7 **CROSS-EXAMINATION**
8 Q BY MR. HAYES: I guess I should just say, Ms. Christensen,
9 my name is Ian Hayes, I represent the Union. I'm going to be
10 asking you questions about all of the testimony, or some of it,
11 that you just went through earlier today.
12 A Um-hum.
13 Q And I'm going to be jumping all over the place. And
14 that's just the nature of my notes, and also pausing a little
15 bit. So just be patient with me, okay? You testified that in
16 March 2020 Gimme! closed all of its stores, not just the five
17 Ithaca stores that, you know, are covered by the Union contract
18 and are at issue here, but also its other stores in New York
19 City. Do you remember testifying about that?
20 A Yeah.
21 Q Okay. With -- within a matter of a few weeks, Gimme! had
22 actually made the decision to permanently close those -- those
23 two New York City stores, correct?
24 A Yes.
25 Q Do you remember about one that was?

A And I looked at our timeline recently, I believe it was early April.

Q Early April, that's -- okay. And Gimme! made some kind of announcement along those lines, right?

A Yes.

Q Okay, but the same decision was not made with respect to the Ithaca stores, correct?

A Correct?

Q You -- one of the Employer's exhibits Is it just a series of letters to all of the employees -- form letters dated March 30th that were -- I think you called them termination letters, or something very close to that? You remember those letters, right?

A Yes.

Q I don't need you to look at them. My question is, Gimme! also sent follow up letters to all of the employees within about two weeks of that, clarifying or explaining that the employees were laid off because of COVID, and not because of any kind of wrongdoing. Is that correct?

A Yes. The effects bargaining negotiations then asked for those letters to be sent. We created the letter. I don't recall if anyone requested it, and we did it. So yeah --

Q You don't recall if anyone --

A -- we -- we wrote the letter that the termination was due to the COVID-19 pandemic, which had been a request of the

negotiations team in effects bargaining. Janet Levine created that letter and had it ready to go. I don't know if any -- if since the bargaining unit asked to receive it, or if the negotiations team actually sent it out.

Q Okay.

HEARING OFFICER SUTCLIFF: I'm sorry. Is that the letter -- is that a -- was that an -- an appendix to the agreement? Was that Appendix A to that agree -- agreement? It's not actually in the document. There's a reference to that letter. Yeah, so page -- page 1 of the document number 1, "All layoffs," Appendix A. Is that the letter you're referring to?

THE WITNESS: That is the letter I'm referring to.

HEARING OFFICER SUTCLIFF: Is that the letter you're referring to also, Mr. Hayes?

MR. HAYES: Yes. That's -- that's right. Yes.

HEARING OFFICER SUTCLIFF: Which that -- it's not in --

MR. HAYES: Thank you.

HEARING OFFICER SUTCLIFF: -- the record, it's not in the record now, is -- will it be, or --

MR. HAYES: I -- I didn't see a reason to offer it, I --

HEARING OFFICER SUTCLIFF: Okay.

MR. HAYES: -- I just wanted Ms. Christensen to refer to it. Just so there's no question.

HEARING OFFICER SUTCLIFF: That's fine.

MR. HAYES: Yeah.

HEARING OFFICER SUTCLIFF: No -- no problem. Go ahead.

MR. HAYES: Okay.

Q BY MR. HAYES: All right. Ms. Christensen, you -- you spoke a little bit about the importance of the presence of Cornell to -- like the Ithaca economy, and including the business of Gimme! Coffee as a whole. Do you remember that?

A Yes.

Q And you testified a little bit about Cornell's plans and the fact that in the fall of 2020, I believe they were doing all remote classes, right?

A I believe so.

Q So that -- that did change as time went on, and there were at least plans, if not an actual implementation of a plan, to have at least some in-person classes at Cornell in the spring 2021 semester, right?

MR. WAGNER: I'm going to object to the question. It goes beyond the relevant time period. The Cornell Spring Semester didn't start until February. And I think we're getting into post end of January evidence.

HEARING OFFICER SUTCLIFF: Okay. I'm going to overrule the objection, and allow the line of questioning. And I -- and it would only -- for the purposes of whether there were any plans regarding Gimme! Coffee openings regarding the spring time frame. So I've overruled the objection.

Go ahead, Mr. Haynes.

Q BY MR. HAYES: Well, the question is, as of -- or as late as the end of January 2021, Cornell was making plans to have in-person learning in -- in the spring 2021 semester, correct?

A Yeah, limited in-person learning in 2020.

Q Limited, yes, but it was an -- an improvement from the fall 2020 semester, in other words?

MR. WAGNER: Objection, to the characterization of an improvement.

HEARING OFFICER SUTCLIFF: I'll -- I'll overrule the objection I -- or let's sustain the objections then. Just maybe phrase it terms of a change rather than an improvement.

Q BY MR. HAYES: There was a change from the -- from the fall 2020 semester which all online learning, correct?

A Correct, there were a few more (audio interference).

Q And the same was true -- the same change was -- was true with respect to Ithaca College, which also had plans to do at least some in-person learning going into 2021, correct?

A I believe so, yes.

Q When you were describing the July 7th, 2020 PowerPoint presentation that you made -- or that the Company made, you talked about the phases of reopening, and if you remember, the PowerPoint slide, in particular, has question marks with respect to Cayuga and Gates, correct?

A Yes.

Q At any point in that presentation, did -- did a

Gimme! representative say that those stories would never be opening again?

A No. We did not say that.

Q I mean, is it -- it's -- no Gimme! representative ever said that from that point forward, right?

A We -- I think I need a little -- to give a little context here to say that when we talked about it, we said that the situation was more difficult, that demand was a problem, that there could be financial issues, and we did also mention other options for those things. So we -- we did say we are not sure if we are going to keep the lease at Gates Hall.

And we did -- also said that we had received offers for Cayuga Street, and that both of those things, logically, meaning that those cafes may not be there in the future. But I never said there's a chance that we'll never open Gates again, in those exact words. But I definitely said we may not retain that lease.

Q Either the Company, including you or, you know, anyone else who is designated to speak for the Company. The Company has never made a statement, and -- and when I say never, I mean up through the end of January 2021, that goes for all my questions, the Company has never made an announcement that the Cay -- Cayuga store was permanently closed, correct?

A Correct. We had not announced that.

Q And the Company also has not made an announcement

that the Gates store is permanently closed, correct? Up through the end of January 2021?

A Yes, correct.

Q The -- you mentioned the pilot program at Gates where there was limited staffing, and -- and it was staffed by members of management, that wasn't a -- a permanent plan, that was just the plan for Gates from that day going on into the future, correct?

A No. I'm confused by your question, so I'm going to answer it (audio interference). That was the plan for Gates Hall going forward. There was no way that we could get more than one person in that kiosk safely, given what we knew about COVID. We would have --

Q But --

A We were sche --

Q Okay.

A -- (indiscernible, simultaneous speech) person in that space.

Q Why was it called a pilot program?

A It was called a pilot program because we thought we might close it. That is, we didn't promise the university that we would remain open. We said we would --

Q Okay.

A -- pilot a one-person operation.

Q But I -- correct me if I'm wrong. The idea was that this

is the situation that we're faced with because of the current state of COVID. That doesn't -- as COVID improves, the staffing situation could change along with it going into the future. That was -- that -- that was included within the company's plans as of January 2021 when you made that announcement about the pilot program, correct?

A I'm confused by the question. We all wanted COVID to get better. I had no project plan. I had no projection that COVID was -- was going to get better. Like, all of our project plans were assuming that we were going to be in that status quo. We were assuming door service. We were assuming single-person kiosk service.

Q So was your plan to never have another barista work at the Gates store ever again?

MR. WAGNER: Object to that question because now that's extending well beyond January 31st --

MR. HAYES: As of --

MR. WAGNER: -- and asking --

MR. HAYES: As of -- I under -- okay. Withdrawn.

Q BY MR. HAYES: As of January 31st, 2021, was your plan to never have another barista step foot in the Gates store again?

A Yes.

Q Did you communicate that to the Union?

A We had a conversation about it via email and also in our retail operations meeting.

1 Q Okay. Did you communicate that to the employees who had
2 placed themselves on the wait list?
3 A No. We only reached out to the gimme.unionista email
4 address, which many of them were on.
5 Q So I -- you know, you -- you -- you've offered a lot of
6 testimony about the processes and the motivations surrounding
7 the bargaining of the MOA. I want to ask you about just the
8 operation of the MOA once it was finalized and signed, okay?
9 So under the -- the existing MOA -- and -- and I -- I -- I'll
10 just clarify again, any question I ask is limited in time.
11 I'm -- I'm asking about your understanding, you know, up
12 through the end of January 2021. I -- I don't want to ask you
13 about, you know, if there were changes, anything that happened
14 after that. Do you follow me?
15 A Yes.
16 Q So -- and I just say that because I don't want to have to
17 end every question with that reference or that qualification,
18 but I -- I -- those are the bounds of what I'm asking you
19 about. So under the existing MOA, when Gimme! would implement
20 a reopening, the -- the operation of the MOA was that everyone
21 who was on the wait list would be at least approached and given
22 the opportunity to say they want to return to work, correct?
23 A We -- that is not in our purview. What -- all that the
24 MOA says to us is that we would email .unionistas, the shared
25 email address, and inform them that we were opening a new

1 location. They would do any outreach, and they would provide
2 the list. We would not reach out.
3 Q Right. I -- I didn't mean to suggest you would be doing
4 the outreach. But regardless, so then your understanding
5 was -- was that the Union would -- would reach out to everyone
6 on the wait list about coming back to work at that point,
7 correct?
8 A I somewhat assumed that, but we had had no conversations
9 about what the Union was going to do to produce that list.
10 Q Well, what was -- I mean the -- that -- you spent a lot of
11 time bargaining language in the MOA. You must have had an idea
12 of what the Union would be doing in that case, even if you sort
13 of --
14 MR. WAGNER: I'm going to object --
15 MR. HAYES: -- didn't want to --
16 MR. WAGNER: I'm going to object to the question. The
17 document speaks for itself. I mean, the document lays out the
18 steps. The witness has testified to what the actual steps
19 were. What the Union actually did behind the scenes, she's
20 already testified that she does not have any direct knowledge
21 of that.
22 MR. HAYES: The reason I'm asking these questions is that
23 I don't think -- I -- I have a response to that. I don't think
24 there was adequate testimony about what actually happens under
25 the finalized MOA. And that's why I'm asking.

1 HEARING OFFICER SUTCLIFF: So I guess the question would
2 be then -- so I'll -- I'll sustain the objection just to
3 clarify. So why don't you ask her what -- what was -- what
4 actually happened? Instead of her understanding, let's go
5 through what actually happened.
6 Q BY MR. HAYES: So Ms. Christensen, when -- when there was
7 the -- the first and second phases of reopening, which you
8 testified happened together or almost at the same time, what
9 happened that led to people coming back to work, as far as you
10 know?
11 A As far as we know -- so we did not go through the process
12 that's listed where we email them, wait seven days, and get a
13 list because we were already actively bargaining at that point.
14 They said they would provide a list. We asked them to provide
15 the list. I believe that someone mentioned that they had done
16 a survey or a phone call, and that is how those lists were
17 generated.
18 Q Okay. And when you say they in your answer just now, you
19 mean the Union, right?
20 A The negotiations team.
21 Q The negotiations team. Okay.
22 A We did not directly speak to any of those folks before
23 that list was created except the people who are on the
24 negotiations team.
25 Q Understood. I do want to just clarify one thing. The

1 active recall list that the parties signed off on in the MOA
2 has 14 people, or excuse me, 14 baristas on it, and there were
3 expected to be 14 openings at the stores at that same time,
4 correct?
5 A Correct.
6 Q And your testimony was that that match in the number was
7 essentially just a coincidence, right?
8 A My testimony is that I don't know why there is a match in
9 the numbers because we didn't produce that list. The
10 negotiations team produced the list. We accepted the list they
11 gave us.
12 Q And you didn't tell the negotiations team there were
13 specifically 14 openings, right?
14 A We said there were more than 10 at that point. We did --
15 I don't know if we specifically said 14. It would have been
16 verbally.
17 Q Do you have the Union exhibits available in front of you
18 in that room?
19 A I --
20 Q Say that again, please.
21 A I do.
22 Q Okay. Can you pull out what's been marked as Union
23 Exhibit 10?
24 A Yes.
25 Q Okay. So in your direct testimony, you referred to Tim

texting Colleen to say he didn't want to return to work. You remember that testimony?

A I do.

Q Is this the text you were referring to?

A Yes.

Q Okay.

MR. HAYES: Well, okay. I -- I ask that Union Exhibit 10 be received into the record.

HEARING OFFICER SUTCLIFF: Any objection?

MR. WAGNER: No objection.

HEARING OFFICER SUTCLIFF: Okay. Employer -- or sorry. Union 10 is received into the record.

(Union Exhibit Number 10 Received into Evidence)

MR. HAYES: Okay. Can we just go off the record for one second, please?

HEARING OFFICER SUTCLIFF: Sure. Off the record.

(Off the record at 1:53 p.m.)

HEARING OFFICER SUTCLIFF: Okay. Let us know when we're back on, please.

THE COURT REPORTER: We are.

HEARING OFFICER SUTCLIFF: Okay. We're back on the record. We had some off the record conversations regarding document production under the subpoena. And Mr. Hayes, go ahead with your -- your proposed way to resolve the -- the -- the question you've raised.

1 MR. HAYES: Sure. What -- so what I'd like to do is
2 propose a stipulation that the parties can reach. I -- I've
3 sent the hearing officer and Counsel for the company what's
4 been marked as Union Exhibit 13, which is a copy of a subpoena
5 that was served on the company as part of this hearing. The
6 third -- or number three document request in that subpoena was
7 for "any communications or records of communications from laid
8 off employees to the Employer or any of its representatives
9 regarding such employees intent not to return to work at the
10 Employer and/or a request to be removed from the wait list of
11 the MOA dated August 27, 2020." It's my understanding, based
12 on the off-the-record conversation we just had, that the only
13 responsive document to this number three is what is now in the
14 record as Union Exhibit 10. So I just propose that as a
15 stipulation.
16 HEARING OFFICER SUTCLIFF: Okay. For the Employer? Does
17 the Employer stipulate to that?
18 MR. WAGNER: As I look at the request, it's not limited by
19 date. And we're -- we are -- we had limited our production
20 perhaps mistakenly to up until January 31st of 2021. But
21 subject to that addition, it's -- it's the only written record
22 of such a communication that we have up until that date.
23 MR. HAYES: And I agree with that addition. That's
24 appropriate.
25 HEARING OFFICER SUTCLIFF: Okay. So then with that

1 addition, that stipulation then is received. Thank you.
2 MR. HAYES: Thanks for your patience. Can I continue with
3 my cross --
4 HEARING OFFICER SUTCLIFF: Yes.
5 MR. HAYES: -- examination?
6 HEARING OFFICER SUTCLIFF: Please do.
7 Q BY MR. HAYES: Ms. Christensen, you referred to -- I think
8 you said it was weekly meetings which you called retail
9 operations updates that -- that happened starting in September
10 of 2020 through the end of January of 2021. Do you remember
11 that?
12 A Yes.
13 Q Was anyone on the wait list at -- at the time present in
14 any of those weekly meetings?
15 A Not as far as I know. The only baristas who were present
16 as far as we knew, who the invitations were sent to, were
17 baristas who had completed their COVID onboarding training.
18 Q So were -- were the employees on the wait list even
19 invited to those meetings?
20 A They were not. There was a separate meeting, that
21 September 9th meeting, for the entire bargaining unit.
22 Q Okay. And that's September -- I know there was testimony
23 on the September 9th meeting. That was the only one in this
24 time period that wait listed employees were invited to?
25 A I believe so. We had intended to have them biweekly, but

1 only two people showed up to the first one. One of them was
2 Brittany Cunha, who was on the not returning to work list. And
3 the other person was Rebecca Lespierre, so -- who did not have
4 any interest. I -- we had a conversation about it that I don't
5 remember the full details of, but nobody was interested in
6 making them recurring at that point.
7 Q Okay. So even though the -- the -- there were some --
8 like, the initial invitation refers to bi -- biweekly ongoing
9 meetings, there was only ever one meeting, correct?
10 A Correct. There was only ever one meeting for the entirety
11 of the bargaining unit.
12 Q Right. Okay. Can you take a look at Employer Exhibit 11
13 and let me know when you have that open?
14 A Okay.
15 Q So you testified that this is a list of employees in the
16 barista or lead barista titles who were terminated sometime
17 in -- in 2018 through the end of January of 2021, correct?
18 A Yes.
19 Q So I -- does this also -- this might just be a matter of
20 semantics, but does this list include people who simply quit
21 from their jobs in that time period?
22 A Yes. It includes anyone who was terminated for any reason
23 in that period.
24 Q Okay. Another -- if you just keep that open. I think
25 this question goes for both Employer Exhibits 11 and 10. These

lists have references to stores called Roebling, Mott, and Lorimer. Am I correct in saying those -- those are stores that are not included in the five Ithaca area stores that are the subject of this case?

A Correct. Those are our New York City stores -- were our New York City stores.

Q Okay. Just give me one more moment.

A Sure.

Q Ms. Christensen, I'd like to -- I'd like you to turn to what's been marked as Union Exhibit 11, and let me know when you have that open.

A Yes.

Q Okay. Do you recognize this document?

A Yes.

Q What is it?

A Let me just finish reading through it and make sure I know what it is all the way down. Yes. So this is a memo that was written to describe the conversation that happened in one of those weekly op -- retail operations meetings.

Q Okay.

A It summarizes --

Q I --

A -- that.

Q So does this reflect the announcement about the pilot program at Gates Hall?

A Correct. We announced it in our retail operations meeting first and then followed up with this memo to summarize what we had talked about.

Q Okay. And who created this memo, if you know?

A Victoria Hantout, who was the regional manager.

Q All right. And where was the memo sent to? Who received it?

A It was sent via our standard memo system. So it was sent to everyone who had a Gimme! Coffee email address, and then printed copies were sent to each physical location where each -- so Coco, T-burg, and MLK both have a -- a memo area, and they would be sent the paper copies of the memo to post.

MR. HAYES: Okay. I -- I ask that Union Exhibit 11 be received into the record.

HEARING OFFICER SUTCLIFF: Any objection?

MR. WAGNER: No objection.

HEARING OFFICER SUTCLIFF: Okay. Union --

MR. WAGNER: None.

HEARING OFFICER SUTCLIFF: Union 11 is received into the record.

(Union Exhibit Number 11 Received into Evidence)

MR. HAYES: Okay. Nothing further.

HEARING OFFICER SUTCLIFF: Okay. I just have one question. Looking at Employer 4, which is the MOA, page 3 of 5, numbered paragraph 4. We had some testimony on this, but I

1 want to make sure I'm clear. So this number paragraph talks
2 about notifying the Union when locations are reopening and
3 which locations are reopening at least seven days before. So
4 in reference to this paragraph, to your knowledge, were there
5 any such emails sent to that unionistas Gmail account from the
6 time period of when the MOA was operative through January 31st
7 of 2021?
8 MS. CHRISTENSEN: No, there were not because we did not
9 reopen additional locations.
10 HEARING OFFICER SUTCLIFF: Okay. Thank you. That's the
11 only question that I had. Any redirect, sir?
12 MR. WAGNER: Yes, just very briefly to follow up on the
13 hearing officer's question.
14 **REDIRECT EXAMINATION**
15 Q BY MR. WAGNER: Did the -- how was the information
16 regarding phase 1 and phase 2 and the order of the rehire
17 offers communicated to the Union?
18 A So we communicated to the Union through the process of
19 getting to the final signature point on the MOA, which is how
20 we ended up with that earlier document calling back the first
21 two people first. And then at that September 9th meeting, and
22 I believe there was an email thread as well on September 3rd in
23 which we talked about who had signed an offer letter at that
24 point.
25 Q So is it fair to say that the September 3rd and the

1 September 8th emails, which I believe are in evidence as
2 Employer 19 and Employer 16, were -- comprised written
3 notification clarifying the schedule of -- of -- of offering
4 rehire to the people on the active list?
5 A Yes. So I -- by the time we signed the MOA, we had
6 already discussed that this was going to be three stores
7 opening essentially in one city.
8 Q And the September 9th meeting was -- was with -- with the
9 exception of -- strike that. Do you remember when management
10 communicated to the Union in writing or verbally that -- that
11 Mr. Roth had moved himself from the wait list to the active
12 re -- recall list and was in line to be rehired?
13 A I believe it was the September 9th meeting. I do not
14 believe that we emailed separately because it happened right
15 around the same time as that meeting.
16 Q And did the Union, to your recollection, object to that
17 notification, meaning that -- that Mr. Roth had individually
18 removed himself from the wait list and put himself on the
19 active recall and was next in line to be offered rehire?
20 A No, they did not.
21 Q Did the Union at any time claim that the company had not
22 fulfilled its obligations under paragraph 4 of the MOA,
23 Employer Exhibit 4?
24 A Not in the covered period. Through January 31st, they did
25 not claim that.

1 Q Okay. That's -- that's all I have, Madam Hearing Officer.
2 HEARING OFFICER SUTCLIFF: Okay. I just thought of
3 something. Mr. Hayes, did you want to enter Union 13, the
4 subpoena, into the record?
5 MR. HAYES: Oh, yes. Thank you.
6 HEARING OFFICER SUTCLIFF: I --
7 MR. WAGNER: No objection.
8 HEARING OFFICER SUTCLIFF: I don't -- I don't -- I
9 don't -- okay. So actually, go ahead and offer it, Mr. Hayes.
10 MR. HAYES: Okay. I -- I ask that Union Exhibit 13 be
11 entered into the record.
12 MR. WAGNER: No objection.
13 HEARING OFFICER SUTCLIFF: Okay. Union 13 is received
14 into the record.
15 **(Union Exhibit Number 13 Received into Evidence)**
16 HEARING OFFICER SUTCLIFF: And then, Mr. Hayes, do you
17 have any recross at this point?
18 MR. HAYES: No, I don't.
19 HEARING OFFICER SUTCLIFF: Okay. All right. Ma'am,
20 you're excused. I just remind you that you should not discuss
21 your testimony with any other witness until the hearing is
22 completed. Let's go off the record.
23 (Off the record at 2:17 p.m.)
24 HEARING OFFICER SUTCLIFF: Okay. Back on the record.
25 We're -- we had a lunch break, and now, Mr. Wagner, are you

ready to call your next witness?

MR. WAGNER: We are, Madam Hearing Officer. We call Windell Roth, also known as Mathew Roth.

HEARING OFFICER SUTCLIFF: Okay. Mr. Roth, please raise your right hand.

Whereupon,

WENDELL ROTH

having been duly sworn, was called as a witness herein and was examined and testified, telephonically as follows:

HEARING OFFICER SUTCLIFF: Okay. Would you please state your name and spell it for the record? And you can put your hand down.

MR. ROTH: Legal name is Mathew, M-A-T-H-E-W. Roth, R-O-T-H.

HEARING OFFICER SUTCLIFF: Okay. Go ahead, sir.

MR. WAGNER: Thank you, Madam Hearing Officer.

DIRECT EXAMINATION

Q BY MR. WAGNER: Mr. Roth, please state your current job.

A Lead barista at Community Corners Gimme! Coffee.

Q And did there come a time that you previously worked or was there a time you previously worked at Gimme! prior to the COVID pandemic and closure?

A I did work at Gimme! prior to the pandemic closure.

Q For how long approximately?

A A year and a half?

1 Q In what role?
2 A As barista.
3 Q Part time or full time?
4 A Started out as part time, and then it moved to full time.
5 Q And during the period before the COVID closure, as barista
6 as you've described, were you a member of the Union?
7 A I was.
8 Q Were you also on the bargaining committee for the effects
9 bargaining when Gimme! announced that some of the stores would
10 be opening on a limited basis?
11 A Yes. I was on the negotiations team.
12 Q And did you participate in negotiation of the August 27th,
13 2020 memorandum of agreement that specified the recall list, or
14 the rehire list?
15 A Yes, I did.
16 Q And -- and how were those conducted? In person or by
17 Zoom?
18 A They were conducted by Zoom.
19 Q And were you present by Zoom for all of those
20 negotiations?
21 A If not all, most.
22 Q Okay. If you could turn -- you have a notebook in front
23 of you which has exhibits in it. If you could turn to tab 4,
24 which we're already at. This is a -- a document in evidence as
25 Employer 4. Is that the -- the COVID agreement that was

1 finalized on August 27th of 2020?
2 A Yes. It appears so to me.
3 Q And would you look near the end and tell me if you see
4 your signature either wet or electronic upon this document?
5 A Yes, I do, as Wendell Roth.
6 Q Okay. And again, that was on -- on behalf of the Union.
7 Is that right?
8 A Yes.
9 Q Okay. If you can turn to page 3, and then I'm going to
10 take you on to page 4. We see near the bottom of the page the
11 active recall list, and then on page 4 the wait list. You
12 appear on the wait list on this documents, correct?
13 A Correct.
14 Q And now, were you involved in the process of -- within the
15 Union bargaining committee of populating this list and ordering
16 it?
17 A Yes.
18 Q And was this -- were people in the bargaining unit given
19 the opportunity by bargaining unit seniority to choose which
20 list they were on, meaning active versus wait, and once they
21 did that, by bargaining unit seniority, where they appeared on
22 the list?
23 A Correct. Yeah. You could choose if you were ready to be
24 put on the recall list or if you wanted to remain on the wait
25 list.

1 Q And -- and whichever you chose, did you also have a
2 choice, based on bargaining unit seniority, where you would
3 fall on that list? In other words, if I was the most senior
4 person in the bargaining unit, I could have chosen position one
5 on either of the lists, correct?
6 A Correct.
7 Q And is this, Employer Exhibit 4, a -- an accurate result
8 of that internal bargaining unit process?
9 A Correct. Yeah.
10 Q Did there come a time when you notified Gimme! that you
11 wished to be removed from the waitlist and be placed on the
12 active list?
13 A Yes, I did.
14 Q If you could turn to tab 20, Employer 20, which is also in
15 evidence. What is this document?
16 A This is an email I sent to Colleen and Morgan, who was a
17 manager at the cafe I worked at, saying that I'm ready to be
18 back on the recall list.
19 Q What caused you, if you recall, to make that decision?
20 A Because I knew that State Street where I had worked, had
21 been staffed and that they were staffing for Community Corners
22 and didn't have any plans for any other cafes at the time, and
23 I wanted to make sure that I secured a position for myself.
24 Q Okay. And once you send the email, which is Employer 20,
25 where you actually offered employment?

A I was, yes.
Q And have you been working since that time?
A Yes.
Q Bear with me one second. Could you please turn to Employer 16? Prior to you sending that email on September 7th, how were you made aware -- how did you become aware of the fact that MLK or State Street had been fully staffed and you needed to put your name on that recall list if you were going to get in Coco or Community Corners. How did you learn of that?
A We had weekly Zoom meetings with Gimme! management (audio interference), and we had meetings within the Union. And then also reviewing the recall list, I was able to see who had been hired back where. And I heard in one of the Zoom meetings that they were hiring for State Street -- I mean, for Community Corners.
Q Okay. And that's what caused you to send the email on September 7th?
A Yes.
Q If -- if you look at Employer 16, which is in evidence, it's an email from Colleen on September 3rd to this address, gimme.unionistas@gmail.com. Were you -- did you have access to that email?
A I did not.
Q If you look at the third paragraph in Colleen's email which talks about plans to recall all baristas on the active

list by 9/20 and -- and some additional information, did you learn of the information in that paragraph through these weekly meetings and bargaining committee meetings? And the -- and the fourth paragraph. Sorry, the third --

A Yes.

Q So is it fair to say that you -- well, let me ask it a -- a gentler way. Did you have any concern that if you didn't put your name on the active list at -- at the time that you did, September 7th, that there wouldn't be a position open for you?

A Correct. Yes. I had hesitations about coming back to work at that time with the COVID situation, but I didn't want to have to, you know, lose my position or wait indefinitely. So I decided to go back on.

Q Okay. No further questions.

HEARING OFFICER SUTCLIFF: Mr. Hayes, any cross?

MR. HAYES: Just give me a moment.

HEARING OFFICER SUTCLIFF: Sure.

MR. HAYES: All right. I'm ready.

HEARING OFFICER SUTCLIFF: Okay. Go ahead.

CROSS-EXAMINATION

Q BY MR. HAYES: All right. Mr. Roth, my name is Ian Hayes. I'm an attorney representing the Union, and I'm just going to ask you a couple of questions about what you just said under oath, okay?

A Okay.

Q So you -- you talked briefly about the fact that you helped bargain the -- what we're calling the MOA, the -- the effects MOA, correct?

A Correct.

Q All right. So under the MOA, when there was to be a new phase of reopening for Gimme!, everyone who was -- who was on the wait list needed to be contacted to see if they were ready to come back to work in that new phase, correct?

A Yes.

Q And that was your understanding after going through the process of bargaining the MOA, correct?

A Correct.

Q All right. You -- I -- I might have missed this and I -- I apologize if I did. So you sent your email saying that you wanted -- you know, you wanted an open position if there was one, and you said you started working after that. Do you remember when you actually started working?

A I think it was about a week later.

Q So is that approximately in the second week of September?

A Yeah.

Q Something close to that, anyway?

A Something close to that, yeah.

Q Okay. So that was -- that was still during either the first or the second phase of reopening that was happening, correct?

A I think the second phase. Yeah. I'm not positive about the window (audio interference).

Q And -- and you -- you testified at -- a moment ago about -- or a couple of minutes ago that you did that because you didn't want to have to wait indefinitely. You -- you would have been waiting indefinitely because, under the MOA, there -- there are recall rights for someone on the wait list as long as COVID -- the COVID reopening process was happening, correct?

A I'm sorry. Can you repeat that?

Q Yeah. I -- you know what? I'll withdraw it. I know that was kind of garbled. I'll ask it a different way. Under the MOA, does a person's recall rights have any time limit if they put themselves on the wait list?

MR. WAGNER: I'm going to object to the question because it -- it -- the question, it stands indefinitely, and we -- we have a -- a prior ruling by Madam Hearing Officer of -- of an end date of -- of the relevant time period.

HEARING OFFICER SUTCLIFF: Mr. Hayes, how -- how do you -- how do you want to get at what you're trying to get at?

MR. HAYES: I'll -- I'll withdraw the question, and I have nothing further.

HEARING OFFICER SUTCLIFF: Okay. Any redirect?

MR. WAGNER: Yeah. Very, very briefly.

REDIRECT EXAMINATION

Q BY MR. WAGNER: Mr. Roth, were you in attendance -- after

1 you sent the email on September 7th to Colleen and Morgan, did
2 you attend a meeting on September 9th where management gave an
3 update to all of the baristas, including the bargaining
4 committee, of the -- the -- all the rehires of phase 1, phase
5 2?
6 MR. HAYES: I'm objecting --
7 MR. ROTH: (Indiscernible, simultaneous speech) --
8 MR. HAYES: -- to the question. It's beyond the scope of
9 cross-examination.
10 HEARING OFFICER SUTCLIFF: I'm -- I'm going to overrule
11 the objection. In these representation case proceedings, the
12 formal rules of -- of evidence don't apply, so we can -- we can
13 be a little bit broad with our questions. So I'll allow it.
14 Go ahead.
15 MR. WAGNER: Thank you.
16 Q BY MR. WAGNER: If you could turn to number 9, please.
17 This document's in evidence, Mr. Roth, and it -- it indicates
18 as of September 8th, the individuals who had been offered
19 rehire in the bargaining unit, and your name appears as the
20 very last, does it not?
21 A It does.
22 Q And does that refresh your recollection on your start
23 date?
24 A Yes, it does.
25 Q And what is that?

A September 15th.

Q Okay. So as of September 8th, a day after you sent that email, you had been offered the position and were set to begin on 9/15?

A Yes.

Q Do you recall being in the meeting on September 9th where this information was discussed with the -- the bargaining committee?

A Not directly.

Q Okay.

A I don't remember that, but --

Q Do you recall whether -- do you know whether the bargaining committee knew in and around September 8th, September 9th that you had taken your -- your name off the wait list and put it on the recall list.

A I --

MR. HAYES: Objecting. It's asking for testimony that goes to other peoples' state of mind.

HEARING OFFICER SUTCLIFF: Why don't -- so I'll sustain it. Why don't you ask him if he informed anybody?

Q BY MR. WAGNER: Yeah. Did you inform anybody on the bargaining committee that you were going to put your name -- take your name off wait and go on to active?

A I did.

Q And --and who -- whom was that?

A That have been to likely Maggie and Amy. It would have been during a Zoom meeting.

Q Okay. And was there -- when you notified (indiscernible) and -- and -- and Jamie, and I apologize. I don't know Jamie's last name off the top of my head. Did -- did you receive any objection from either of them or anyone else on the bargaining committee about you doing so?

A No.

Q Okay. If you could quickly look at number 19. And this is an email from Colleen to the union -- unionista email address checking in about tomorrow's operation update, which was the September 9th meeting. Does this refresh your recollection of whether you were there?

A It looks familiar.

Q Okay. And from the time you were rehired when you started on 9/15 of 2020 until the end of January of 2021, did anybody on the wait list from the bargaining unit communicate to you that -- that they would have put their name on the active list ahead of you and that you essentially took their place?

A No.

HEARING OFFICER SUTCLIFF: No further questions. Thank you.

HEARING OFFICER SUTCLIFF: Any recross?

MR. HAYES: No.

HEARING OFFICER SUTCLIFF: Okay. Sir, you're excused.

I'll just remind you not to discuss your testimony with any of the other witnesses while the hearing is open, okay?

MR. ROTH: Okay.

HEARING OFFICER SUTCLIFF: Thank you.

MR. ROTH: Thank you.

HEARING OFFICER SUTCLIFF: Do you have any further witnesses, Mr. Wagner?

MR. WAGNER: Not of time. We reserve the right to call rebuttal witnesses if -- only if necessary. Thank you --

HEARING OFFICER SUTCLIFF: Okay. Mr. Hayes, are you ready to call your first witness?

MR. HAYES: Sorry. Just one moment.

HEARING OFFICER SUTCLIFF: Um-hum. Let's go off the record.

(Off the record at 3:22 p.m.)

THE COURT REPORTER: We are. We are. I had you on mute. Sorry. I (indiscernible, simultaneous speech) --

HEARING OFFICER SUTCLIFF: Okay. All right.

THE COURT REPORTER: -- totally are.

HEARING OFFICER SUTCLIFF: Ver -- very good. Okay. Mr. Hayes, you want to call your first witness?

MR. HAYES: The Union calls Maggie Lipinski.

HEARING OFFICER SUTCLIFF: Okay. Ms. Lipinski, please raise your right hand.

Whereupon,

1 MAGGIE LAPINSKI
2 having been duly sworn, was called as a witness herein and was
3 examined and testified, telephonically as follows:
4 HEARING OFFICER SUTCLIFF: Thank you. Go ahead, sir.
5 **DIRECT EXAMINATION**
6 Q BY MR. HAYES: All right. Maggie, where are you employed?
7 A I'm employed for Gimme! Coffee. I work as a barista at
8 the MLK location.
9 Q Okay. How long have you worked there?
10 A I started in November of 2019.
11 Q Have you always worked at the MLK store?
12 A Yeah. That's my -- that's -- that's my primary location,
13 although I do pick up shifts at the Community Corners location
14 as well.
15 Q Do you have a role with the Union?
16 A I am a member of the negotiations committee. I have been
17 since the beginning of ba -- bargaining in -- in March. And I
18 do administrative work for the Union as well, typing up emails,
19 sending emails, one-on-one updates.
20 Q Okay. In -- in all of those roles, do you have any other
21 responsibilities or duties that you carry out beyond what you
22 just said?
23 A I guess probably the only other thing I could say is,
24 like, making store visits, and obviously as a member of the
25 negotiations committee, bargaining with -- with my Employer.

1 Q Okay. So I'm going to ask you about the -- the bargaining
2 of the MOA that's at issue in this case.
3 A Um-hum.
4 Q Do you remember when that began?
5 A So the bargaining of the MOA itself began at the end of
6 July, beginning of August.
7 Q Of 2020?
8 A Of 2020, yes.
9 Q How often did the negotiations committee meet with the
10 company to do that?
11 A Towards the end of bargaining, probably in the -- in the
12 month of August, we were meeting, like, once or twice a week.
13 At least once a week, I would say.
14 Q Okay. And just from your memory, who from the Union was
15 present at -- at least one of those sessions?
16 A So the negotiations committee was always present, and that
17 would have been myself, Wendell Roth, Samantha Mason, Eva
18 Mailloux, Jenna Burger, Bart Feberwee. We had an adviser from
19 the Work -- Tompkins County Workers' Center, Gen Rand, who
20 would also be present at the negotiation sessions. The
21 negotiation sessions were also open to really anyone who wanted
22 to attend from the bargaining unit. So occasionally a
23 bargaining unit member, a barista, would pop on the Zoom call.
24 We were meeting over Zoom. And that could -- normally, that
25 was probably Jesse Sanchez. Brenden Lukosovich was on there

for a few. Aidan Kaplan-Wright, Tahera Rafia-Kassam to name a few.

Q Okay. And what was your personal involvement in those sessions?

A So my personal involvement, I was one of the team members who typed up the -- typed up the -- typed up any proposals that we presented. I presented the proposals to management, talked them through kind of what our ideas were, what -- what were our desired outcomes, undesired outcomes, our goals, and things like that. And so I was there in the Zoom meeting speaking to my Employer and trying to reach an agreement.

Q Okay. Did the negotiations committee have meetings separately, you know, outside of bargaining sessions where you talked internally about what you were trying to achieve in the MOA?

A Yes. We would meet separately, also often over Zoom or a Google Meet, and we would -- we were also frequently exchanging emails with our Union reps at Workers United, and we would meet with them, too, separately.

Q All right. So from your memory of those sessions, what -- what were some of the Union's goals that it was trying to achieve in bargaining the MOA?

A Some of our goals were the preservation of our recall rights, which were indefinite under our contract. We were also -- one of our major goals was to preserve peoples' hire

dates and wages so they didn't take a pay cut when they returned to work. And one of our goals, I would also say, it was reaching an agreement that was flexible and still protected all of our unit members and their rights.

Q Okay. And when you say --

MR. WAGNER: Move to strike the answer to the extent it's inconsistent with the stipulation we reached earlier in the day regarding the effects of the MOA and recall rights.

MR. HAYES: Well, I was --

HEARING OFFICER SUTCLIFF: I --

MR. HAYES: -- going to --

HEARING OFFICER SUTCLIFF: I -- okay. Go ahead.

MR. HAYES: I -- I was going to ask a clarifying question. Can I ask that first?

HEARING OFFICER SUTCLIFF: Yeah.

MR. HAYES: Because I think that'll clear it up.

Q BY MR. HAYES: Maggie, when you say indefinite recall rights, that means people have recall rights throughout the process of the COVID reopening process, regardless of how long that took, correct?

A Yes. Yes, that is correct.

HEARING OFFICER SUTCLIFF: Is your motion still pending?

MR. WAGNER: It is --

HEARING OFFICER SUTCLIFF: Mr. Wagner?

MR. WAGNER: -- because (audio interference) January 31st.

I mean, we -- we -- we took an hour to negotiation that stip, and now we're -- we're bleeding out beyond the stipulation.

HEARING OFFICER SUTCLIFF: Okay. So --

MR. WAGNER: (Indiscernible, simultaneous speech) --

HEARING OFFICER SUTCLIFF: -- I hear -- I -- I hear you. I'm going to deny the motion, and I'm -- I'm just going to -- to consider this testimony in light of the stipulation that's received, and I won't give it any weight beyond the stipulation, okay?

MR. WAGNER: Thank you, Madam Hearing Officer.

HEARING OFFICER SUTCLIFF: Go ahead, Mr. Hayes.

MR. HAYES: Yeah.

Q BY MR. HAYES: So Maggie, under the MOA that was eventually, you know, finalized and signed, how -- can you walk us through the mechanics of how recall works? How does someone get recalled to work under the MOA?

A So as we talked about previously, we have an active recall list and we have a wait list. And essentially what we -- what we did when we first cre -- where it was -- when we first were created these two lists, as that first phase of recall was starting, we sent a survey out to all of the bargaining unit members. We got responses back from all thir -- 32 of them. And we asked questions like are you ready to return to work immediately? If you are ready to return to work immediately, what locations are you ready to return to work? And based on

1 people's responses, sorted people into an active recall list
2 and the "wait list," which -- and if they place themselves on
3 the wait list and they indicated that they weren't ready to
4 return to work immediately but still wanted to be contacted at
5 the next phase of recall. So after -- so we had this active
6 recall list. It was exhausted in that first rou -- phase of
7 recall. And as it states in the MOA, once a new phase of
8 recall is began, the -- Gimme! will notify the Union at least
9 seven days in advance that a new phase of recall is opening,
10 they'd like another list. And so at that point, we -- we
11 meaning the Union's representatives, the stewards, negotiation
12 committee members would contact everyone on the wait list and
13 pose those same questions again. Are you ready to re -- are
14 you ready to return to work immediately or would you like to
15 stay on the wait list? And based off of the response -- those
16 responses, we -- we would create another active recall list and
17 another wait list.
18 Q Okay. So that -- that -- those steps that you just
19 described. Well, first of all, you keep saying we. Who is we
20 when you're describing this?
21 A So in the context of the of the -- of the MOA agreement,
22 as we were bargaining it, as we were kind of formulating those
23 two lists, that would have been myself, Eva Mailloux, Sam
24 Mason, again, the negotiation committee members, Bart Feberwee,
25 Jenna Burger, Wendell Ross.

1 Q Okay. And you were -- at least in some aspect, you were
2 representing the Union in that process?
3 A Yes.
4 Q Okay. And that process you just described a minute ago,
5 that -- that was the process that was contemplated by the MOA?
6 A Yes.
7 Q All right. Now, after that -- those initial phases of
8 reopening which we've heard about today at the hearing. So
9 let's say after, you know, the end of September of 2020 and
10 going forward through the end of January 2021, when -- what was
11 your understanding of what needed to happen when there was
12 going to be a new -- if there were going to be a new phase of
13 reopenings?
14 A So what would need to happen is, again, we would return to
15 the people who had placed themselves on the wait list and ask
16 if they would -- and this, again, would be when I say we, I
17 mean myself and the other negotiation team members and other --
18 and also Union stewards, we return to that wait list and ask --
19 we would contact, reach out to the wait list and ask if they
20 were ready to return to work immediately or if they would like
21 to say on the wait list.
22 Q Okay. And then what would happen?
23 A And then we would, based on who was ready to return to
24 work immediately, we would form an active recall list one
25 through whatever how many -- however many people wanted to

1 return to work immediately, we would -- and we would order them
2 according to bargaining unit seniority.
3 Q All right. What if someone did not want to go back on the
4 active list at that point? What was their option?
5 A They could either stay on the wait list or they could
6 indicate to us that they did not want to return to Gimme! at
7 all and no longer wanted to be considered for recall.
8 Q Okay. And that process you -- you just described, that
9 involved approaching everyone on the wait list about returning
10 to work regardless of their seniority, correct?
11 A Yes, that is correct.
12 Q You heard testimony today from Mr. Roth and Ms.
13 Christensen about several employees taking themselves off the
14 wait list at some point in 2020. Do you remember hearing that?
15 A Yes, I do.
16 Q Did -- employees taking those steps, did that change how
17 the MOA operated when there was a new phase, in your
18 understanding?
19 A No, that did not change the way the MOA operated.
20 Q Okay. And I should have clarified. I -- I'm only asking
21 about -- as a little bit of an abstraction, but I'm only asking
22 about your understanding in the time period of 2020 into the
23 end of January 2021. You understand that?
24 A Yes, I do understand that.
25 Q All right. So did -- throughout any of this period, did

1 the Union communicate with people on the wait list about what
2 their recall rights were?
3 MR. WAGNER: And -- and just -- just for clarification,
4 during what period?
5 MR. HAYES: During the period I just named, 2020 through
6 the en -- end of January 2021.
7 A Yes. We indicated through emails and through one-on-one
8 conversations with the -- the bargaining unit members I would
9 say all throughout 2020 -- 2020 and through the end of January
10 2021.
11 Q BY MR. HAYES: Okay. Were you personally doing that?
12 A Yes, I was personally doing that.
13 Q And -- and through which methods were you doing that?
14 A Both through email and through personal one-on-one
15 conversations. What -- part of my duties on the negotiations
16 team was -- was to draft up emails and to have one-on-one
17 conversations with unit members just to update them on what was
18 going on in negotiations, provide information about -- about
19 the MOA, and gather any thoughts that they had.
20 Q So when you say negotiations there, are you referring to
21 negotiating the effects MOA or negotiating a successor CBA, or
22 both?
23 A Both.
24 Q Okay. I want to back up a little bit, and I want to ask
25 you to -- you have the Union exhibits that have been marked for

identification in front of you, right? Or available to you, correct?

A Yes.

Q Okay. Let me know when you have Union Exhibit 12 in front of you.

A I have it in front of me.

Q Sorry, just -- okay. What is this document?

A So this is an update email from the negotiations team sent to the bargaining unit on August 23rd of 2020. We're updating them that we've reached a tenement -- tenement -- a tentative agreement with management and that we're moving the tentative agreement on to a ratification vote, that there -- there will be a proctor to send out a vote later in the week.

Q All right. Now, when you say this was sent to the unit, who does that include?

A That includes all -- all baristas on the active recall list and all baristas on the wait list.

Q Okay, so in other words, at that point, August 23rd, that was every barista who had been laid off, correct?

A Yes, that is correct.

Q And that was approximately 32 people at that time?

A Yes, that is correct.

Q On this document, the "to" field is -- is just blank; do you know why that is?

A Yes. In our update emails, we basically say -- we blind

1 copy everyone that we're sending the update email to.
2 Q Okay, so when it's -- when the email is forwarded, those
3 addresses are not visible; is that correct?
4 A Yes, that is correct.
5 Q But the email was sent to the entire unit?
6 A It was sent, yeah.
7 MR. HAYES: Okay. I ask that Union Exhibit 12 be entered
8 into the record.
9 HEARING OFFICER SUTCLIFF: Any objection?
10 MR. WAGNER: I (audio interference) grounds.
11 HEARING OFFICER SUTCLIFF: I'm sorry. I can't hear you.
12 MR. WAGNER: I would object on two grounds.
13 Can you hear me now?
14 HEARING OFFICER SUTCLIFF: Okay, go ahead. Yeah.
15 MR. WAGNER: The first ground is the -- the last sentence
16 of it, which is italicized, paragraph 2, runs afoul of our
17 stipulation. So I would -- I would, if it's going to be
18 accepted, ask to be stricken or redacted. Because it -- it --
19 it is inconsistent with the stip that we had earlier today.
20 And the other ground is that the stipulations talked about
21 the definition of the recall rights per the MOA. The document
22 speaks for itself, so this -- this adds no substantive,
23 objective evidence beyond the MOA. And again, this is simply a
24 characterization of it by the Union bargaining committee
25 members.

MR. HAYES: I'd like to respond to that.

MR. WAGNER: So on that --

MR. HAYES: Oh, sorry.

MR. WAGNER: So we -- we would accept the introduction of the exhibit if that second-to-last of the second paragraph is stricken, and that it be accepted only as to the interpretation of the bargaining committee and not viewed by the hearing officer as varying from the -- the terms of the MOA as it -- as it is in evidence in this proceeding.

MR. HAYES: I'd like to respond to that.

HEARING OFFICER SUTCLIFF: Sure, go ahead.

MR. HAYES: So I -- I -- the second point, I think, is just a legal argument that the company is free to make in its post-hearing brief.

As far as how this relates to the stipulation, this is obviously an email that was sent in August of last year. Regardless of what our stipulation is today in September of 2021, that does not go back and alter time and space and -- and have an effect on an email that was sent over a year ago.

Furthermore, it was -- the Union was clear in negotiating that stipulation today. We are not waiving or conceding that no recall rights exist after January of 2021. The Hearing Officer is free to disregard any information that pertains to that, but we're not conceding that point. And because of that, I don't think it's appropriate to redact this document.

HEARING OFFICER SUTCLIFF: Okay. Thank you for your -- for your points. I'm -- I'm going to -- I'm going to overrule the objection to the document. I'm going to allow the document into the record.

And to the -- to the point of requests that certain things be stricken, I agree that at the time that this email was drafted, it -- it speaks for what was -- what was this -- the drafter's state of mind at that point in time and has no bearing whatsoever on the stipulation that we have received today with respect to the new -- the -- the -- the later point in time, the point in time that is relevant to this proceeding.

So I'll allow the exhibit into the record, and I will give it the weight that it is afforded. Okay, so Union 12 is received into the record.

(Union Exhibit Number 12 Received into Evidence)

MR. WAGNER: Okay.

Q BY MR. HAYES: I have one more question, Maggie, about this -- this document, and I -- I -- I apologize if you already said this. Did you draft this email personally?

A I can't say that I sat -- was the one that sat down and -- and typed it. But I certainly looked over it and gave it a thumbs up, at the very least.

Q So did, I take it, the negotiations committee drafted emails as a group in some way?

A Yeah. Sometimes, it would be as a group; other times, one

1 person would get assigned to draft the email. They would send
2 out the draft to the negotiations committee, and we would
3 provide edits, or we would okay it. And only until everyone
4 had okayed the email, then it would be sent out.
5 Q Okay, I'm going to ask you to open up a different exhibit
6 in front of you, and that's Union Exhibit 14?
7 A Sure.
8 MR. HAYES: Let me know when you have that.
9 And just to the hearing officer and Mr. Wagner, you know,
10 I know I sent you this with very little notice. If you need to
11 look over this, I'm more than happy to let you do that.
12 HEARING OFFICER SUTCLIFF: I'm -- I'm good.
13 Mr. Wagner?
14 MR. WAGNER: Fine.
15 Q BY MR. HAYES: Okay. Do you have it open, Maggie?
16 A I do, yes.
17 Q Okay. What is this document?
18 A So this is another update email from the gimme.unionistas
19 account from the negotiations team at the very end of August,
20 Monday, August 31st, 2020, where we are essentially notifying
21 the bargaining unit that we have signed the effects bargaining
22 agreement with management. And we're explaining again another
23 clause that has been added to the bargaining unit. And then,
24 we're summing up by saying, these are our goals in the coming
25 months.

Q Okay, and who was this email sent to?

A This is sent to the whole bargaining unit, so that would have been everybody, again, on the active recall list or on the wait list.

Q Okay, and again, this document, the "to" field is blank; is that for the same reason that you described regarding Union Exhibit 12?

A Yes, that everyone has been bcc'd.

MR. HAYES: Okay. I ask that Union Exhibit 14 be accepted into the record.

HEARING OFFICER SUTCLIFF: Any objection?

MR. WAGNER: Just give me one moment, please?

HEARING OFFICER SUTCLIFF: Sure.

MR. WAGNER: A brief voir dire, please?

HEARING OFFICER SUTCLIFF: Go ahead.

VOIR DIRE EXAMINATION

Q BY MR. WAGNER: Ms. Lapinski, in the -- did you draft this email?

A Again, I can't say that I was the one that sat down -- it's -- it's likely, since I frequently was the -- the -- the person assigned to draft the emails in the negotiations, in the negotiations team. But I can say with certainty, at the very least, I gave it a thumbs up, I okayed it.

Q Okay, and the agreement that's referred to in the second paragraph --

A Um-hum.

Q -- that's the Employer Exhibit 4 that we've been discussing here today?

A Yes, that's correct.

Q So it's the actual signed agreement, correct?

A Yeah.

Q And by the date of this email, you were -- you knew you were going to be recalled to MLK as part of the --

HEARING OFFICER SUTCLIFF: I'm going to stop you right there; that's beyond voir dire. You can ask that on cross.

MR. WAGNER: Okay. I only have an objection to the inclusion of the last full paragraph about the CBA negotiations because they're irrelevant. But I -- I'm not moving to strike. I would just ask that the hearing officer deem that last full paragraph to be irrelevant.

HEARING OFFICER SUTCLIFF: Okay, so we're -- did you object to the document coming in?

MR. WAGNER: No, I don't.

HEARING OFFICER SUTCLIFF: Okay. Yes, Employer -- or I'm sorry. Union 14 is received into the record. Thank you.

(Union Exhibit Number 14 Received into Evidence)

MR. HAYES: Thanks.

RESUMED DIRECT EXAMINATION

Q BY MR. HAYES: Maggie, I'm going to move on and ask you about the bargaining of a successor CBA; were you involved in

that process?

A Yes, I was.

Q Okay. About when did that start in 2020?

A That started -- I believe we had our first session with management the second week of November of 2020.

Q And continued after that?

A Yeah.

Q Okay. Who was present representing the company in those sessions?

A So Claire Christensen and Colleen Anunu were present to represent the company.

Q And who was representing the Union?

A I was representing the Union. Jamie Baird was also representing the Union. Eva Mailloux was representing the Union. Wendell Roth and Susie Shelton were also representing the Union. And our Union reps from Workers United were representing the Union, as well. So that would have been Gary Bonadonna, Jasper Zach. Richard Bensinger was in a few of the sessions, as well. And Vanessa Patterson (phonetic throughout), who was a Union organizer from Albany, was in the sessions, as well.

Q Were you in the bargaining session that took place on December 28th, 2020?

A Um-hum.

Q Do you remember --

HEARING OFFICER SUTCLIFF: Was that a yes? Was that a yes?

THE WITNESS: Yes. Yes, I -- yes, that's a yes.

HEARING OFFICER SUTCLIFF: Thank you.

MR. HAYES: Sorry.

Q BY MR. HAYES: Did a representative of the company make a comment during that session regarding the reopening of stores?

A Yes. I believe it was Claire who said that the plan was to open Gates in February and Cayuga shortly after.

Q So do you remember, what was the context of that comment?

A We had been asking about -- the negotiations committee had been asking about plans. We've been talking about recall a lot in the negotiation sessions.

Q Okay, so --

A I -- yeah, I don't -- I'm sorry. I don't believe I can really give any specific context. But it most likely came up while we were talking about recall rights.

Q Okay. I'm going to ask you to look at what's been marked as Union Exhibit 4; tell me when you have that?

A Sure. I have it.

Q Okay. Do you recognize this document?

A I do.

Q What is it?

A These are my personal notes from the negotiation session on December 28th, 2020, I -- that I keep a journal.

Q Okay, so you wrote these -- all of these notes down?

A Yeah, I handwrote these notes.

Q Is there a reference in here to the comment about stores reopening?

A Yes, the last bullet point says "opening Gates early February, opening Cayuga shortly after".

Q The -- the sort of bottom third of this document is -- is blacked out; do you know what was on the page?

A I believe it was more personal notes, probably some -- I believe it was just me jotting down some of my thoughts from the day of the nego -- of the session.

Q Okay, so does that mean that the -- the sentence about opening Gates early February, opening Cayuga shortly after, was your -- the last note you took in the bargaining session itself?

A Yes, yes, that's -- that's correct.

MR. HAYES: Okay. I ask that Union Exhibit 4 be entered into the record.

MR. WAGNER: We'd like to see the whole document before we take a position.

HEARING OFFICER SUTCLIFF: Let's go off the record.

(Off the record at 3:56 p.m.)

RESUMED DIRECT EXAMINATION

Q BY MR. HAYES: Now, did the -- throughout CBA bargaining, did the Union communicate with waitlisted workers about what

was going on in bargaining?

A Yes. Again, mostly through email and through one-on-one phone conversations, that would be, as well as through store visits, like, visits to the physical store locations, the cafe. So for example, I would get on some calls with bargaining unit members and provide updates, gather thoughts.

Q Okay, and that includes those forms of communications with people on the wait list?

A Yes, it does.

Q Okay, how often were members of the negotiations committee engaging in those kinds of communications?

A We would try to send email updates rather frequently or at least once after every negotiation session. Phone calls were less -- less frequent. I would say I was on the phone with folks, with bargaining unit members, at least twice a month.

Q Okay, and so does that include communicating what happened in the December 28th session to members of the wait list?

A Yes.

Q Okay. Did you personally do that?

A I did personally do that, yes.

Q And did you -- in those communications, did you specifically talk about the comment about the stores reopening.

A Yes, I -- I did.

Q Do you remember which people on the wait list you personally communicated with about that?

A I personally communicated with Josh Martinez and Ashley Yajko, as well.

Q Okay. How do you remember that -- that it was those two?

A Typically, when we do one-on-one phone conversations, we kind of split up the bargaining unit among whoever is on the negotiations team. And it's people you communicate with frequently. It's people who you are comfortable with. And so since the beginning of CBA negotiations, I had been in contact with Josh and Ashley the most. So it kind of fell to me to reach out and call those folks whenever I needed -- needed to pass along information or ask questions.

Q All right, and -- and the other members of the negotiations committee were, so to speak, assigned to communicate with other people on the wait list?

A Yes.

Q I'm going to ask you to look at what's marked as Union Exhibit 12; let me know when you have that?

A I have it up.

Q Okay. Well, so obviously, we already heard testimony about this earlier in the day, but do you recognize this document?

A Yes.

Q What is it, in your understanding?

A It's the update email from Sunday, August 23rd, 2020, from the negotiations team.

1 Q It's from the 26th, right?
2 HEARING OFFICER SUTCLIFF: Is it -- I think you're maybe
3 talking about a different exhibit. This one's 12; we've
4 already entered this one into the record, and you've already
5 questioned her about this email. Is there a different email
6 that you're trying to talk about?
7 MR. HAYES: Oh, did I say 12? I'm sorry. I --
8 HEARING OFFICER SUTCLIFF: You said -- you said 12.
9 Q BY MR. HAYES: I'm -- I'm sorry, Maggie. Please open
10 Union Exhibit 11.
11 A Okay.
12 Q Sorry.
13 A No worries. I am -- I am there.
14 Q Okay. Do you recognize what this is?
15 A Yes, I do.
16 Q And -- and what is this, in your understanding?
17 A This was a memo from a retail operations meeting on
18 January 26th, 2021.
19 Q Okay, and it was regarding the reopening of Gates, right?
20 A Yes.
21 Q Before COVID, what was your knowledge, if any, about how
22 many baristas worked at Gates at any given time?
23 A To my knowledge, Gates was staffed kind of anywhere --
24 with two to three baristas at a time, and a manager. And to my
25 knowledge, it was also one of the stores, because of its -- of

how small it was, it was also one of the stores that would be closed with a -- with a single person, with a single barista.

Q Okay. Now, just going back to this document, Union Exhibit 11, do you know if the negotiations committee communicated with people on the wait list about this specific document?

A Yes, I believe I communicated with people about this specific document about -- about, at the very least, Gates reopening.

Q Okay, and -- and were those communications in the same form that you've described about CBA bargaining updates?

A Yeah, they -- yes. They weren't over email, but they were through personal one-on-one conversations and phone calls.

Q Okay, and was it the same thing where the members of the negotiations committee split up who they were talking to?

A Yeah, it was -- it was with the same people. I wouldn't say it was that -- it was that formal of an update. It was more I'm checking in with a -- with bargaining unit members to see how they are doing and give them an update on how -- on -- on what's going on in negotiations and what the retail operations are currently at Gimme!.

Q Okay. Just give me one second. I'm going to, Maggie, ask you about a couple of other documents that have been marked as Union exhibits. Open up the Union Exhibit 1?

A All right.

Q Is this the MOA we've been talking about all day?
A Yes, it is.
Q And it's the same document that's in the record as Employer Exhibit 4, right?
A Yes, it is.
MR. HAYES: I ask that Union Exhibit 1 be entered into the record.
HEARING OFFICER SUTCLIFF: Is there a particular reason why we need two versions of this?
MR. HAYES: No.
HEARING OFFICER SUTCLIFF: I -- I think -- I don't think we need two versions of it. As long as there isn't anything different about yours, I think we leave it as Employer 4.
(Union Exhibit Number 1 Rejected)
MR. HAYES: Okay.
Q BY MR. HAYES: Maggie -- I'm going to move on. Maggie, open what's marked as Union Exhibit 2?
A All right.
Q Do you recognize what this is?
A Yes, this is our collective bargaining agreement.
Q And the -- the CBA bargaining that was going on in May 2020, that was to negotiate an agreement that would be a successor to this, correct?
A Yes, that is correct.
MR. HAYES: All right. I ask that you Union Exhibit 2 be

entered into the record.

HEARING OFFICER SUTCLIFF: Any objection?

MR. WAGNER: I do. I don't see how it's relevant, particularly in light of our -- our stipulation on the -- the COVID MOA. The -- the issue in this hearing has nothing to do with the CBA that expired at the end of the year, but rather the reasonable expectation of rehire through January 31st, 2021, by the nine challenged ballots.

MR. HAYES: Well, okay. I can sort of -- I can go through some testimony with the witness on that if -- Madam Hearing Officer, if -- if you're not willing to accept it at this point.

HEARING OFFICER SUTCLIFF: I -- let's -- let's hear some testimony on it. I -- I -- you're -- you're -- although he's got some -- he's got an objection. Why don't -- why don't you withdraw your -- your offer of it for right now so it's not actually pending with an objection, so withdraw your offer now?

MR. HAYES: Withdrawn.

(Union Exhibit Number 2 Withdrawn)

HEARING OFFICER SUTCLIFF: Okay, so if you want to talk about it, and then we can revisit the offering of the document.

MR. HAYES: Okay.

Q BY MR. HAYES: So Maggie, you don't have to look at the CBA to -- to -- to answer these questions. Did the CBA have any bearing on the Union negotiations committee, their goals in

1 bargaining the effects MOA in the middle of 2020?
2 A I would -- I would say that it had -- I would say that it
3 had bearing in the sense that we, as a negotiations team,
4 wanted to -- we wanted to -- we wanted to bargain over
5 provisions that were in the CBA, such as the layoff and recall
6 process. I don't know if that answers your question.
7 Q Okay, yeah. Well, could you just explain that a little
8 bit, like, how in terms of -- what did you want to achieve as
9 compared to what was in the CBA?
10 A We wanted to achieve a recall and layoff process that was,
11 I guess, more -- I guess that we wanted to bargain over the
12 layoff and recall process. Because we wanted to, like, achieve
13 or -- or create or come to an agreement about some sort of
14 process that addressed the COVID-19 pandemic specifically.
15 Q And how does that relate to the subject of seniority
16 specifically?
17 A So the clause 11, which -- in the CBA, which is the
18 seniority clause, indicates that at the time of a layoff, the
19 most -- the least senior barista would be the first to be laid
20 off and the most senior barista would be the first to be
21 recalled. And during effects bargaining, we had disagreements
22 with management about what that would look like. Where we, as
23 negotiations, came during bargaining, we're saying, that is
24 company-wide seniority, if you're not going to bargain -- if
25 we're not going to bargain over this clause or come make our --

1 or amend this clause, then that is what -- that's how we expect
2 the recall process to go.
3 The problem internally is that we were -- when I say
4 "internally", I mean internally as the negotiations team -- is
5 that we kind of had all these problems that we had to solve,
6 such as people feeling unsafe in a global pandemic, people just
7 not ready to return back to their store quite yet. And so I
8 guess the problem that we were trying to address was an issue
9 of, like, flexibility and adaptability so we could, like I said
10 earlier in my testimony, come to an -- a layoff and recall
11 procedure that preserved and protected workers' rights but was
12 also flexible and adaptable.
13 Q Okay, and that -- that disagreement that you referred to a
14 minute ago between the Union and the company regarding
15 seniority, that was -- Ms. Christensen referred to that in her
16 testimony, as well, right?
17 A Yes, that is correct.
18 MR. HAYES: I ask that Union Exhibit 2 be entered into the
19 record.
20 MR. WAGNER: I continue to object, or I renew the
21 objection. The witness has actually correctly stated that the
22 paragraph 11 of the MOA, Employer Exhibit 4, modifies its
23 onset. So that's the document at -- at -- at issue for this
24 hearing as to reasonable expectation of rehire during the COVID
25 pandemic, which clearly was still raging in -- in the end of

January of 2021. The contract -- the entire contract is of no relevance, particularly because the COVID MOA, specifically in paragraph 11 says, this memorandum of agreement shall amend the contract.

MR. HAYES: Judge, I have a --

HEARING OFFICER SUTCLIFF: I was just going to say, I'm already to rule on this. Your objection is noted. I'm going to allow the contract into the record, and I also just give it the weight that it's accorded. So we'll move on. So Union 2 is received into the record.

(Union Exhibit Number 2 Received into Evidence)

MR. HAYES: Okay. Nothing further.

HEARING OFFICER SUTCLIFF: Okay. Do you have cross-examination?

MR. WAGNER: I do. Thank you, Madam Hearing Officer.

HEARING OFFICER SUTCLIFF: Are you ready to proceed right now?

MR. WAGNER: Yep, I am. Thanks.

HEARING OFFICER SUTCLIFF: Okay. All right. Go ahead.

CROSS-EXAMINATION

Q BY MR. WAGNER: Ms. Lapinski, Union Exhibit 4, your notes, correct?

A Yes, those are my notes.

Q Your handwriting, correct?

A That is correct.

Q Do you recall how long the session was on 12/28/2020?
A I believe it was an hour and a half, two hours.
Q Was there multiple sessions on that day?
A No, there was just one session.
Q Was that the day the contract was set to expire?
A Yes.
Q So you said one to two hours?
A Yes.
Q And this is the full extent of the notes you took for a one- to two-hour bargaining session; is that correct?
A That is correct.
Q Okay. And you'll agree with me, won't you, that -- that you were -- to your knowledge, any other member of the bargaining committee did not reach out after this session through the end of January of 2021, to confirm with the company the -- the reopening of the Cayuga Street store pursuant to the MOA; did you?
A No, I did not reach out.
Q Okay. And that would have been part of -- that would have been an appropriate outreach if you thought they -- if the bargaining committee thought that Cayuga was reopening imminently, so that you could do the process you described of -- of -- of going back out to the wait list, and identifying who wanted to -- to work and, who -- who still wanted to stay on the list, correct?

1 A That's correct.
2 Q And -- and similar to the Gates situation, when you were
3 made aware of the pilot program pursuant to Victoria Hantout
4 know regarding Gates the -- the Union did not seek input from
5 any bargaining member, because it was communicated that that
6 was going to be a single kiosk, manager operated only, correct?
7 A Are you -- I'm sorry, I'm a little confused by that
8 question.
9 Q Mr. Hayes asked you questions about a document that was
10 entered on 1/26/21 from Victoria Hantout announcing the -- the
11 pilot at Gates as a single kiosk; do you remember that
12 testimony and that document?
13 A Yes, I do.
14 Q And at that point, you nor any other bargaining member --
15 bargaining committee member that you're aware of, reached out
16 to the wait list to say hey, there might be a position at
17 Gates. Because you were told that it wasn't going to be a -- a
18 barista position, correct?
19 A No, I didn't reach out to people specifically to trigger
20 that process of creating a recall list for Gates, if that's
21 what you're asking.
22 Q Yeah, that's what I'm asking. Thank you. And in the
23 session of -- bargaining session 12/28/2020, your notes -- two
24 hashmarks above your last note in Union Exhibit 4, it says
25 where are people happiest; do you see that with a question

mark?

A I do, yes.

Q And isn't that part of the same conversation that was happening in bargaining with -- with Ms. Christianson that she -- since her prior testimony today, was telling people aspirationally we'd love to reopen to the -- everywhere. We love Cayuga. It's our original store. It's where many people are happiest, but that would take a change in COVID. And -- and absent such change where -- we have no plans to reopen; isn't that the -- the full context of a much broader conversation as part of a one- to two-hour bargaining session?

A I believe part of the context of that note specifically is talking about where are people happiest, because we were also discussing scheduling issues, and placing people at specific locations as well. I think it was during that time, we were also talking about the recall clause, and we were discussing roadblocks that happened of trying -- of how to -- of how to -- how to place people where -- where are they going to be happiest.

Q And a lot of --

A Where would they fit in the best.

Q Sorry, I didn't mean to cut you off.

A Oh, go right ahead.

Q But -- but Ms. Lapinski is it -- is it not true that a number of the people on that wait list were happiest at Cayuga?

A Yes, I would say that's true.
Q And a lot of those people were the senior-most members of the bargaining unit, by bargaining unit seniority, correct?
A Yes, that is correct.
Q So wouldn't it stand to reason that, if Ms. Christensen actually committed to opening Cayuga in a mere month or two after this session, that that would have triggered a inquiry -- at least an inquiry, if not a demand, by the Union to clarify so that this be people who were happiest at Cayuga, who had the highest bargaining unit seniority, could start bidding for those jobs? That didn't happen, did it? You -- you did not -- the bargaining committee did not reach out with a wait list to say hey, Cayuga's reopening, we're going to do a new service. You didn't do that, did you?
A No, we didn't take those steps, because as per the MOA the thing that triggers -- the indication that the -- that triggers an actual formal putting together of a recall list is a -- it's being told within seven days.
Q And let me -- understood. So you would agree with me that Ms. Christensen's statement on 12/28/20 did not constitute that, correct? That was not a commitment to open Cayuga, correct?
A It wasn't a formal email, no.
Q Nor was it a commitment to open Cayuga, was it?
A I believe that it was -- it might not have been a, we're

1 going to open Cayuga in the next seven days; but it certainly
2 was a we are going to open Cayuga in February or late -- or
3 early March.
4 Q And so your notes don't say February or March, do they --
5 for Cayuga?
6 A No, they say opening Gates early February, opening Cayuga
7 shortly after.
8 Q So what -- weren't Ms. Christensen's comments aspirational
9 and based upon a number of conditions that there was no
10 indication that those conditions would be met. Meaning, a
11 change in the COVID pandemic risk, and resolving the issue of
12 the lack of any ducts on which filters could be placed.
13 Weren't those absolute conditions on reopening Cayuga? And as
14 to those conditions being met, there was no plan to -- to
15 reopen Cayuga; wouldn't you agree with that? And in this
16 bargaining session, did she not communicate that?
17 A She communicated specific issues of the opening up Cayuga,
18 yes.
19 Q Okay. And she also told you that those conditions had not
20 been met yet, correct?
21 A Yes, that is correct.
22 Q Would you agree with me -- and I'm changing time frame
23 here. I'm going back to August of when -- when you all were
24 putting together the -- the recall -- back to recall list and
25 the wait list. Would you agree with me that the nine challenge

voters in this proceeding had the seniority to put themselves on the active recall list and be among the first 14?

A Yeah, they were some of the more senior employees.

Q And they also had the opportunity between August 28, of 2020, and the end of September, to notify the committee that they wished to be considered or put on the active list, like Mr. Roth had done?

A Yes, they had that opportunity.

Q And they did not avail themselves of that, did they?

A No.

Q And you were present for the September 9, 2020 meeting with management where the update was given on all of the offers to rehire the baristas on the active recall list plus Mr. Roth who had switched from wait to -- to recall, correct?

A This is in a meeting that was for the folks on the wait list, correct -- as well.

Q It was an all -- it was the all-hands-on-deck meeting that was -- that was discussed by Ms. Christensen.

A Yes and that was the meeting --

Q And that was -- sorry, go ahead. I cut you off.

A And that was the meeting that an invite was extended also to the people who were still on my access, correct?

Q You tell me.

A I -- I was not at the -- present at the meeting where -- which was for where the people on layoff were invited. And if

1 the all-hands-on-deck company-wide meeting was a required
2 meeting, then it's likely that I would have been -- been there,
3 yes. But I -- I don't have any -- I don't have any memory.
4 Q You just don't know one way or the other; you're not sure?
5 A I know I wasn't at the meeting where it was just Brittany
6 and -- and Rebecca.
7 Q Correct. Thank you for that. You did learn, however,
8 sometime around September 8th or 9th, of all of the offers and
9 rehires including Mr. Roth that had been done by Gimme!,
10 correct?
11 A Yes. Because my own offer was made around that time as
12 well.
13 Q Okay. And despite the prediction by management that the
14 MLK and T-burg would be the first phase, and Coco or Cayuga
15 would be the second phase, do you agree with Ms. Christensen's
16 testimony when she said those were kind of smooshed together
17 because it took so long for the Union and management to
18 negotiate the August 27th MOA, that it was just became one
19 continuous phase; do you agree with that?
20 A That MLK, and T-burg, and Coco became smooshed together?
21 Q Yeah.
22 A Yes, I would agree with that.
23 Q Okay. And the Union never objected, through yourself or
24 any of the other bargaining committee members, of the
25 management not sending out a -- a new seven-day email for Coco,

1 because everyone knew that with the exception of Mr. Roth that
2 active recall list was completely met. In other words,
3 everyone on that active recall list was offered a job, correct?
4 A Well, I believe it was our understanding that Coco,
5 because that Coco got absorbed into the first phase of recall.
6 Because, in the MOA that we eventually signed at the end of
7 August, Coco is indicated as part of this -- as part of the
8 phase of recall.
9 Q Right. And so it was not objectionable to the Union that
10 Gimme! glued them together as one big phase 1, and was able to
11 reach every single person on the active recall list and offer
12 them employment, correct? There's no objection from the Union
13 in that process, right?
14 A There was no objection to Janet calling and verifying
15 everyone's positions on the list that we provided.
16 Q That's not my question. My question is, once the Union
17 learned that it was MLK, T-burg, and Coco, and that all those
18 offers were out there for the active recall list, the Union did
19 not object to Gimme! not sending a second email out to say,
20 okay, it's phase 2 Coco now. Because that active recall list
21 was still an active list. It was a -- it was a legitimate what
22 the people still wanted to come back with the -- with the
23 exception of Mr. -- Mr. -- is this Tim Brogan? Am I correct
24 about that?
25 A I think the reason why there was no objection was because

1 there was no indication that Coco was actually a second phase
2 of recall. Coco was already in that first phase.
3 Q Okay. Fair enough -- fair enough. You're -- you're --
4 you're fine. And now Mr. Roth, though, was sort of a late
5 change, that -- that he did unilaterally September 7th, and
6 you've seen that email, correct? You -- you saw that as part
7 of the Employer's case?
8 A I did.
9 Q And there was no objection from the Union on that -- that
10 action by Mr. Roth, was there?
11 A No.
12 Q And there was nobody on the wait list that approached the
13 bargaining committee, including you, that said hey, wait a
14 second, I was higher than Wendell Roth on the wait list, and I
15 want to take that place ahead of him, correct?
16 A No. Not to my knowledge.
17 Q You said correct? Just for the clarification of the
18 record, I'm correct on that right?
19 A Yes, that is correct.
20 Q Okay. Thank you. You would agree with me, would you not,
21 that after the phase 1 that included MLK, T-burg, and Coco,
22 that and through January 31st, 2021 Gimme! never sent the
23 seven -- a seven-day email indicating under the MOA that
24 another phase of COVID reopening was going to occur?
25 A I --

Q Correct?

A -- yes, that's correct.

MR. WAGNER: I have no further questions. Thank you, Ms. Lapinski.

HEARING OFFICER SUTCLIFF: Redirect?

MR. HAYES: Yes.

REDIRECT EXAMINATION

Q BY MR. HAYES: So Maggie, a couple of minutes ago Mr. Wagner was asking you about the bargaining session on December 28th, and whether Ms. Christensen was referring to absolute conditions on Cayuga reopening. You remember that, right?

A Yes.

Q What do you remember her saying regarding the expectation of when the issues having to do with Cayuga would be resolved?

A I remember -- I remember the -- the issues. I mean, the HVAC system had been brought up several times.

Q Uh-huh.

A But I believe that -- I believe that in the session what was said is that -- that they would be solved sometime during the month of February, kind of with -- as Gates as piloting. And then once those issues -- once, like, those specific facility issues would be resolved, Cayuga would then be start -- would then start to reopen.

Q So was that part of the same conversation where she made the comment about Cayuga reopening shortly after Gates?

A I believe so, yes.

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Recross?

MR. WAGNER: Yes.

RECROSS-EXAMINATION

Q BY MR. WAGNER: Ms. Lapinski, you told me on -- in response to my question that, you agreed that that Ms. Christensen said these are requirements to allow us to open Cayuga, and the HVAC concern had not yet been resolved, correct?

MR. HAYES: Objection. That is not what she said. I -- you know, I -- that's a mischaracterization.

MR. WAGNER: I --

HEARING OFFICER SUTCLIFF: I -- I'm going to overrule the objection. I'm not sure that that's not what she said. Obviously, when I see the record, I'm going to compare what she says on direct versus what she -- what the -- what this person says on direct and what this person says on cross. So I -- I think we need to just move forward.

Go ahead.

Q BY MR. WAGNER: Isn't that true, Ms. Lapinski, that -- that -- that what Ms. Christensen said is, if we could resolve the HVAC we could -- we -- we would love to open Cayuga? But there was no resolution of that as of that date, and no schedule for resolving it; isn't that correct? It was

aspirational only, agreed?

A No, actually I don't agree. I would -- it was more of a we are going to pilot Gates, and then Cayuga would be short -- open shortly thereafter.

Q So now you're changing your testimony by saying that the HVAC had been resolved; is that your testimony now that the HVAC had been resolved?

A No, I don't think the HVAC had been resolved.

Q You agree with me that Cayuga could not reopen, from management's perspective, until the HVAC could be resolved, correct?

A Yes, there were -- Claire had brought up certain issues that needed to be resolved.

Q And there had not been a definitive solution identified on -- by December 28th of 2020? It was a question of if, not a question of when, correct?

A I -- I -- how do I phrase this? I think the question of -- the way it was phrased in the -- I mean, if we're going to talk specifically about the HVAC system, the way I remember it being phrased was, the HVAC system is -- is a problem. It needs to be -- it needs to be fixed. Not, like, if it's going to be fixed, it -- it needs to be fixed. Does that --

HEARING OFFICER SUTCLIFF: Let me -- let me ask you this.

THE WITNESS: Sure.

HEARING OFFICER SUTCLIFF: Did Ms. Christensen say to you

in this -- in this meeting, this HVA system is going to be fixed in February?

THE WITNESS: I don't believe anything that -- that absolute. It was more of a, this system will be fixed.

HEARING OFFICER SUTCLIFF: Okay. Anything further, Mr. Wagner?

MR. WAGNER: Nothing further, Madam Hearing Officer.

HEARING OFFICER SUTCLIFF: Any other redirect, Mr. Hayes?

MR. HAYES: No.

HEARING OFFICER SUTCLIFF: Okay. You're excused. I'll just remind you not to discuss your testimony with anybody until the hearing closes.

Let's go off the record for a minute.

(Off the record at 4:51 p.m.)

HEARING OFFICER SUTCLIFF: Okay. Back on the record. We had some off-the-record conversations regarding sort of the -- the scheduling of the remainder of the hearing.

So at this point in time, Mr. Hayes, are you ready to call your next witness?

MR. HAYES: I am, but I need about five minutes to get them on the line.

HEARING OFFICER SUTCLIFF: Okay. Sure let's go off the record. And then we'll come back on when the witness is ready.

(Off the record at 4:54 p.m.)

HEARING OFFICER SUTCLIFF: M. Baird, would you please

raise your right hand?

Whereupon,

MOLLY "JAMIE" BAIRD

having been duly sworn, was called as a witness herein and was examined and testified, telephonically as follows:

HEARING OFFICER SUTCLIFF: Okay. Please state your name and spell it for the record.

THE WITNESS: My legal name is Molly Baird, M-O-L-L-Y B-A-I-R-D, but I go by Jamie, J-A-M-I-E.

HEARING OFFICER SUTCLIFF: Okay. And you can put your hand down.

Go ahead.

DIRECT EXAMINATION

Q BY MR. HAYES: All right. Jaime, where do you work?

A I work at the MLK location.

HEARING OFFICER SUTCLIFF: I'm going to stop you right there. We've got some -- we've got some issues hearing you. Are you on a -- on a wireless connection?

THE WITNESS: Yes, I am.

HEARING OFFICER SUTCLIFF: Can you get yourself to a wired connection, or no?

THE WITNESS: I'm sorry. I don't believe I can.

HEARING OFFICER SUTCLIFF: Okay. Well let's -- let's keep going a little bit, and -- and let's see if gets a little bit better.

Go ahead, Mr. Hayes.

Q BY MR. HAYES: Okay. So just tell us again, where do you work?

A I work at the MLK location (audio interference).

Q Okay. When did you start working for Gimme!?

A I started working early February of 2020.

Q Okay. And did you have any role with the Union?

A I was a part of the bargaining committee when we entered contract negotiations in, I think, October of 2020.

Q Okay. And that was your first involvement with the Union?

A That was, yeah.

Q All right. And were you present for the bargaining session on December 28th, 2020?

A I was, yeah.

Q Okay. At that session, do you remember anyone from the company making a comment about any stores reopening?

A Yes, I do. We had heard that the Gates location on Cornell's campus, would be opening in February. And that the Cayuga Street location would be at -- opening shortly after (audio interference).

Q Okay. So did someone at the session say that?

A Yeah. Yeah, it was Claire.

Q Okay. And do you remember any other discussion on that topic regarding the Cayuga store opening -- reopening?

A Yeah. We had heard that the reason the Cayuga Street

location hadn't opened yet was because the -- there was something wrong with the HVAC system.

Q Okay. So when you -- when you say you had heard that, who told you that?

A Oh, I'm sorry. Claire had told us that, in that meeting.

Q Okay. So based on that topic of discussion, at the bargaining session, what was your understanding of when the HVAC system at Cayuga was going to be fixed?

A Well since the company had told us that Gates would be opening first and then Cayuga shortly after, I understood that the HVAC system would be fixed shortly after Gates opened.

Q Okay. And did -- did you keep any bargaining notes from that session.

A No, I did not.

Q Okay. Nothing further.

HEARING OFFICER SUTCLIFF: Any cross?

MR. WAGNER: Yes. Thank you.

CROSS-EXAMINATION

Q BY MR. WAGNER: Jaime, do you prefer Jaime, or Ms. Baird, or something else?

A Jaime is fine.

Q Thank you, Jamie. I'm Paul Wagner, I'm the attorney for Gimme!. I just have a few questions to ask you. Isn't it true that at that bargaining session, Ms. Christensen, when she mentioned the possibility of Cayuga Street reopening, said that

it was conditioned on fixing the HVAC system?
A Yeah.
Q And that the company had not had any definitive plans, or a -- a SOP, a standard operating procedure or any sort of document that indicated that the HVAC system was going to be fixed in a certain way; isn't that true?
A There was no SOP about the HVAC. But they did say that Cayuga would be opening shortly after Gates.
Q Didn't Ms. Christensen actually say that we would like to open Cayuga Street shortly after Gates, but that conditions are figuring out the steps to the HVAC system, which had not occurred yet; isn't that true?
A What I remember is being told that opening Cayuga was the plan and that the HVAC needed to be fixed first.
Q Right. And that the HVAC system had not been fixed yet, nor was there a plan to fix it as of December 28th, 2020, correct?
A When I was told that Cayuga would be reopening, and that the HVAC system needed to be fixed, I assumed there was a plan to fix them.
Q Okay. Then Ms. Christensen did not describe that she had a plan in place, did she?
A No.
Q Didn't she say words to the effect of, we'd love to open Cayuga shortly after -- or after Gates, if we can come up with

a plan to fix the HVAC system. But, without that, it creates an unsafe environment for our baristas; isn't that what she said?

A What I remember is that there was a plan to open Cayuga shortly after, and that a fixed HVAC was necessary for safe conditions.

Q Right. But Ms. Christensen never described any details of a plan -- the -- the actual steps to fix the HVAC or any proposal that was in place, did she?

A No.

Q Because no such plan existed, correct?

A Again, I assumed there was a plan, because they said they wanted to open Cayuga, and that the HVAC needed to be fixed.

Q And -- and isn't it true that a lot of the members of the bargaining unit were on a wait list, only wanted to work at Cayuga?

MR. HAYES: Okay. I'm objecting. That's beyond the scope of the direct testimonies, completely outside of it.

HEARING OFFICER SUTCLIFF: It's okay. hold on. Let me -- let me rule on the objection. It's -- I'm going to overrule the objection. Again, this is a representation case proceeding. The formal rules of evidence do not apply. We're going to allow testimony in -- in this regard.

Go ahead, Mr. Wagner.

Q BY MR. WAGNER: Jaime, isn't it true that a number of -- a

majority of the people on that wait list, as of December 28th, 2020, really wanted Cayuga to open back up, because it was the only store they were willing to work at, correct?

A I'm not sure it was a majority. There were several of the (audio interference) were looking for the part-time work.

Q And -- but it -- isn't it true, that as a member of the bargaining committee that you were on, that you were keenly aware of the interest of a number of the wait-list people to -- to have some hope that Cayuga was going to reopen; is that accurate?

A Yes.

MR. WAGNER: Thank you. No further questions.

HEARING OFFICER SUTCLIFF: Any other redirect?

REDIRECT EXAMINATION

Q BY MR. HAYES: Jaime, Mr. Wagner -- when Mr. Wagner asked his first question about conditioning reopening of the Cayuga Store, on fixing the HVAC system, you gave a short answer in that it seemed like he cut you off. Was there something else you wanted to say in response to that?

A There's nothing specific I remember, I guess, I'll just reiterate that, because they said there was a plan to reopen Cayuga, and that they needed to fix the HVAC. I assumed there was a plan to fix the HVAC. That's all.

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Anything further, Mr. Wagner?

RECROSS-EXAMINATION

Q BY MR. WAGNER: Yes, just one -- one last question. Jamie that assumption was merely your own assumption, based on your belief that a plan must be in place, correct?

A When they told us that they were planning on reopening Cayuga shortly after they reopened Gates, and that they needed to fix the HVAC; I felt that it was implied that they were going to fix the HVAC.

Q Understood. Did you or any other Union bargaining committee member then ask to see the plan for fixing the HVAC out of safety concerns for your fellow baristas who would be going back to work there?

A No.

MR. WAGNER: Thank you. No further questions.

HEARING OFFICER SUTCLIFF: Anything else, Mr. Hayes?

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Okay. You're excused. I'll just remind you not to discuss your testimony with any other witness while the hearing is open. Let's go off the record for a second.

(Off the record at 5:14 p.m.)

HEARING OFFICER SUTCLIFF: Back on the record.

The parties have discussed that we are going to conclude testimony for the day.

Since there's nothing further, the hearing will be

adjourned to Friday September 3rd, 2021, at 9 a.m.

Off the record.

(Whereupon, the hearing in the above-entitled matter was recessed at 5:15 p.m. until Friday, September 3, 2021 at 9:00 a.m.)

1 **C E R T I F I C A T I O N**

2 This is to certify that the attached proceedings, via Zoom
3 videoconference before the National Labor Relations Board
4 (NLRB), Region 3, Case Number 03-RD-271639, Gimme Coffee, Inc..
5 and Courtney Susan Shelton and Workers United Local 2833, held
6 at the National Labor Relations Board, Region 3, 130 South
7 Elmwood Avenue, Suite 630, Buffalo, New York 14202-2465, on
8 September 2, 2021, at 10:29 a.m. was held according to the
9 record, and that this is the original, complete, and true and
10 accurate transcript that has been compared to the reporting or
11 recording, accomplished at the hearing, that the exhibit files
12 have been checked for completeness and no exhibits received in
13 evidence or in the rejected exhibit files are missing.
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17 BARRINGTON MOXIE
18 Official Reporter
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25

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

Gimme Coffee, Inc. **Case No. 03-RD-271639**

Employer,

and

Courtney Susan Shelton

Petitioner,

and

Workers United Local 2833,

Union.

_____

_____

Place: Buffalo, New York (Via Zoom Videoconference)

Dates: September 3, 2021

Pages: 176 through 224

Volume: 2

OFFICIAL REPORTERS
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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of: GIMME COFFEE, INC. Employer, and COURTNEY SUSAN SHELTON Petitioner, and WORKERS UNITED LOCAL 2833 Union.	Case No. 03-RD-271639

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **NEALE K. SUTCLIFF**, Hearing Officer, at the 130 South Elmwood Avenue, Suite 630, Buffalo, New York 14202-2465, on **Friday, September 3, 2021, 9:05 a.m.**

1 **A P P E A R A N C E S**

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1 **I N D E X**

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3 WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
4 Richard Bensinger	178	181	184	185	
5 Gary Bonadonna	186,190	191			189
6 Claire Christensen	197,204	212	214		
7 (Recalled)	204,210				
8 Colleen Anunu	220				

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1 **E X H I B I T S**

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EXHIBIT	IDENTIFIED	IN EVIDENCE
Employer:		
E-23	202	204
E-24	205	208
E-25	208	212
Union:		
U-5	187	190
U-15	177	178

1 **P R O C E E D I N G S**

2 HEARING OFFICER SUTCLIFF: On the record. We are resuming
3 the hearing this morning. Before we get started with
4 additional testimony, Mr. Hayes, you have another exhibit you
5 would like to offer?
6 MR. HAYES: Yes. I'd like to offer Union Exhibit 15,
7 which is just and art -- an online article from "The Cornell
8 Daily Sun" dated December 10th, 2020. The Union isn't offering
9 any testimony around this. I just want to offer it into the
10 record for what it's worth, and ask the hearing officer to take
11 judicial notice of it.
12 HEARING OFFICER SUTCLIFF: Okay. And Mr. Wagner, does
13 Employer have a position on this?
14 MR. WAGNER: We'd object. If the article is cherry-picked
15 at out of a stack of other -- judicial notice is not
16 appropriate, even under a lack of rules of evidence for a
17 newspaper, particularly in this day and age. So -- and it's --
18 it's utterly unhelpful to the issue in this case, and would
19 need to be contextualized. I don't see any -- any relevance,
20 and we see it get -- it actually confusing or slanting the
21 issues inappropriately.
22 HEARING OFFICER SUTCLIFF: Okay. Your objection is noted.
23 I'm going to overrule it. I'll allow it in. I will take
24 judicial notice of it, and I'll just give it the weight that it
25 is accorded. Okay? So --

MR. WAGNER: (Indiscernible, simultaneous speech) --

HEARING OFFICER SUTCLIFF: -- 15 is in the record.

(Union Exhibit Number 15 Received into Evidence)

MR. HAYES: Okay. The Union calls Richard Bensinger as its next witness.

HEARING OFFICER SUTCLIFF: Okay. Mr. Bensinger, raise your right hand, please.

Whereupon,

RICHARD BENSINGER

having been duly sworn, was called as a witness herein and was examined and testified, telephonically as follows:

HEARING OFFICER SUTCLIFF: Okay. Can you please state your name and spell it for the record?

THE WITNESS: Richard Bensinger, B, as in boy, E-N-S-I-N-G-E-R.

HEARING OFFICER SUTCLIFF: Okay. Go ahead, Mr. Hayes.

DIRECT EXAMINATION

Q BY MR. HAYES: Okay, Richard. What's your relationship with Workers United?

A I'm a -- I oversee organizing. I'm a consultant for the Union. Senior adviser is my title.

Q Okay. And how long have you been doing organizing, consulting work?

A I've been doing organizing/consulting since 1998 and organizing since the mid-1970s.

Q Okay. Have you done work related to Worker -- Workers United's campaign at Gimme! Coffee?
A Yes.
Q All right. Did you attend CBA bargaining sessions that the Union was at in 2020?
A Yes.
Q About how many sessions do you remember attending?
A Not all of them. I don't really recall. I think something close to probably three.
Q Okay. Were you present at the December 28th, 2020 session?
A Yes.
Q All right. So at that session, do you remember a comment from a company representative about stores reopening?
A Yes.
Q Okay. How did that happen, in terms of the flow of the conversation?
A Well, I asked them specifically if they had enough job openings now, meaning in late December, that they could recall people from layoff. And Claire responded saying that they're going to open Gates in early February, and shortly -- very shortly after that, they would be opening in Cayuga. They had to fix an HVAC system to -- to get it to come open.
Q So just -- just tell us again what -- as close as you can remember, what were the words that Ms. Christensen used when

she made this comment about the stores reopening?

A That -- about the stores reopening? That they'd reopen -- they would be opening Gates in early February, and very shortly after that they would be opening Cayuga.

Q Okay. And then, what was the issue she was describing related to the HVAC system?

A That it needed fixing? You would think it would be good -- a good system, but it was the opposite, that they had to fix it.

Q That they had to fix it.

A Yeah.

Q Did she talk about any other issues that could prevent Cayuga from opening soon after Gates, other than the HVAC issue you just referred to?

A No.

Q Okay. Were these -- were these comments different in any way from the way the company had talked about store reopenings before that point, from what you witnessed?

A I wasn't involved in negotiations, but it was good news and we were excited. I remember that because they were going to be finally opening these two places.

Q Okay, so it was a change, in other words.

A Yes.

Q And how do you remember, you know, the specifics of this conversation in bargaining at this point?

A How do I remember?

Q Yeah.

A From my memory? Basically from memory. Why do I remember? How do I remember?

Q I --

A I remember it because we were glad that were going to be recalling people.

Q Okay. All right, nothing further.

HEARING OFFICER SUTCLIFF: Cross-examination?

MR. WAGNER: Madam Hearing Officer, may I have five minutes, please?

HEARING OFFICER SUTCLIFF: Sure. Let's go off the record for five minutes.

(Off the record at 9:11 a.m.)

HEARING OFFICER SUTCLIFF: Okay. Mr. Wagner, cross?

MR. WAGNER: Thank you.

CROSS-EXAMINATION

Q BY MR. WAGNER: Hi, Richard.

A Hi, Paul.

Q Richard, do you remember Claire calling the HVAC system in those negotiations a COVID super-spreader?

A No. I remember her saying that there was a big problem with it. You would think it would work. I don't recall her saying that. She might have, but I remember her saying, you would think it would work. It was the opposite.

Q And do you recall her also saying that we have no current solution for it?

A No.

Q And do you remember her saying that reopening of Cayuga is conditioned on solving this infrastructure problem, which is the HVAC system?

A No. What I remember her saying was, is they were going to reopen or open Gates in early February, and very shortly after that -- it -- it wasn't qualified with that. Very shortly after that, they were going to open Cayuga. It was -- wasn't equivocal. That was the news that she was giving us.

Q And -- and so did -- do -- do you -- did the Union, through you or anyone else at that session or after ask for the information on the solution to the H -- HVAC to ensure safety of any baristas that would be hired there?

A I didn't make -- I didn't ask. I don't know --

Q Was that a concern give -- given the fact that the company had identified it as a serious COVID-spreading risk, wasn't that a concern of the Union to return baristas to such an environment?

A I think -- I would figure that after the Cayuga had been closed for a very -- months and months, for about ten months, that they had -- it would seem reasonable, they had time -- this is my speculation. I don't know. But that they would have time to fix the HVAC system. I fixed one of my --

Q Right, but --

A I replaced mine.

Q No, I -- I -- I appreciate that as an assumption, but you would agree with me, would you not, that -- that one of Workers United's focus, particularly in -- in COVID and -- and post-COVID is the health and safety of workers, correct?

A Ever since the Triangle Shirtwaist fire, Paul.

Q Yeah, exactly. And so wouldn't it be reasonable for the Union to say, well, wait a second, we need to be satisfied that this COVID-spreader, as you described it, is going to be solved to the -- to the satisfaction of the Union, as a watchdog group (audio interference)?

MR. HAYES: Objection. The witness did not testify to say the -- the system was a spreader. And when you asked him about it, he said he didn't remember any language like that. So that premise should not be part of the question.

HEARING OFFICER SUTCLIFF: I sustain that objection.

MR. WAGNER: Cross-examination.

HEARING OFFICER SUTCLIFF: That's -- that's a -- yeah, the point is, is he did -- he did not testify to that so I -- there's another way to ask the question so let's do it.

MR. WAGNER: Okay.

Q BY MR. WAGNER: At no point in those negotiations, Richard, did any member of Union committee ask about the safety or express their concern about the safety of the environment at

Cayuga Street; did they?

A I don't remember anyone doing that. I wasn't in all the bargaining. I did not ask that.

Q And isn't it true that no one asked that because Claire Christensen made it clear that that issue has no solution for it as of yet?

A No, that's not true.

MR. WAGNER: No further questions.

HEARING OFFICER SUTCLIFF: Any redirect, Mr. Hayes?

REDIRECT EXAMINATION

Q BY MR. HAYES: Richard, after you heard the comments that you testified, hearing Ms. Christiansen say, at that bargaining session, what was your impression about the HVA system being fixed, generally?

A That it would be fixed very shortly after early February, which is when they said that was the timeline. And it wasn't -- they didn't say six months from now, but that one place was opening up, the Gates -- that being Gates in early February, and very shortly after that, Cayuga. That's -- that's what Claire told us. It wasn't equivocated. It wasn't dependent upon -- it was being fixed, and there was -- there was a specific time given, which is very early after -- very shortly after the Gates Hall location reopened. N

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Any recross?

MR. WAGNER: Yes, just very briefly.

RECROSS-EXAMINATION

Q BY MR. WAGNER: Richard, who told you about yesterday's testimony?

A No one.

Q Okay, thank you.

MR. WAGNER: No further questions.

HEARING OFFICER SUTCLIFF: Okay. Mr. Bensinger, you're excused. I remind you not to discuss your testimony with anyone until the hearing closes.

MR. BENSINGER: Thank you.

HEARING OFFICER SUTCLIFF: Okay. So, Mr. Benzinger, we can --

MR. BENSINGER: I'm -- I -- I'm going to leave.

HEARING OFFICER SUTCLIFF: Yeah, yeah.

MR. BENSINGER: Be seeing you all.

HEARING OFFICER SUTCLIFF: Okay, thank you.

MR. BENSINGER: Bye, Paul.

MR. WAGNER: Bye, Richard.

HEARING OFFICER SUTCLIFF: Okay. Mr. Hayes, you ready to call your next witness?

MR. HAYES: Yes, the Union calls Gary Bonadonna.

HEARING OFFICER SUTCLIFF: Okay. Mr. Bonadonna, would you please raise your right hand?

Whereupon,

1 **GARY BONADONNA**

2 having been duly sworn, was called as a witness herein and was

3 examined and testified as follows:

4 HEARING OFFICER SUTCLIFF: Okay. Please state your name

5 and spell it for the record.

6 THE WITNESS: Gary Bonadonna, B, as in boy, O-N-A-D, as in

7 David, O-N-N-A.

8 HEARING OFFICER SUTCLIFF: Okay. Go ahead, Mr. Hayes.

9 **DIRECT EXAMINATION**

10 Q BY MR. HAYES: Gary, what's your position with Workers

11 United?

12 A I'm the manager of the Rochester Regional Joint Board,

13 which is the upstate New York chapter of Workers United.

14 Q Okay. How long has he been in that position?

15 A My current position, five years.

16 Q And that's the top position within the local, correct?

17 A It is.

18 Q As part of your position as manager, have you done work

19 related to Gimme! Coffee?

20 A I have.

21 Q Did you attend CBA bargaining sessions that took place in

22 2020?

23 A I did.

24 Q Did you attend every session?

25 A I -- I believe -- I may have -- I may have missed one

session, but I was at -- if not all, then I only missed one.
Q Were you at the December 28th, 2020 session?
A I was.
Q Okay. At that session, do you remember a comment from the company about stores reopening?
A Yeah. Well, I had put it in my notes. I -- I remember it really being one of the only things worth remarking from that session. But yeah, I remember Claire saying they were planning -- they were tentatively opening Gates and Cayuga in February.
Q Just -- just tell us -- I mean, I -- I understand what you just said. Tell us, to the best you can -- of your memory, what words did Ms. Christiansen use when she was making this comment?
A I just remember -- and I don't remember the -- the sequence actually of Gates first and then Cayuga. I just remember both of those being said that they were opening in mid to late February, is what I think I wrote in my notes. And the Cayuga -- at the Cayuga store, the HVAC system was a problem. It was -- either needed a new order or needed to be repaired.
Q Gary, I'm going to ask you to look at what's been marked for identification as Union Exhibit 5. Tell me when you have that in front of you.
A Okay, one second. Okay, I have it.
Q Okay. What is this document?

A These are my bargaining notes from December 28th, and then there were notes from other things after that.

Q Okay. So you took these notes yourself, right?

A I did.

Q Is this one page the entirety of your notes from that bargaining session?

A It is.

Q Or I guess I should say the entirety of the notes from that day's bargaining.

A Yeah, that was the extent of what I wrote for that -- for that session.

Q All right. And where on this document, if -- if anywhere, is there a reference to the comment from the company you just described a minute ago?

A That -- that -- the third bullet. I jotted that down.

Q And just -- I think your handwriting is pretty clear, but can you just read it to us, what it says?

A Gates and Cayuga tentatively opening in mid or late February.

Q Okay. And you mentioned it briefly, but do you remember what was below the -- the line, sort of a third of the way down the page, that this -- you know, everything below that is now redacted. Do you know what's under that redaction?

A I do.

Q Without talking about substance, what -- what -- what is

it?

A It's -- it's notes from another meeting I had with colleagues of mine and an attorney after we received a decertification petition.

Q Okay. So those are not notes from that bargaining session, correct?

A No.

Q Okay.

MR. HAYES: I asked that Union Exhibit 5 be entered into the record.

HEARING OFFICER SUTCLIFF: Any objection?

MR. WAGNER: One brief voir dire?

HEARING OFFICER SUTCLIFF: Sure.

VOIR DIRE EXAMINATION

Q BY MR. WAGNER: Hi, Gary. Do you prefer me to call you Gary or Mr. Bonadonna?

A Gary is fine.

Q Thank you, Gary. So if this note would have included a -- an additional note that -- subject to the HVAC problem being fixed, that would be accurate, correct?

A No. No. I mean, I remember HVAC being in the discussion that that needed to be replaced or repaired.

Q Okay.

A But not -- not that that was Cayuga -- the store opening was conditioned just on that.

Q There are other conditions for the store opening, other -- -- in addition to the HVAC being fixed?

HEARING OFFICER SUTCLIFF: I'm going to stop you there. That's --

MR. HAYES: I'm objecting. That's beyond --

HEARING OFFICER SUTCLIFF: I'm -- I'm -- sustain the objection. That's going on -- beyond the scope of voir dire. You can use that for cross.

MR. WAGNER: Thank you, Madam Hearing Officer. I have no objection to the --

HEARING OFFICER SUTCLIFF: Okay. Union 5 is received into the record.

(Union Exhibit Number 5 Received into Evidence)

HEARING OFFICER SUTCLIFF: Any further questions of this witness, Mr. Hayes?

MR. HAYES: Yes. Just give me one moment.

RESUMED DIRECT EXAMINATION

Q BY MR. HAYES: So Gary, you already mentioned the issue that Ms. Christensen raised about the HVAC system. In making these comments, did she talk about any other issues that could prevent the Cayuga store from opening soon after the Gates store?

A No. I -- I don't know if I misspoke there to say that was -- there were other conditions. It -- just in the conversation, Claire had said there -- what I captured in the

notes, they tentatively opening. But what I remember is discussion of the HVAC system. It needed to be -- it needed to be repaired or a new one. I -- I don't remember.

Q Okay. And I -- just to repeat, you said that you were at every bargaining sessioning -- session or almost every bargaining session for the successor CBA, correct?

A Correct.

Q So these comments from Ms. Christensen, were they different from the way the company had talked about store reopenings before that point?

A We hadn't got word about Cayuga until that day.

Q So there hadn't -- you're -- you're saying there hadn't been any comments about Cayuga before that session?

A I don't -- I don't remember if we had asked the status of it before. I'm sorry. I just remember that session, it was discussed.

Q Okay.

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Okay. Cross?

MR. WAGNER: Thank you, Madam Hearing Officer.

CROSS-EXAMINATION

Q BY MR. WAGNER: Gary, at the meeting, did you ask all the details about the -- Gimme!'s plans to fix the HVAC system?

A I don't remember if I spoke about that at all.

Q You would agree with me, would you not, that that would be

not only a legitimate request by a Union to protect workers' health and safety, but one that would have to be legally complied with, correct?

A Sure. Yes.

Q And in fact, you recall Claire using the phrase or describing the HVAC system as a COVID-spreader or super spreader, the current system.

A I don't remember them saying that.

Q If -- if -- if -- if Gimme! had said that, if Claire or Colleen had said that in that meeting, would you agree with me that, as the manager of -- the head of the Union, that that would have thrown up a red flag to you to inquire as to the proposed fix for the safety of your -- your members?

A Yeah. I -- I think at the time -- you know, this was December 28th, and hearing that the plan was opening Cayuga in mid-February, still -- that's a month and a half to two months away still so I can't remember my state of mind. Me -- I mean, that's obviously -- health and safety is very important. But about on that day, the urgency -- and there's the -- you know, we heard, the opening of the plan so -- but it was still a month and a half away or longer.

Q And in the ensuing month, in the month of January, neither you nor anyone from Workers United or any of the baristas asked or -- either formally or informally, information about the replacement or repair of the HVAC system, correct?

A I did not. I don't know if anyone else had.

Q Okay. And at no time, between that bargaining session and the end of January, did you or anyone else in the bargaining unit or the Union inquire to Gimme! management as to the details of the supposed reopening of Cayuga correct?

A I didn't.

Q And you're not aware of anyone else doing that, right?

A I'm not sure.

Q Now, on the day of the bargaining session, you mentioned under your direct testimony that you then met with your colleagues and your attorney, regarding the de -- the decertification petition, correct?

MR. HAYES: Objection. That's not what the testimony was. I also object to any question that would prompt information that's protected by attorney/client privilege.

MR. WAGNER: Yeah, I'm not --

HEARING OFFICER SUTCLIFF: Sustain the objection. There's potentially a -- I'm not sure what you're getting at, but I'm not sure how relevant that is.

MR. WAGNER: Well, I'm getting at the fact, if I can make an offer of proof, that -- that -- that this gentleman, who is the head of his Union, was in a bargaining session and had already received the decertification petition in this case. And that that was the primary focus of his mental faculties at the time. That's what I'm getting at. I'm not asking for any

attorney/client information.

MR. HAYES: I'd like to respond to that. That is not what the witness testified to. He said he had notes from other dates, including a meeting regarding decertification petitions. So there's no foundation for a line of questioning related to that, even if this were not protected by attorney/client privilege, which it is.

MR. WAGNER: And does the mere fact --

HEARING OFFICER SUTCLIFF: I'll sustain the -- oh, go ahead.

MR. WAGNER: The mere fact of a meeting on the same day -- if it was the same day and the same petition, is relevant to his credibility that he remembered specific things from the bargaining session. If he was aware of a decertification --

MR. BONADONNA: That wasn't the same day.

MR. HAYES: Gary, please, don't -- don't answer.

HEARING OFFICER SUTCLIFF: About this -- yeah, I'm going to sustain the objection because he already testified that the notes that are redacted are from a different day.

MR. WAGNER: I didn't realize that. I withdraw the question. Thank you.

HEARING OFFICER SUTCLIFF: Okay.

Q BY MR. WAGNER: Mr. -- Gary, did you -- did you, at any time between December 28th of 2020 and the end of January, do your own research or -- or inquiry regarding the -- the danger

of -- of COVID being spread as an aerosol in a workspace with no -- with -- without air duct filters?

A I may have looked into some -- I mean, we -- we represent a lot of places, a lot of different things. I mean, it was like an overarching issue. I -- I don't -- I may have come across so I don't know.

Q And between the onset of the COVID pandemic in March of 2020 through the end of January, do you recall in -- for any bargaining unit or any employer workplaces doing research or research done on how retail employees or restaurant or coffee shop employees safely exist in the state without ducts with filters?

A I -- a lot of different health and safety issues at this time, in this once-in-a-century pandemic. I don't know specifically about the -- if I searched about air ducts. If I come across -- I came across a lot of things.

Q And -- and you don't recall before -- let me ask you this way. Do you recall in the December 28th meeting Claire Christensen or anyone from Gimme! describing that they had actually found a solution to the HVAC system?

A It -- just that it would be fixed, and that Cayuga would open in February.

Q And they didn't describe how it would be fixed?

A No, I don't -- I don't think -- be -- be repaired or replaced, so --

Q Okay. And again, just to clarify, you or no one else from the Union side that maybe said, how is it going to be repaired or fixed, you didn't ask that question.

A I did not. I don't remember if anyone else did.

Q Thank you. No further questions. Thank you, Gary.

A Thank you.

HEARING OFFICER SUTCLIFF: Any redirect?

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Okay. Mr. Bonadonna, you're excused. Just remind you not to discuss your testimony with anyone while the hearing is still open. Mr. Hayes, do you have any further witnesses?

MR. HAYES: No. Obviously, we reserve for the purposes of rebuttal, but otherwise, the Union rests.

HEARING OFFICER SUTCLIFF: Okay. Mr. Wagner, do you have any recall or new witnesses?

MR. WAGNER: I do. We're going to need a couple of minutes to send a few exhibits around.

HEARING OFFICER SUTCLIFF: Okay.

MR. WAGNER: Can I get -- can I get ten?

HEARING OFFICER SUTCLIFF: Yes, absolutely. Let's go off the record for ten minutes. So resume on -- so what do we have, 9:35? So we're -- we're back at 9:45.

(Off the record at 9:35 a.m.)

HEARING OFFICER SUTCLIFF: Okay. Mr. Wagner, do you have

1 additional testimony that you would like to present?
2 MR. WAGNER: Yes, in rebuttal, the Employer calls back to
3 the stand, Claire Christensen.
4 HEARING OFFICER SUTCLIFF: Okay. Ms. Christensen, I just
5 remind you that you're still under oath.
6 Whereupon,
7 **CLAIRE CHRISTENSEN**
8 having been previously sworn, was called as a witness herein
9 and was examined and testified, telephonically as follows:
10 HEARING OFFICER SUTCLIFF: Go ahead, Mr. Wagner.
11 MR. WAGNER: Thank you.
12 **RESUMED DIRECT EXAMINATION (RECALLED)**
13 Q BY MR. WAGNER: Ms. Christensen, much has been said --
14 testified, about the now infamous 12/28 bargaining session and
15 you've heard the testimony of what you said through various
16 witnesses. I would like you to have a chance to tell the
17 hearing officer what you recall about that session, and
18 obviously, with respect to the potential of Cayuga Street
19 reopening in the future.
20 A Yes. So in that brief conversation in that bargaining
21 session, I did mention that we were hiring a Gates' store
22 manager, which was a position that was open at that time. So
23 that's the context of saying Gates maybe in February. And I
24 also said that we were hoping to reopen Cayuga Street, but that
25 there was a problem with the HVAC system, which we had not

solved and I didn't have a solution for. I called it an infrastructure issue for reopening Cayuga Street.

Q And do you recall whether at that meeting you referred to the current HVAC system as a "COVID-spreading tool"?

A Yes, I did. I had been calling it that fairly regularly when I was asked questions about Cayuga Street. I would call it Cayuga -- a COVID-spreading tool, and a space that would not be responsible to invite workers back into.

Q Did you make it clear to the folks in the session that -- well, let me ask it this way. As of 12/28/20, had you found a -- a solution to this COVID-spreading tool, which would be HVAC -- to the current HVAC system at Cayuga Street?

A No, I had not.

Q Give us a little context on what you had done in order to try to seek a solution and why you had no solution at that time.

A So I had done a bunch of research initially on air-conditioning spread in restaurants and food service, which had to do with air patterns, and then followed up by reading some of the New York State Forward guidance for malls and other large spaces, so that this is something that New York State was requiring for businesses at our scale. But I was reading the New York Forward documents for businesses at larger scales, to sort of understand what the safest practice would be.

We, very rapidly, identified Cayuga Street's air-

conditioner as a problem. And part of how that came about was that I asked Thom Cooper, who was our facilities manager at the time, to help me interpret some of the ASHRAE commentary that was already existing about aerosol pandemics and about COVID response -- ASHRAE being the American Society of HVAC Air-Conditioner Engineers (sic) -- something like that. So a lot of this research was over my head. I think everyone was reading over their head in the COVID pandemic. But this was -- you know, it was diagrammatic. It was like search-isolation protocol, and a lot of terminology that I didn't understand.

So I relied a lot on Thom to help me interpret it. And Thom helped me interpret it sufficiently that we installed higher-quality filters at all of our other locations other than Cayuga Street. And we increased the frequency of those changes and changed some things about airflow.

Thom Cooper left the company last summer, and we did not have a facilities manager at that time. He'd already -- Thom, before he left, gave me a no about Cayuga Street. I asked him if he could jerry-rig something, if there was some, you know -- some way to make this work without the ducts, and he had also said no, which I took pretty seriously, because Thom Cooper laughed at $20. So we couldn't keep it jerry-rigged.

After Thom left, I talked to Tomas Reyer, who's our equipment specialist. So he's not HVAC specifically, but he opened up the jerry-rig solution. And we looked at some of the

diagrams together, and he also could not think of a solution. So we had a lot of trouble rehiring a facilities manager. We gave two offers throughout the fall, and both of those folks said no. We did not have a facilities manager still as of the end of December 2020.

Colleen was doing some of the construction work for our facilities. And -- and so through that fall, I was asking questions of other folks outside of the company to try to understand the problem. So we were talking to Claudia Brenner, who's a local architect, about some winterizing solutions for other cafes. We mentioned the problem to Claudia Brenner. She --

Q Then the problem -- you're talking about HVAC?

A The problem about -- yes, HVAC problem at Cayuga Street to Claudia Brenner. She didn't have a solution offhand. She said here are the HVAC specialists you'd have to talk to, but you're looking at an incredibly high bill if you talk to these specialists. And then I spoke to Kevin Cuddeback and Ben Guthrie, who are two of our landlords, as we were going into the winter season, about including HVAC in the furnace at our Trumansburg location, where the air-conditioning and furnace are separate. So we solved the air-conditioning problem, but not the furnace problem yet. And talked to both of them about the various furnace solutions versus the radiator at Cayuga Street and so on. And Kevin Cuddeback went and did some

research, and he also could not think of a solution to this problem at that time.

Q Did you even have a cost estimate as of December 28, 2020, as to what a total solution might cost?

A No, I did not.

Q And was cost a consideration, at that time, to the company?

A It was. We were losing about $10,000 week through December -- that is for the month -- in the month of December. And that's unusual for -- for businesses in Ithaca. Usually, we have a very good December. And then our January is very bad. But the students who had come to -- to the Ithaca area, some of them came back for the fall semester as well as for the spring semester; they all left at Thanksgiving. So we didn't have the holiday sales period that we expected in December. So you know, looking at Claudia Brenner's, like, back-of-the-napkin, I think you're looking at 20K, which --

Q $20,000?

A $20,000 -- if you ask the HVAC specialists. That was definitely something that we were, like, that is a putting-off-to-the-future problem.

Q Got it.

MR. WAGNER: Madam Hearing Officer, did you receive the three exhibits that we marked?

HEARING OFFICER SUTCLIFF: Three? Well, let's see. Oh,

okay. Yep, I just got the other two. Okay, so I got the first one.

MR. WAGNER: Should be 23, 24, and 25.

HEARING OFFICER SUTCLIFF: Okay. Yes, I have them.

MR. WAGNER: And -- and Ian, do you have them as well?

MR. HAYES: I do.

Q BY MR. WAGNER: Okay. So I'd like to show you what's been marked for identification as Employer 23. Can you identify that document?

A Yes, these are my notes from our CBA bargaining session on December 28th.

Q And I see that these are typed. Is that your normal practice is to type them up?

A Yes, I usually type those while we're on Zoom.

Q So this isn't transcribed from handwritten notes? This is directly typed into a computer?

A That's correct.

Q And was it done contemporaneous to the session on 12/28?

A Yes, it was.

Q Like, in the session?

A It was done during the session of 12/28. So these are the notes I was taking as people were speaking, and identifying who -- who had which concerns and how we were talking about the various issues.

Q And -- and just for the record, this is a two-page

1 document. Do you recall how long this session was?
2 A I believe it was about two hours, since it -- it was the
3 day that the contract was set to expire.
4 Q And -- and is there any mention of the reopening of Cayuga
5 Street in these notes?
6 A No, there isn't.
7 Q And do you have an explanation as to why you didn't
8 include that?
9 A So this came up somewhere between leaves of absence here
10 and seniority. Seniority and -- persisted in being the most
11 difficult to -- to come to terms with each other section of
12 our -- our CBA bargaining. Our positions were very far apart.
13 I think, actually, Colleen says that your proposals are very
14 far apart, and who wanted to continue this discussion. And so
15 we were trying to talk through potential solutions to this
16 problem.
17 And Richard Bensinger, who was in the -- the meeting as
18 well -- Richard said, what if we could just end the entire
19 COVID seniority controversy that we're having -- or not
20 controversy -- conversation that we're having by rehiring
21 everyone and having them go on leave immediately until you have
22 enough positions for them? And so basically, to -- to make the
23 COVID, in a way, no longer relevant to our conversation by
24 rehiring everyone back into open positions.
25 So I had to tell Richard that we did not have sufficient

open positions for everyone. And additionally, you know, even if we had tried to do that, we would have been hiring full time and et cetera, et cetera. And that's when I said, and hopefully, we'll be looking at rehire or reopening sometime in the spring. But it's definitely not happening now, and we don't have those open positions.

Q And -- but based on your recollection, do you believe you made it clear in -- in the words that you used, that the -- that there -- there was no -- not yet a solution for the HVAC; thus, there was no time line for reopening?

A I did. I said, we don't have a solution for it. I said it was an infrastructure problem.

MR. WAGNER: We'd offer 23, Madam Hearing Officer.

HEARING OFFICER SUTCLIFF: Any objection?

MR. HAYES: I'd like a brief voir dire.

HEARING OFFICER SUTCLIFF: Yep, go ahead.

VOIR DIRE EXAMINATION

Q BY MR. HAYES: Ms. Christensen, are these the complete notes from that bargaining session that you took?

A Yes, they are.

MR. HAYES: Okay, nothing further. No objection.

HEARING OFFICER SUTCLIFF: Okay. Employer's -- this is -- 23 is received into the record.

(Employer Exhibit Number 23 Received into Evidence)

DIRECT EXAMINATION

1 Q BY MR. HAYES: Ms. Christensen, I'd like to show you
2 what's been marked for ID as Employer 24. Can you identify
3 that document, please?
4 A Yeah. These are ongoing notes for those weekly retail
5 office meetings for every one that we did. So this was a
6 weekly meeting that they would be marked on every set of notes.
7 And every week, we talk about topics in GC education, we talk
8 about topics in retail, and we talk about the broad opening
9 picture, which might include, for example, a reopening question
10 or a question about what we're doing about a COVID precaution.
11 So these are in reverse chronological order. And they would be
12 typically displayed on the screen for everyone who chose to
13 attend that meeting as we spoke about it at a meeting.
14 Q Who was permitted to attend these meetings? Who was
15 invited?
16 A Everyone who worked in retail, so every store manager and
17 educator, our director of education, and every barista who had
18 been through their COVID training. So we didn't invite people
19 until they finished going through, like, the mask policy and --
20 and so on.
21 Q And -- and that would be all baristas that had been
22 rehired --
23 A Yes.
24 Q -- post-COVID limited reopening?
25 A That's right. All baristas who had been rehired at that

point were invited to every one of these meetings.

Q Including Ms. Lapinski and Jaime Baird, who -- who have testified here?

A That's right.

Q Okay. And in Employer 24, do you see any mention of a Cayuga Street reopening even -- even conditionally? You can take the time if you need to look through it.

A No, I don't see anything about Cayuga Street in this document.

Q And had there been an actual plan to open Cayuga Street because the HVAC system had been solved, would you have expected that to be discussed and presented in one of these meetings?

A Yes, I would have discussed and presented it. Whenever we took an action that seemed likely to lead to a reopening in the future, we'd discuss it. So for example, we did mention in this meeting that we had posted a position for a store manager. And in the same meeting where we did that, we said we're expecting single coverage.

Q And at these meetings, the -- the attendees were allowed to ask questions and give input as well; were they not?

A That's right. Every meeting ended with an open-question session.

Q Okay. And going in reverse chron order, I see a meeting on January 26th, January 19th, January 12th, January 5th. So

1 five meetings -- did I count that correctly -- after that
2 bargaining session on 12/28?
3 A That's right.
4 Q And do you recall any barista or any other attendee asking
5 a question about the reopening of Cayuga?
6 A No, no one asked about Cayuga reopening.
7 Q Okay. And -- and a similar question -- well, not a
8 similar question. After 12/28 negotiating -- after this issue
9 came up in your discussion with Richard on -- on, you know,
10 can't you just recall everyone and immediately put them on
11 leave, when you mentioned the HVAC -- current HVAC was a COVID
12 spreading tool, and there was no solution found yet, did anyone
13 from the Union offer a suggestion on what a solution might be?
14 A No.
15 Q Did they ask any questions about what you were thinking in
16 terms of potential solutions for -- to ensure safety of
17 baristas?
18 A No.
19 MR. WAGNER: We offer 24.
20 MR. HAYES: Yeah, I have an objection to everything in the
21 document past the first two pages of notes, because I don't
22 know what this is supposed to be rebutting. But there was
23 testimony from the Union's witnesses about the January 26th
24 meeting. So that's -- you know, I -- I guess that makes sense.
25 That's the first two pages. And then there was testimony about

1 what happened at the December 28th bargaining session. There
2 wasn't any testimony relating to any other meetings. So I
3 think Ms. Christensen's testimony on those questions is
4 irrelevant. And I think that the meeting notes on the same
5 topic are also irrelevant.
6 HEARING OFFICER SUTCLIFF: Okay. Your objection is noted.
7 I'm going to allow the document into the record, and I will
8 give the proper weight that it's afforded, including noticing
9 dates and -- and -- and making sure the analysis of the
10 document applies to the issue at hand. So Employer 24 is
11 received into the record.
12 **(Employer Exhibit Number 24 Received into Evidence)**
13 Q BY MR. WAGNER: Ms. Christensen, I'm showing you what's
14 been marked for ID as Employer 25. Can you look at that
15 document, please?
16 A Yes.
17 Q What's that document?
18 A This document is our store manage meeting agenda from the
19 27th. So we typically have the retail operations meeting one
20 day, and then the following day we would have a store manager
21 meeting, and go further into detail or talk about with store
22 managers to the operationalized things we were talking about.
23 Q And this is dated 1/27 of what year?
24 A 1/27/2021.
25 Q Okay. And so this is nearly a full month after that

negotiating session on 12/28/20?

A That's right.

Q And do you see any mention of the issues at Cayuga Street in this meeting?

A Yes. At the end of this conversation, we were asked about -- by some of our store managers whether -- whether or not to go with the opening. And we answered much the same thing that we've been answering when we were asked this question, that there were things that needed to be worked through before we could open.

Q Okay. And what -- what -- what were those things that are referenced in that first bullet point under "Cayuga"?

A The HVAC, the workflow, and other -- the social distancing in space.

Q Okay.

A Since we had been open, all of these store managers had worked -- or almost all of them had worked briefly in our delivery program, when we were attempting to pilot it out of our Cayuga location, before we moved to MLK. So they were very familiar with those workflow issues, since they were why we moved.

Q And just explain the last bullet where it says, likely put it back later than March; no solid plan yet. Can you describe what that first --

A Yes. So we -- pretty consistently throughout the COVID

pandemic, we would have this hopeful, aspirational future where in two months we have a better COVID situation. We'd have more bandwidth. Colleen and I would be able to spend all of our time devoted to an issue. And so we kept consistently pushing this. We'd say, like, at least two months from now, that's at least how long it will take us to -- to get to it. So like, we pushed back later than March is we don't know when it's going to happen in the future, but it's definitely not going to happen in the next few months.

Q And was this part of the meeting something you had prepared to present, or was this in response to a question from one of your store managers?

A I believe that it was in response to a question from one of our store managers, but I'm not 100 percent sure.

MR. WAGNER: Okay. We offer 25.

MR. HAYES: I'd like to do voir dire on this.

HEARING OFFICER SUTCLIFF: Sure.

VOIR DIRE EXAMINATION

Q BY MR. HAYES: Ms. Christensen, who created this document that we're looking at?

A Victoria Hantout, our regional manager.

Q Okay. And was it -- are they minutes from what actually happened at the meeting, or was this prepared in -- in whole or in part ahead of the meeting?

A The bullet points, typically, would be prepared in advance

of the meeting, to give us a -- a set of what we would be talking about. And then at every meeting, there's someone who would take turns taking notes into the agenda. So everything below the bullet points or any additional items would all have been taken down during the meeting.

Q And so -- okay, understood. On the day of the meeting, going through the -- the -- you know, the last few days in January of 2021, who was able to see this document?

A All the store managers and all the educators.

Q And just -- I'm sorry. I -- I -- I know this has been referenced, but who are the educators?

A So our -- our store managers each work in a particular location; our educators work to do training, compliance, bar certification, so a thing that someone is prepared to -- to do an espresso drink from the bar. We have three of them, a director of education, and two trainers who train in store, and all three of them would also be involved in those meetings.

Q Okay. And just -- just tell us -- I apologize if you already said this completely, but who all was at this meeting on -- on January 27th? Who attended?

A I -- I didn't look it up, but who would have attended would be all the store managers and the educators, unless one of them happened to be off that day.

Q Okay.

A The regional --

Q So it's -- I'm sorry. I didn't mean to cut you off.

A Me, Colleen Anunu, Victoria Hantout, the regional manager, Sherry Aldrich (phonetic throughout), James Byrne -- no, not James Byrne -- Morgan Braca (phonetic throughout), Dave Torrey (phonetic throughout), and Alexis Lopez (phonetic throughout) were in the store managers and as the three educators as well.

Q Okay. And that's -- that's who -- also who was invited to the meeting, I take it?

A Yes.

MR. HAYES: Okay. I -- I think the document has limited probative value and relevance, but I don't object to it coming into the record.

HEARING OFFICER SUTCLIFF: Okay. Employer 25 is received into the record.

(Employer Exhibit Number 25 Received into Evidence)

MR. WAGNER: No further questions.

HEARING OFFICER SUTCLIFF: Cross? Recross? Yes? Cross.

MR. HAYES: Cross.

HEARING OFFICER SUTCLIFF: Cross.

MR. HAYES: Yeah.

CROSS-EXAMINATION

Q BY MR. HAYES: So Ms. Christensen, you heard Richard Bensinger's testimony earlier today about the exchange that happened at the December 20th bargaining session, right?

A Yes, I did.

Q And you heard him describe how the topic of store reopenings came up, right?
A Yes, I did.
Q So that matched, in -- in any meaningful way, what you just described in your direct testimony, right, that the -- the Union raised the issue of recalling people in -- in some way or another? And in part of your response, you brought up the -- the topic of Gates and possibly Cayuga reopening, correct?
A Yes.
Q In -- in other words, my -- the point is the Union didn't ask a direct question about the store's reopening. You raised that as part of your response to a different question, right?
A I raised it in response to a question about rehiring everyone, which, I think, is about stores reopening.
Q Well, okay. That's -- that's fair enough, but that's -- all right.
MR. HAYES: Withdrawn.
Q BY MR. HAYES: The -- the -- the meetings that are reflected in Employer Exhibit 24, the -- you know, which are the meeting minutes, you said only baristas who had undergone COVID training -- those were the only baristas who were able to attend those meetings, correct?
A I did, yes.
Q In other words, people on the wait list -- baristas on the wait list were not able to attend, right?

A That's right. These meetings were exclusively for people who were then working again.

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Any redirect?

MR. WAGNER: Yes, very briefly.

REDIRECT EXAMINATION

Q BY MR. WAGNER: Ms. Christensen, Mr. Hayes asked you a question about the context of the Gates/Cayuga that -- that are coming up into negotiation around 12/28/20. When you brought that up, isn't it so that you -- well, let me ask it more -- more openly. You brought it up not to say to -- to Richard, Mr. Bensinger, that, oh, yeah, we've got all these positions coming up; you brought it up to show that there were no definitive open positions in the future?

A That's right. That's why I mentioned, specifically, the Gates' store manager and not Gates' baristas, and why I described the infrastructure problem at Cayuga Street, and was specifically in response to the question, can we rehire everyone now or in very short order? And the answer was no.

Q Is it also true that the full-time/part-time issue plays a role in that?

A It didn't -- I don't believe that it came up in that meeting. It did come up in other questions, at other meetings when people had asked. It was much like the question of, when are you going to open those locations? The question of will

there be part-time work came up repeatedly for those periods.

Q And through the end of January 2021, was there ever a consideration of going back to some baristas working part time?

A No, there was not. We were committed to our pod setup and the -- the team safety.

Q Why?

A Because I believe that January was COVID's winter peak in Ithaca. We were continually communicating concerns throughout December and January, back and forth within the company. We had a continual COVID-update thread. This is a particular time when our staff were generally feeling unsafe in the community, and we repeatedly reassured them that we would not be abandoning our safety measures.

So one of the things that the retail meeting often did is that they were an invitation for people to say, here are my concerns, and I want to make sure that we're going to keep doing it safely. And we wanted to tell them, yes, yes, we are. Because that's why -- we know it's the only reason people chose to be rehired is because they confidence in our safety precautions.

MR. WAGNER: Thank you. No further questions.

HEARING OFFICER SUTCLIFF: Any recross?

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: I have a couple of questions. There was some testimony on -- on this December 28th meeting

that -- that there -- the word "February" was used in terms of the Gates' reopening. And then, potentially, there's the shortly thereafter. Did -- did you use the term "February" when you were discussing the -- the -- the potential reopen of Gates?

THE WITNESS: I believe I said hopefully February for the Gates' store manager, with -- coming on -- the Gates' store manager, not being reopening by itself. But I -- it was -- it was not about Gates reopening; it was about hiring that open Gates' store manager position.

HEARING OFFICER SUTCLIFF: Okay. Did you use the phrase "shortly thereafter"?

THE WITNESS: Not to my recollection.

HEARING OFFICER SUTCLIFF: Okay. These two questions are -- are for my general edification. I -- this is just stuff that I want to know. Pre-pandemic, how many baristas were employed at Cayuga?

THE WITNESS: Ten to 12, depending on how part time they were. So we -- we had a couple baristas there who only worked ten hours a week. So then if I got 12 and -- people wanted more full time, we have --

HEARING OFFICER SUTCLIFF: Okay. So to break that out, full-time/part-time, please?

THE WITNESS: Oh, gosh. I think we only have two part-time people -- I mean two full-time people. So it's two full-

time people; everyone else worked under 30 hours a week.

HEARING OFFICER SUTCLIFF: Okay. And ten PT. Okay. And sitting in the room right now, is Cayuga open?

THE WITNESS: Yes.

HEARING OFFICER SUTCLIFF: Okay. When did Cayuga open?

THE WITNESS: The very end of June -- or early July. It was just -- I'm sorry. I can't remember what day even today is.

HEARING OFFICER SUTCLIFF: Okay.

THE WITNESS: July -- Fourth of July weekend, I believe is when it opened.

HEARING OFFICER SUTCLIFF: Okay. In what -- in what capacity is it open?

THE WITNESS: It originally opened for four days a week, so Thursday, Friday, Saturday, Sunday, and is now open seven days a week. It's still like all of our other cafes; it's still open limited hours, only until 3 p.m. Pre-pandemic, it was open until 7, 8, or 9, depending on the time of the year.

HEARING OFFICER SUTCLIFF: What's the staffing situation?

THE WITNESS: Currently, three baristas on each team. And there's a -- a -- an optional sort of manager, shorter shift as well, but the support shift only get to be --

HEARING OFFICER SUTCLIFF: Okay. I just wanted it in the record. Thank you. Anything else of this witness?

MR. WAGNER: Madam Hearing Officer, in response to your

question, I think your questions -- plural -- I think it's also relevant to note that when Cayuga reopened, none of the nine challenged ballots wanted to come back.

MR. HAYES: I'm objecting to that, because Mr. Wagner is not testifying in this hearing, and it's obviously outside of the scope of what we're supposed to be offering evidence on.

MR. WAGNER: Well, the hearing officer asked --

HEARING OFFICER SUTCLIFF: So let's -- let's back up. I did -- I did ask the question, but you are testifying. So if you want to -- in response to my questions, that's fine. I'll give it -- as again, my questions are just for my own edification. I -- they're --

MR. WAGNER: Oh, okay.

HEARING OFFICER SUTCLIFF: It's just something that I ask. So if you want to respond by questioning the witness, then go ahead and do that.

MR. WAGNER: Well, but I'm making an offer of proof. If you -- if -- I'm -- I'm seeking guidance from you as the hearing officer. You asked for your own edification, but it's in the record. Do you -- do you want me to ask those questions? Is that something that you're going to allow? Because I -- if we're -- if we're talking about actual post 1/31/21, in terms of staffing and timing, then I think that -- that becomes at least marginally relevant.

HEARING OFFICER SUTCLIFF: Well, I think for just the

purposes of my asking the question, I -- I was really looking at it only in terms of numbers, not necessarily people. So I don't --

MR. WAGNER: Okay.

HEARING OFFICER SUTCLIFF: -- think there's actually any relevance to who actually filled those positions. My question was more just a numbers' question.

MR. WAGNER: Got you.

HEARING OFFICER SUTCLIFF: Okay?

MR. WAGNER: Then I'm going to ask the --

HEARING OFFICER SUTCLIFF: So knowing that --

MR. WAGNER: What's that?

HEARING OFFICER SUTCLIFF: Knowing that, is there anything further of this witness?

MR. WAGNER: Nothing further.

HEARING OFFICER SUTCLIFF: Anything further, Mr. Hayes?

MR. HAYES: Nothing further.

HEARING OFFICER SUTCLIFF: Okay. Is there any -- so there's nothing further of this witness. So you are excused. And I'll just remind you not to discuss your testimony with anybody until the hearing closes. Let's go off the record.

MR. WAGNER: I've got one more witness.

HEARING OFFICER SUTCLIFF: Oh, you do? Oh, okay. I'm sorry. That's what I was going to ask. So go ahead.

MR. WAGNER: Yep.

HEARING OFFICER SUTCLIFF: Call your witness, please.

MR. WAGNER: The Employer calls Colleen Anunu, who's sitting -- you can just stay there -- who's sitting to my left --

HEARING OFFICER SUTCLIFF: Okay.

MR. WAGNER: -- your right.

HEARING OFFICER SUTCLIFF: What are your preferred pronouns, please?

MS. ANUNU: They/them.

HEARING OFFICER SUTCLIFF: Okay, thank you. Okay. Ms. Anunu, please raise your right hand.

Whereupon,

COLLEEN ANUNU

having been duly sworn, was called as a witness herein and was examined and testified, telephonically as follows:

HEARING OFFICER SUTCLIFF: Okay. Thank you. Please state your name and spell it for the record.

THE WITNESS: My name is Colleen Anunu, C-O-L-L-E-E-N A-N-U-N-U.

HEARING OFFICER SUTCLIFF: Okay, go ahead.

MR. WAGNER: Thank you.

DIRECT EXAMINATION

Q BY MR. WAGNER: Colleen, you've heard testimony about this bargaining session on 12/28/20; were you present?

A I was.

Q And could you describe for the hearing officer what you recall Ms. Christensen saying with regard to the possibility of Cayuga Street reopening?

A Yes. So to put it into context, this was the last ten minutes of two months of bargaining. This was the last session, the last ten minutes. We were explaining to Richard Bensinger how the seniority proposal that was in the MOA worked, because he did not ever have that documentation. We walked him through it.

And it came to the point where he asked a lot of questions, one of which being, well, could you bring everybody back now? To which Claire responded, no, we cannot, but we -- as we have presented in previous meetings, we are rehiring a Gates Hall manager. And let's see. We're rehiring a Gates Hall manager for likely February, and hopefully, Cayuga Street in the future. But there's an HVAC issue, which Claire often described, too -- including that meeting -- as "a COVID-spreading tool", and said we had no infrastructure solution for it.

Q And -- and in response to that, do you recall the Union asking any questions about potential solutions or whether certain things had been explored as potential solutions?

A I believe the only response was some laughter about it being called a "COVID-spreading tool".

MR. WAGNER: No further questions.

HEARING OFFICER SUTCLIFF: Any cross?

MR. HAYES: No.

HEARING OFFICER SUTCLIFF: Okay. Anything further of this witness then, Mr. --

MR. WAGNER: Nothing further.

HEARING OFFICER SUTCLIFF: -- Mr. Wagner?

MR. WAGNER: We -- we have nothing further, and we rest our rebuttal.

HEARING OFFICER SUTCLIFF: Okay. Let's go off the record. (Off the record at 10:24 a.m.)

HEARING OFFICER SUTCLIFF: Okay. We're back on the record. We had some off-the-record conversations about the -- the flow of the hearing. Is there anything further the parties wish to present in the way of testimony?

MR. HAYES: Not from the Union.

MR. WAGNER: Not from the Employer.

HEARING OFFICER SUTCLIFF: Okay. In discussions with our court reporter, we have an estimated transcript length of approximately 220 pages.

We also discussed briefing period. And I have indicated that the parties have until the close of regular business hours on September 24th, 2021, for the filing of briefs in this proceeding, and that close of business is 5 p.m. If there is nothing further, the hearing will be closed. Let the record show no response.

The hearing is now closed. Off the record.

(Whereupon, the hearing in the above-entitled matter was closed at 10:30 a.m.)

1 **C E R T I F I C A T I O N**

2 This is to certify that the attached proceedings, via Zoom
3 videoconference, before the National Labor Relations Board
4 (NLRB), Region 3, Case Number 03-RD-271639, Gimme Coffee, Inc.
5 and Courtney Susan Shelton and Workers United Local 2833, held
6 at the National Labor Relations Board, Region 3, 130 South
7 Elmwood Avenue, Suite 630, Buffalo, New York 14202-2465, on
8 September 3, 2021, at 9:05 a.m. was held according to the
9 record, and that this is the original, complete, and true and
10 accurate transcript that has been compared to the reporting or
11 recording, accomplished at the hearing, that the exhibit files
12 have been checked for completeness and no exhibits received in
13 evidence or in the rejected exhibit files are missing.
14
15
16
17 BARRINGTON MOXIE
18 Official Reporter
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25

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

GIMME COFFEE, INC., **Case No. 03-RD-271639**

Employer,

and

COURTNEY SUSAN SHELTON,

Petitioner,

and

WORKERS UNITED LOCAL 2833,

Union.

UNION EXHIBITS

Place: Buffalo, New York (via Zoom Videoconference)

Dates: September 3, 2021

OFFICIAL REPORTERS
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E-Reporting and E-Transcription
7227 North 16th Street, Suite 207
Phoenix, AZ 85020
(602) 263-0885

EXHIBIT EXCLUDED

Leading Case Number: 03-RD-271639

Leading Case Name: GIMME COFFEE, INC.

Exhibit Number: U-1

Description: NOT OFFERED

The above-referenced exhibit is not included herein for the following reason:

1. Exhibit Withdrawn:
2. Exhibit Rejected:
3. Other (Explain):

Exhibit Retained By: COUNSEL

Barrington Moxie

Court Reporter

Collective Bargaining Agreement
Between
Gimme Coffee and Workers United Local 2833

12/28/17

Union Exhibit 2

EXHIBIT NO. U-2 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 12 DATE: 09-2-2021 REPORTER: Barrington Moxie

I. Preamble

A. Workers United and Gimme! Coffee mutually affirm their commitment to uphold Gimme's mission, which is:
   a. to find beautiful coffee, to reveal it in the roast and prove it in the cup.
   b. to be knowledgeable and consummate hosts, thereby attracting and connecting people.
   c. to grow strong as a business by balancing nature, people and profits.

B. We recognize that Baristas and Lead Baristas are key to providing a positive experience to our customers, which is bedrock to the overall success of the company.

C. The union recognizes that the company through its positive relationship with the union as well as by the improvements contained in this agreement, has demonstrated its commitment to social and economic justice, and therefore we the baristas commit to dedicate ourselves to exceeding all expectations regarding excellence.

D. The union pledges to continue and even expand the outstanding customer service that Gimme! Coffee is known for, lending our energy, creativity and spirit to our common goals.

E. We further affirm our intention to create an exemplary model of a union/management relationship that benefits workers, employer, and customers alike. We intend to accomplish this by working together in good faith, seeking common ground, communicating proactively, by being positive and looking for the good in everyone, and above all, by being human.

II. Recognition of Workers United by Gimme! Coffee

A. Gimme! Coffee recognizes the Union as the representative of all full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg, New York.

B. Excluded are store managers, confidential employees, professional employees and supervisors as defined in the National Labor Relations Act, and all other non-barista employees.

III. Non-Discrimination

A. Gimme and Workers United value diversity and will not discriminate against any employee on any protected basis under any federal, state, or local law.

B. Sole Remedy Available. The sole remedy available to any employee for any alleged breach of this Agreement will be pursuant to this Grievance & Arbitration Procedure. However, if the Union elects not to take a grievance on behalf of an employee to arbitration, and the matter is not otherwise resolved by the parties, the employee may proceed with other available legal or statutory remedies. In that event such election by the employee will bar any further or subsequent proceeding for relief under the Grievance & Arbitration Procedure for the same matter. By mutual agreement Gimme and the union may choose to arbitrate the issue.

IV. Orientation for new Gimme workers

A. Gimme will allow the Union an unpaid, voluntary meeting of 30 minutes with new employees as part of their orientation.

B. Workers United will present new hires with a packet of information on the Gimme union no later than their first day of work.

C. Workers United will make a representative available as needed at Gimme's request to answer prospective employees' questions about union membership.

V. Just Cause

A. Gimme employees may only be disciplined for just cause and with due regards to their reasonable rights.

VI. Probation

A. The probationary period for new Gimme Coffee employees is 90 days.

B. During the probationary period, Gimme management has the sole discretion to discharge the employee and there is no appeal.

VII. Grievance and Arbitration Procedure

Grievance Procedure:

A. Step 1. Gimme workers are strongly encouraged to address any dispute or differences with Gimme management by meeting in person directly with their store manager on anyone in the management chain including the Regional Manager, COO, or CEO.

B. Step 2: Any barista grievance should be submitted in writing to the store manager, regional manager, COO or CEO. The grievance must be filed within fourteen (14) days of the incident in question or fourteen (14) days from the day on which the employee reasonably discovered the facts giving rise to the issue. Following the submission an effort will be made to settle the matter in person between the store manager, the regional manager, COO, or CEO and the Gimme worker including a shop steward and/or a Workers United representative.

C. Step 3: If the grievance is not settled within thirty (30) calendar days of the filing of the grievance, the Gimme worker may immediately request a further conference between an authorized Union officer and the Gimme management representative.

D. Arbitration:
   a. In the event that a dispute is not settled , then either party may submit the unresolved dispute to arbitration. However, before the union makes a final decision on whether or not to arbitrate a grievance the employer may produce a written position on this grievance and the union will share it with the membership. If the grievance goes to arbitration then the union and Gimme management will request a panel of seven (7) arbitrators from the American Arbitration Association for arbitration under the laws of the State of New York for a final and binding determination. The Union and Gimme management may, by mutual agreement, choose another arbitrator agreeable to both parties.
   b. Legal briefs will be allowed.
   c. The request for arbitration must be in writing with a copy to the other party, and must be no later than thirty (30) calendar days from the date on which the written grievance was denied by the Employer. Failure, for any reason, to refer the dispute to arbitration within thirty (30) calendar days of the date on

which the grievance was denied by Gimme management will constitute an abandonment of the grievance.

d. The cost of the arbitration will be shared equally by the Employer and the Union.
e. The arbitrator's award shall be final and binding on both Gimme management and the Gimme workers involved in the grievance.

VIII. Union Activities at Gimme

A. Workers United will provide Gimme with notice of any employees who it designates as employee representatives and officers of the Union, as well as the designated union representative(s) assigned to the local union. Designated stewards and officers have authority to represent the Union in dealing with management.

B. The Employer will provide the Union with space to post notices for meeting announcements, election of officers, or any other Union information for the benefit of the members. The Union and its members agree not to post written materials elsewhere on the Employer's premises.

C. A union representative from Workers United will be permitted to visit Gimme's premises by appointment with management, during work hours to administer this Agreement. Union representatives may not disrupt work in order to administer this Agreement.

IX. Leaves of Absence for Gimme Workers

A. Leaves for Gimme workers will be granted in accordance with federal, state, and local laws, and Gimme policy as per the Employee Handbook.

B. Leave for Union purposes shall be considered a personal leave and shall be governed by the Employee Handbook policies for Personal Leave.

C. Leaves will be provided as medically necessary. Proper documentation is required as per the Employee Handbook.

D. All time on personal leaves of absence shall not be considered as time worked for the purpose of computing seniority. All time on non-personal leaves of absence shall be considered as time worked for purposes of computing seniority.

X. Hours of Work

A. Overtime is paid for all hours after 40 in a week and is paid at the rate of time and a half.

B. If a barista is called into work then sent home because there is no longer available work, they must be paid a minimum of four (4) hours of pay.

C. Baristas are allowed one thirty (30) minute unpaid break for any shift of more than six hours that extends over the noonday meal period (11am - 2pm). Baristas may waive, in writing, their right to an unpaid lunch break under the conditions described in the Employee Handbook.

D. Baristas are allowed to take one paid break of fifteen (15) minutes and as-needed paid breaks of no more than five (5) minutes at a time at their own reasonable discretion, based on agreement with their coworkers and based on customer flow.

XI. Seniority

A. Seniority is based on length of service from the most recent date of hire.

B. In the case of a layoff, the least senior barista would be the first laid off. The most senior barista would be the first to be recalled back to work.

XII. Sick Leave and Paid Time Off

A. The New York City Sick Leave Policy, as per the Employee Handbook, shall be extended to cover employees under this contract. Employees are required to help find coverage for their shift if they are able to do so.

B. Baristas shall retain their existing PTO accrual rate. PTO policies, including waiting period, use policies, and maximum accrual, shall be governed in accordance with the Employee Handbook.

C. Upon signing of this contract, each employee covered under this contract will receive an initial, one-time deposit of sick leave equivalent to what each employee would have earned had this policy been in effect for the three months prior to the contract date.

Thereafter, accruals will continue in accordance with the New York City Sick Leave Policy.

XIII. Health Insurance

a. Each year when insurance options become available, Gimme management will schedule a meeting with union representative(s) to review them and gather feedback.

XIV. Holiday Pay

A. Gimme workers will be paid time and one half for all hours worked on holidays as defined in the Employee Handbook.

XV. Wages

A. **Minimum Pay Rate & Drink Certification.** The minimum pay rate for certified Baristas will be $10.80/hour. Prior to a Barista's successful completion of drink certification, they will earn $0.40/hour less than the minimum pay rate.

B. **Increase upon Contract Signature.**

I. All workers under contract will receive +$0.40 upon signing.

II. Drink-certified workers under contract will receive an additional +0.15 upon signing

C. **Performance-Based and Seniority Increases.** Beginning at the second annual performance review, annual performance increases will be awarded on a sliding scale based on individual performance and seniority. Annual performance increases will be awarded at the anniversary of the most recent hire date; transfers and position changes will not reset the anniversary date. In order to grieve their increase, employees must show clear and convincing evidence that the evaluation is unfair.

I. After the second year of employment, the sliding scale is 0.30 / 0.40 / 0.50

III. After the third year of employment, the sliding scale is 0.40 / 0.50 / 0.60

IV. After the fourth year of employment and thereafter, the sliding scale is 0.50 / 0.60 / 0.70

D. **Across-the-Board Increases**. Beginning in the second year of this contract, Baristas and Lead Baristas will receive a $0.70 minimum Across-the-Board (ATB) increase annually. Minimum ATB increases

will be the minimum of the agreed upon rate or the change required to meet the change in minimum wage, whichever is higher. ATB increases will go into effect in the pay period that includes the date December 31. Any mid-year across-the-board adjustments made at management's discretion for market reasons shall reduce the end-of-year ATB by an equivalent amount.

E. **Gates Hall Premium.** Baristas working at the Gates Hall cafe will earn a minimum $1.00 in addition to their normal pay rate for their Gates Hall shifts. Baristas working at Gates Hall will also receive a bus pass in accordance with Gimme policy.

F. **Lead Barista Premium.** Lead Baristas will earn 1.00 over their Barista rate while they remain in the Lead Barista position.

G. **Cap.** Barista wages will be capped at $15.50 for non-Gates Baristas and $16.50 for Gates Baristas. Lead Barista wages will be capped at $16.50 for non-Gates LBs and $17.50 for Gates LBs.

XVI. Union Shop & Check Off

A. The Employer agrees that as a condition of continued employment, all employees within the bargaining unit who are presently members of the Union shall maintain their membership and all present or future employees who are not presently members of the Union shall upon the sixty-first day following the date of hire shall apply for membership in the union.

B. The Employer, to the extent authorized in writing and as provided by law, will withhold from the wages of each Union member such dues and initiation fees as are specified in writing by the Union. The Employer will remit such funds to the Rochester Regional Joint Board Union Office on a monthly basis. Under no circumstances, however, will the Company have any financial liability to the Union in the event of any oversights or errors.

XVII. Bargaining Unit Work

A. If overtime floor shifts are available, then bar-certified Baristas and Lead Baristas will receive preference for those shifts, provided that the given Barista/LB has the necessary skills.

B. The union acknowledges that Gimme managers and trainers customarily work full and partial barista floor shifts as part of their duties, and that this is an integral part of Gimme's success; the union

also acknowledges that in times of Barista and Lead Barista shortage, other Gimme employees, including managers, trainers, and others, may be called upon to assist with floor shifts.

C. The union furthermore acknowledges that Lead Barista is an unique and important support position whose job duties overlap those of Baristas, Store Managers, and Trainers. No job duty is designated solely for Lead Baristas; Lead Baristas are expected to learn a variety of skills and perform specific assignments in addition to their regular Barista floor shifts as requested by managers and trainers to support the store's needs.

XVIII. Health and Safety of Baristas

A. Gimme is committed to providing a safe and healthy work environment and looks forward to working with the Union to ensure that Barista safety concerns are heard and addressed, including through training as appropriate.

XIX. Labor-Management Relations

A. Once a month, the Union and Gimme Management will meet to discuss issues pertaining to Gimme. Prior to the meeting, both parties shall share items for discussion.

XX. Management Rights

Gimme! and Workers United specifically agree that Gimme! shall have the right to direct the workforce and to determine the policies and methods of operating its business, except as expressly limited by the specific provisions of this Agreement. Such management rights and responsibilities shall include, but not be limited to, the following:

A. The right to select the employees it will hire;
B. The right to establish or revise work schedules;
C. The right to determine the size and composition of its working force;
D. The right to determine the number and types of equipment, material, products, and supplies to be used or operated;
E. The right to establish reasonable work rules to achieve its business and social objectives, and the right to discipline or discharge employees for just and reasonable cause;
F. The right to determine assignments of work reasonably related to the employee's classification and the needs of Gimme!;
G. The right to discontinue all or any part of its business operations for business purposes;

H. The right to cease any job and the right to expand, reduce or cease any department or operation for business purposes consistent with this Agreement;
I. The right to introduce new, different, or improved methods and procedures in its operations;
J. The right to promote or transfer;
K. The right to be the final judge of the qualifications of new applicants with the absolute right to determine whom it will hire consistent with this Agreement; and
L. The right to otherwise generally manage its operations in an efficient manner for business purposes.

XXI. No Strikes or Lockouts

A. The Union agrees that it will not engage in any strikes, sympathy strikes, stoppages of work, slowdowns, boycotts, refusals to handle merchandise, picketing of Gimme's establishments or other interruption of work or interference with Gimme's operations during the term of this Agreement or any extension. Gimme agrees that there will be no lockouts during the term of this Agreement or any extension. Participation by any employee in any such practice prohibited by this Section will be considered just and reasonable cause for discharge or other disciplinary action to be determined by Gimme; and subject to the grievance and arbitration procedure of this Agreement. The Union further agrees that it will notify and direct employees engaged in an unauthorized strike or work stoppage in violation of this Agreement to return to work immediately. There will be no responsibility on the part of the Union, its officers, representatives, or affiliates for any strike or other interruption of work, provided the Union complies with the provisions of this Section.

XXII. Length of Contract

A. This contract between Gimme management and Gimme workers will be in effect from December 28, 2017 to December 28, 2020.

XXIII. Limited Wage Reopener

A. Although the parties have agreed to wage increases for the life the Agreement as set forth in Article XV, either party may, after the first anniversary of the Agreement, request a reopener within 30 days prior to the contract anniversary to renegotiate wages in the remainder of the Agreement, depending on economic conditions. If elected by either party, these negotiations will be limited to the wages to be paid after first contract anniversary, and may result in wage increases below or above the agreed upon amounts.

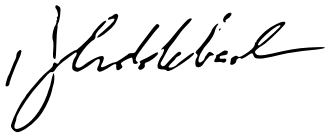
Signed	Signed
	
Workers United Gimme Baristas Bargaining Committee	Gimme Coffee Management

EXHIBIT EXCLUDED

Leading Case Number: 03-RD-271639

Leading Case Name: GIMME COFFEE, INC.

Exhibit Number: U-3

Description: NOT OFFERED

The above-referenced exhibit is not included herein for the following reason:

1. Exhibit Withdrawn:
2. Exhibit Rejected:
3. Other (Explain):

Exhibit Retained By: COUNSEL

Barrington Moxie

Court Reporter

Datum / Date: 12/28/2020 Negotiations

U Ex 4

Attendance: Gary Bonadonna, Maggie Lapinski, Susie Sheldon, Jaz Brisack, Richard Bensinger, Colleen Anuny, Jamie Baird, Wendell Roth, Vanessa Patterson, James Byrne, Aaron Goodenough, Claire Anderson

- Leave settlement option open
- Create a list of five ASAP & list of ~~five~~ seven arbitrators already
- May not be necessary to include 8c
- Note loop in w/ clause 9 + seniority & specifically 9d
  - & difference between disability, FMLA, + EFCRA
  - & Statutory leaves of absence
- Where are people happiest?
- Layoff is due to lack of work or positions
- Opening dates, early February; opening Cayuga shortly after

[redacted]

Union Exhibit 4

EXHIBIT NO. U-4 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 2 DATE: 09-2-2021 REPORTER: Barrington Moxie

12/28/20 11AM Zoom bargaining session #8 w/ company

- more conversations w/ company about arbitration + seniority clauses!
- layoff + recall - Long discussion
- Gates + Cayuga tentatively opening in mid or late February

[redacted]

EXHIBIT NO. U-5 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 2 DATE: 09-2-2021 REPORTER: Barrington Moxie

EXHIBIT EXCLUDED

Leading Case Number: 03-RD-271639

Leading Case Name: GIMME COFFEE, INC.

Exhibit Number: U-6 thru U-9

Description: NOT OFFERED

The above-referenced exhibit is not included herein for the following reason:

1. Exhibit Withdrawn:
2. Exhibit Rejected:
3. Other (Explain):

Exhibit Retained By: COUNSEL

Barrington Moxie

Court Reporter

2:52

TB

Tim >

Awesome, talk soon!

Great - and I don't know if this is apparent but I'm happy to talk through all of the new stuff (set up and safety etc) with you at any point. If that would be helpful I'm around to give that overview!

Thu, Oct 22, 3:16 PM

Hey Colleen.

For now, you can consider me not interested in returning. If my interest changes in the near near future, I'll be sure to communicate that!

Thanks again!

-Tim

Thu, Oct 22, 5:37 PM

Thank Tim! Best of luck to ya!

Delivered

iMessage

EXHIBIT NO. U-10 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 2 DATE: 09-2-2021 REPORTER: Barrington Moxie

Retail Ops Meeting for Everyone
1/26/2021

Another update from the Retail Ops meeting!

QC/ED: Kevin WIlsea on Maintenance Schedule

Maintenance Schedule

Last week a conversation got started surrounding cleaning and maintenance of cafe equipment. From that conversation we learned that there is some inconsistency in what should be required in cafes and what is actually scheduled for cleaning and maintenance. Our Barista RSOP doesn't currently outline guidelines for cleaning equipment besides the espresso machine and the grinders. Kevin Wilsea has taken on the task of compiling a daily and weekly maintenance schedule and SOP for all things related to cafe equipment cleaning.

Some of the things included will be about milk wash and steam wand cleaning, cleaning the pitcher rinser, using grindz on retail grinders, cleaning the sprayer heads on the bunn brewer, slightglasses on bunn urns, as well as some store specific items. Cafes should expect this SOP in about a week or so. If you have any questions about general cleaning or store specific items you can email Kevin and he'll be sure to include them in the SOP, kevin.wilsea@gimmecoffee.com

Retail: Victoria Hantout on Square Loyalty and reopening Gates

Square Loyalty

From chatter in Basecamp threads and feedback from staff, it's clear there are some issues with Square Loyalty that still need to be addressed. These issues included Square not loading customer profiles, customers having multiple profiles, what it looks like for customers to redeem their points, and how a "Lg Oat Ch X" and a "Red Eye" are still only 2 points even though they are an espresso drink.

We're looking into all of these issues. We will be getting together an SOP for "merging" customer profiles and publishing that early next week. For redeeming points, a video will be sent out on what that process looks like so you can better understand the customer experience. With the adding of espresso to brewed coffee and other beverages, there is some back end things we need to look at

EXHIBIT NO. U-11 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

before we're able to make those changes, but when we have an answer we will update you all.

Reopening Gates

We're excited to announce that our location at Gates Hall will be reopening for full service on Monday 2/08. We will be opening up for half the week prior for coffee service only to get a feel for the space and customer flow. Alexis will be moving from MLK to Gates and Kevin will be taking over as back bar support for Team 1.

Gates will be single coverage and online ordering only. Alexis will be up there Monday through Thursday and Victoria will be taking over Fridays. The Eversys automatic machine will be installed to help with the flow of having single coverage.

Someone asked if they could go up there and visit. Currently we are waiting on guidance from Cornell about restrictions of people on campus and allowed in buildings. We will update when we have that guidance.

If you have other concerns or feedback you can reach out to your Store Manager or email Victoria: victoria.hantout@gimmecoffee.com

Cheers!

---------- Forwarded message ---------
From: **Gimme Union** <gimme.unionistas@gmail.com>
Date: Sun, Aug 23, 2020 at 6:42 PM
Subject: Town Hall & Vote
To:

Dearest Baristas,

We've heard back from management and both parties are ready to move forward with a ratification vote. The tentative agreement is attached. This agreement will also be reviewed by our counsel from Workers United.

At the beginning of each phase of recall, a new list will be created. This list will be created from a spreadsheet containing all unit members and their recall preferences, and will be numbered based on company-wide seniority. Members can place themselves on a phase's recall list, which includes their store preferences, or the "waitlist" which they can remove themselves from at any time. *Members on the waitlist do not forfeit any of their recall rights.*

We've designed this recall system to be somewhat fluid so management and our union can accommodate people's needs. It will also require constant communication between management and our union.

Please join us for a Town Hall meeting tomorrow to answer any of your questions and discuss any concerns surrounding this agreement.

Town Hall - Monday August 24, 3pm
Agenda
• Tentative Agreement Overview

Union Exhibit 12

EXHIBIT NO. U-12 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

• Clarification Questions
• Any concerns?
• Addressing August 22nd Email

On Tuesday, we will be holding a ratifying vote. Please read the agreement before voting.

Ratification Vote - Tuesday August 25
Vote Proctor: Nathan Sitaramin

Once again if you have any concerns please don't hesitate to reach out. **We will send out the zoom link to the town hall tomorrow.**

Solidarity,
The Negotiations Team
Ava
Bart
Jenna
Maggie
Sam
Wendell

FORM NLRB-31

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Gimme Coffee, Inc. c/o Paul Wagner, Esq., Stokes Wagner, ALC, 903 Hanshaw Rd., Ithaca, NY 14850

As requested by Ian Hayes, Attorney for Workers United Local 2833

whose address is 1103 Delaware Ave., Buffalo, NY 14209
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Region 3

of the National Labor Relations Board

at The post-election hearing by Zoom

in the City of

on September 2, 2021 at 10:00 a.m. or any adjourned

or rescheduled date to testify in Gimme Coffee, Inc. 03-RD-271639
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1DHQV7L

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at

Dated: August 23, 2021

Lauren McFerran

Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq*. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

Union Exhibit 13

EXHIBIT NO. U-13 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

Documents to be produced:

1. Any internal documents or communications regarding plans to reopen or expand the number of active employees at any of the Employer's five locations in Ithaca and Trumansburg, NY (hereinafter the "Employer's stores") from August 1, 2020 through January 31, 2021;

2. Any communications with laid-off employees regarding the Employer's plans to reopen or expand the number of active employees at any of the Employer's stores from August 1, 2020 through January 31, 2021;

3. Any communications or records of communications from laid-off employees to the Employer or any of its representatives, regarding such employees' intent not to return to work at the Employer and/or a request to be removed from the Waitlist (Appendix C) of the MOA dated August 27, 2020;

4. A list of any and all Baristas and Lead Baristas hired at any of the Employer's stores from January 1, 2018 to present, including such employees' hire dates, titles, and store locations; and

5. A list of any and all Baristas and Lead Baristas whose employment ended at any of the Employer's stores from January 1, 2018 to present, including such employees' last date of employment, titles, and store locations.

U Ex 14

---------- Forwarded message ---------
From: **Gimme Union** <gimme.unionistas@gmail.com>
Date: Mon, Aug 31, 2020 at 3:19 PM
Subject: Agreement signed! Recall begins
To:

Dearest Baristas,

We want to thank everyone for their patience over the past four months of negotiations and we are very pleased that we have reached an agreement with Gimme management, especially in regards to recall. We feel we've come up with an **effective agreement that doesn't compromise our contract and allows us to protect Unit members who are not ready to return to work.**

Attached is the agreement that was reached with management. There has been one change to section 4.1 (*Hire Date Preservation*). **Anniversary dates will also be preserved. If a Unit member's anniversary date falls under the time of their layoff, their wage will be adjusted upon recall to include any seniority increase awarded under the Collective Bargaining Agreement.** This change specifically applies to baristas and Lead Baristas who would have reached their second anniversary date; management has agreed to give those Unit members the seniority increase awarded under the Collective Bargaining Agreement. We are very happy that we were able to clarify this in the Effects Bargaining Agreement since this was a concern raised by several baristas at the time of our layoff. **If you are recalled and do not receive your pre-pandemic wage or wage with your seniority raise, please contact the Negotiations Team.**

Now that Effects bargaining is wrapping up, we have two major items that need attention: **creating union by-laws & preparing for CBA negotiations in December.** If anyone has any other topics

EXHIBIT NO. U-14 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

they would like to focus on and/or be involved in at this time please let us know as we finalize an agenda over the next few weeks. We are looking forward to working with all you on these projects to build power within our union, and continue to fight for our rights and protections as workers.

If you have any questions or concerns, please don’t hesitate to reach out!

In Solidarity,
The Negotiations Team
Ava
Bart
Jenna
Maggie
Sam
Wendell

The Cornell Daily Sun | (https://cornellsun.com/2020/12/10/most-cornell-courses-will-be-taught-online-this-spring-heres-how-cornell-decided-the-roster/)

U Ex 15

Hannah Rosenberg / Sun Assistant Photography Editor

Classes in the spring will remain primarily out of the classroom, as was the case this fall.

COURSE ROSTER

December 10, 2020

Most Courses Will Be Taught Online This Spring. Here's How Cornell Decided the Roster.

By **Madeline Rosenberg and Meghana Srivastava**

Cornell was one of few universities to invite all of its undergraduates back to campus this fall for a semester void of bustling lecture halls and packed seminar rooms — but classes have unfolded mostly online for reasons beyond faculty resistance (https://www.nytimes.com/2020/07/03/us/coronavirus-college-professors.html) or public health concerns.

College of Engineering faculty mathematically modeled seating capacity in classrooms and found that only around 600 spaces on Cornell's campus were fit for socially distanced teaching under state guidelines. Constrained by space and other factors, the same modeling is propelling the University into a spring semester with only a slight uptick in in-person classes.

Six foot distancing cut classroom capacity to about 20 percent of the original limits, capping most in-person classes to 50 students, according to Lisa Nishii, vice provost for undergraduate education. Those limitations, along with faculty choice, mean Cornell will offer around 65 percent of classes either online or with hybrid instruction this spring.

Deciding which courses professors could teach with masked and distanced students involved more than the registrar. College of Engineering professors, University architects, department heads and engineering and architecture students stepped in to develop classroom capacities and shape the course roster, University architect Margaret Carney told The Sun in an email.

Engineering faculty estimated how many socially distanced student seats could squeeze into each of more than 3,200 potential instructional spaces — including some that aren't traditionally used as classrooms, such as building atriums.

Union Exhibit 15

EXHIBIT NO. U-15 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 4 DATE: 09-2-2021 REPORTER: Barrington Moxie

To count the exact number of total seats available for in-person instruction, University architects then created seating plans for each classroom that followed the capacity limits, configuring them around features including chalkboards and doorways.

Taking the drawings and models of the engineers and architects into account, Nishii said Cornell later distributed in-person classroom space to departments, factoring in historical class sizes and their number of courses. The departments then decided which classes to hold between four walls and which on Zoom.

But fall and spring course modalities are constrained by more than the number of classrooms that can hold socially distanced students. Whether the class is a seminar or a lecture matters — classes that rely on small group discussions are more likely to be taught online so students can better hear each other, according to Nishii. But ultimately, faculty themselves choose if they are comfortable teaching in-person.

A summer University survey found (https://www.nytimes.com/2020/07/03/us/coronavirus-college-professors.html) that about a third of faculty weren't interested in teaching in-person classes, a third were "open to doing it if conditions were deemed to be safe," and about a third were "willing and anxious to teach in person," said Provost Michael Kotlikoff.

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"We knew there were many legitimate reasons why faculty might feel uncomfortable teaching in person," Nishii wrote. "Our data suggested that over 40 percent of faculty may be in elevated risk categories, many faculty live with or care for individuals who are in elevated risk categories, and faculty were facing significant challenges balancing work and family responsibilities due to the closure of daycare centers and K-12 schools."

Though Cornell is running most courses online during both semesters, students do not appear deterred from returning to campus: Around 75 percent of enrolled Cornell students studied (https://cornellsun.com/2020/11/08/three-quarters-of-enrolled-students-are-zooming-from-ithaca-this-fall/) in Ithaca this fall, and the University anticipates an additional 1,500 students will return in the spring.

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The Cornell Daily Sun

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OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

GIMME COFFEE, INC., Case No. 03-RD-271639

Employer,

and

COURTNEY SUSAN SHELTON,

Petitioner,

and

WORKERS UNITED LOCAL 2833,

Union.

EMPLOYER EXHIBITS

Place: Buffalo, New York (via Zoom Videoconference)

Dates: September 3, 2021

OFFICIAL REPORTERS
eScribers, LLC
E-Reporting and E-Transcription
7227 North 16th Street, Suite 207
Phoenix, AZ 85020
(602) 263-0885

EXHIBIT EXCLUDED

Leading Case Number: 03-RD-271639

Leading Case Name: GIMME COFFEE, INC.

Exhibit Number: E-1 thru E-2

Description: NOT OFFERED

The above-referenced exhibit is not included herein for the following reason:

1. Exhibit Withdrawn:
2. Exhibit Rejected:
3. Other (Explain):

Exhibit Retained By: COUNSEL

Barrington Moxie

Court Reporter

Employer 3

EXHIBIT NO. E-3 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 36 DATE: 09-2-2021 REPORTER: Barrington Moxie

3/30/20

Jenna Burger
[redacted]

Dear Jenna:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

Janet Levine
Director of Administration

p: 877-446-6325
f: 607-277-1042
3201 Krums Corners Road
Ithaca, New York 14850
orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Karen Aldrich
[redacted]

Dear Karen:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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Sincerely,

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3201 Krums Corners Road
Ithaca, New York 14850

orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Molly Baird
[redacted]

Dear Molly:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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- You will receive accrued, unused paid time off days upon termination.

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Ithaca, New York 14850

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www.gimmecoffee.com

3/30/20

Julianna Bassett
[redacted]

Dear Julianna:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

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3/30/20

Tim Brogan
[redacted]

Dear Tim:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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3/30/20

James Byrne
[redacted]

Dear James:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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3/30/20

Andi Carbaugh
[redacted]

Dear Andi:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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4/2/20

Curt Cook
[redacted]

Dear Curt:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You WILL receive accrued, unused paid time off days upon termination. A check has been mailed to you.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

Janet Levine
Director of Administration

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3/30/20

Curt Cook
[redacted]

Dear Curt:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will NOT receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

Janet Levine
Director of Administration

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3/30/20

Brittany Cunha
[redacted]

Dear Brittany:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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3/30/20

Sarah Dellett
[redacted]

Dear Sarah:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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3/30/20

Rachel Eginton
[redacted]

Dear Rachel:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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3/30/20

Bart Feberwee
[redacted]

Dear Bart:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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3/30/20

Aaron Goodenough
[redacted]

Dear Aaron:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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Sincerely,

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3/30/20

Rebecca Holzer
[redacted]

Dear Rebecca:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

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www.gimmecoffee.com

3/30/20

Aubrie Johnsen
[redacted]

Dear Aubrie:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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Sincerely,

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Ithaca, New York 14850
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www.gimmecoffee.com

3/30/20

Aidan Kaplan-Wright
[redacted]

Dear Aidan:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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3/30/20

Tahera-Rafia Kassam
[redacted]

Dear Tahera:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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3/30/20

Gregg Kearns
[redacted]

Dear Gregg:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

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3/30/20

Margaret Lapinski
[redacted]

Dear Maggie:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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3/30/20

Rebecca Lespier
[redacted]

Dear Rebecca:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

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3/30/20

Jeneva Long
[redacted]

Dear Jeneva:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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3/30/20

Brenden Lukosavich
[redacted]

Dear Brenden:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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3/30/20

Ava Mailloux
[redacted]

Dear Ava:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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3/30/20

Joshua Martinez
[redacted]

Dear Joshua:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

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- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

Sincerely,

Janet Levine
Director of Administration

p: 877-446-6325
f: 607-277-1042
3201 Krums Corners Road
Ithaca, New York 14850
orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Sam Mason
[redacted]

Dear Sam:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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Ithaca, New York 14850
orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Paige Migdon
[redacted]

Dear Paige:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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3201 Krums Corners Road
Ithaca, New York 14850
orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Wendell Roth
[redacted]

Dear Wendell:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Jay Sanchez
[redacted]

Dear Jay:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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f: 607-277-1042

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Ithaca, New York 14850

orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Melis Schildkraut
[redacted]

Dear Melis:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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Sincerely,

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f: 607-277-1042
3201 Krums Corners Road
Ithaca, New York 14850
orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Adonaijah Sharp
[redacted]

Dear Adonaijah:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

If you have any questions about these matters, please do not hesitate to contact me directly @ janet.levine@gimmecoffee.com

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f: 607-277-1042
3201 Krums Corners Road
Ithaca, New York 14850
orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Susie Shelton
[redacted]

Dear Susie:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
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- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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Ithaca, New York 14850
orders@gimmecoffee.com
www.gimmecoffee.com

3/30/20

Taneal Stewart
[redacted]

Dear Taneal:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
- Your New York State statutory disability insurance and workers' compensation coverage terminate on the last day of employment.
- You will receive accrued, unused paid time off days upon termination.

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www.gimmecoffee.com

3/30/20

Ashley Yajko
[redacted]

Dear Ashley:

This letter is to verify that your last date of employment with Gimme! Coffee, Inc. was 3/25. In connection with your separation from Gimme! Coffee, Inc., your attention is called to the following matters:

- Your final paycheck will be issued on date: 4/3
- If you are currently covered under Gimme! Coffee's group coverage for medical, dental or vision insurance, you may be eligible for COBRA, and you will receive COBRA information by mail. Please review it carefully and respond promptly if you wish to continue your coverage.
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- You will receive accrued, unused paid time off days upon termination.

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Employer 4

EXHIBIT NO. E-4 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 9 DATE: 09-2-2021 REPORTER: Barrington Moxie

Effects Bargaining and COVID-19 Agreement Between Gimme Coffee and the Gimme Baristas' Union

1. Letter of Layoff Termination

1.1 All layoffs in March 2020 were the result of the COVID-19 pandemic. A management letter (Appendix A: see attached document) will be sent on behalf of any Unit member requesting it.

2. Retail SOP & New York Paid Sick Leave

2.1 Gimme Coffee and the Gimme Barista's Union will commit to follow the COVID-19 Supplement in the Retail SOP.

3. Probationary Employees

3.1 Gimme and the Gimme Barista's Union will extend the language of Article XI. of the CBA and the Seniority / Rehire Policy for Upstate CBA Employees to all probationary employees that were still in their Introductory Period in Gimme's HR Handbook. This will be considered a one-time, non-precedential for other applications of the CBA and does not guarantee successful completion of this introductory period.

4. Hire Date Preservation

4.1 All Unit members retain their original hire dates for the purposes of calculating wages and benefits, and will be restored to their wage at the time of their layoff upon recall. All Unit members retain their anniversary dates. If a Unit member's anniversary date falls under the time of their layoff, their wage will be adjusted upon recall to include any seniority increase awarded under the Collective Bargaining Agreement. Probationary status, sick time, and PTO accrual will be considered paused for the duration of a worker's layoff and will resume upon recall.

5. Continuation of the Rally Fund

5.1 Gimme Management agrees to continue the fund associated with the Rally Blend toward the barista economic impact relief for at least 6 months following the layoffs of all laid off baristas and Lead Baristas, inclusive of the NYC baristas. The share of the distributions will be based on percentages of the 3 groups of baristas (Upstate, Mott, and Lorimer) at the time of the layoff and this will not change depending on recall of any baristas upstate or downstate.

5.2 Gimme Management agrees to schedule posts for Rally on a weekly basis.

6. Additional Labor

6.1 If Gimme Coffee hires any temporary or seasonal labor outside the bargaining unit and beyond the scope of the CBA (non-barista positions), the bargaining unit and those former employees with probationary status will be made aware of these positions 24 hours in advance of any external posting until the end of 2020. Any applicants will be assessed on qualifications listed in the job description for each position and will go through the interview process. If hired for a non-barista position, a former barista will not be represented by the Union and the CBA and it's amendments will not apply.

6.2 If hired for a non-barista position, a former barista will be offered their previous Bargaining Unit position during recall. They will be included in the recall process agreed upon between both parties.

Memorandum of Agreement August 27th, 2020

Recall Related to COVID-19

Gimme Coffee would like to recall Unit members in order to reopen and staff their stores. Gimme Baristas' Union has Unit members who are ready to return to work. The parties now agree as follows:

1. Recalls related to the COVID-19 pandemic will be based on Unit members who are ready to be recalled, or return to work, and the Gimme Barista's Union will provide Gimme Coffee, via Claire Christensen, with said list prior to a round of recall.
2. A phase recall list will be created by the Gimme Barista's Union. A new recall list will be created for each phase of reopening. It will be based on which Unit members are ready to return to work immediately at the locations opening. The list will be numbered according to company wide seniority.
3. Gimme Coffee will recall Unit members based solely on the numerical order of a phase's recall list.
    1. The location(s) next to a Unit members name indicates where said Unit member is willing to work. If a Unit member has two or more locations next to their name, they are willing to be placed at either location. Gimme Coffee retains the right to decide which location to place a Unit member, provided that the location is among those that the Unit member list and provided that they are recalling Unit members in the order of the list provided.
    2. If Unit members on a phase's recall list are not recalled, they are moved to the top of the next recall list.

    3. Unit members listed under Appendix D will not be returning to work at Gimme Coffee and will not be considered for recall.
4. Gimme Coffee will notify the Gimme Barista's Union, via gimme.unionistas@gmail.com, when locations are reopening and which locations are reopening at least seven days before recall is scheduled to begin (with the exception of the recall of the first two baristas to State Street, which will occur on August 23).
5. At the beginning of each phase of reopening, a separate list of Unit members not ready to return to work will also be created; this will be the "waitlist."
    1. It is up to a Unit member's discretion if they are ready to return to work. Gimme Coffee cannot make that determination on behalf of a Unit member.
    2. Unit members will have the additional rights afforded under federal and state law, including FMLA, FFCRA, and ADA.
6. In the event the recall list is exhausted and positions still need to be filled, Gimme Coffee shall give the Gimme Barista's Union and all wait-listed Unit members three days notice before posting open positions to the public. Gimme Coffee shall recall to the open position the most senior wait-listed member who requests that position and is immediately ready to accept the position as offered.
7. Gimme Coffee's right to open store locations is not prohibited.
8. Gimme Coffee's right to determine the number of positions open is not prohibited.
9. The Lead Barista position and a Lead Barista's wage will be honored at the time of recall. In accordance with the Collective Bargaining Agreement, any changes to the Lead Barista position or a Lead Barista's wage must be bargained over with the Gimme Barista's Union.
10. In the event of a permanent closure of any locations, Gimme Coffee and representatives from the Gimme Coffee Barista's Union will meet to bargain over the effects of the closure.
11. This memorandum of agreement shall amend the contract. However, it is limited to layoff and recalls related to the COVID-19 pandemic and Gimme store reopening, and shall not otherwise modify the agreements between the parties

Appendix B (Active Recall List):

1. Charles Cook (ALL)
2. Susie Shelton (Tburg)
3. James Byrne (State)
4. Sarah Delett (State)
5. Gregg Kearns (Tburg)
6. Tim Brogan (ALL)
7. Tahera-Rafia Kassam (ALL)
8. Rebecca Holzer (CoCo)

9. Aaron Goodenough (ALL)
10. Jeneva Long (State/Cayuga/Gates)
11. Adonaijah Sharp (CoCo/State/Cayuga)
12. Maggie Lapinski (State/Cayuga/CoCo)
13. Aidan Kaplan-Wright (Tburg/CoCo)
14. Jamie Baird (ALL except Tburg)

Appendix C (Waitlist)

- Brenden Lukosovich
- Taneal Stewart
- Samantha Mason
- Rebecca Lespier
- Kari Aldrich
- Paige Migdon
- Josh Martinez
- Andi Carbaugh
- Tim Brogan
- Wendell Roth
- Ava Mailloux
- Bart Feberwee
- Jenna Burger
- Rachel Eginton
- Ashley Yajko
- Jesse Sanchez
- Julianna Bassett
- Aubrie Johnsen

Appendix D (Not Returning to Gimme)

- Brittany Cuhna
- Melis Schildkraut

For Gimme Coffee	For the Union
Colleen Anunu 08/28/2020	Jenna Burger 08/28/2020

08/28/2020

Wendell Roth

08/28/2020

Bart Feberwee

08/28/2020

Margaret Lapinski

08/28/2020

Samantha Mason

08/28/2020

Signature Certificate

Document Ref.: DTEAF-MFSGN-CCACD-FR7UP

Document signed by:

Colleen Anunu
Verified E-mail:
colleen.anunu@gimmecoffee.com

IP: 98.159.211.11 | Date: 28 Aug 2020 21:22:55 UTC

Colleen Anunu

Sam Mason
Verified E-mail:
[redacted]

IP: 67.241.72.5 | Date: 28 Aug 2020 23:05:33 UTC

Samantha Mason

Wendell Roth
Verified E-mail:
[redacted]

IP: 67.249.94.14 | Date: 28 Aug 2020 23:07:11 UTC

Wendell Roth

Maggie Lapinski
Verified E-mail:
[redacted]

IP: 68.175.143.2 | Date: 28 Aug 2020 23:24:39 UTC

Margaret Lapinski

Document completed by all parties on:
29 Aug 2020 02:56:30 UTC

Signed with PandaDoc.com

PandaDoc is the document platform that boosts your company's revenue by accelerating the way it transacts.

Signature Certificate

Document Ref.: DTEAF-MFSGN-CCACD-FR7UP

Document signed by:

Bart Feberwee

Verified E-mail: [redacted]

IP: 68.175.150.67 | Date: 29 Aug 2020 00:34:31 UTC

Bart Feberwee

Jenna Burger

Verified E-mail: [redacted]

IP: 67.249.140.50 | Date: 29 Aug 2020 02:07:47 UTC

Jenna Burger

Ava Mailloux

Verified E-mail: [redacted]

IP: 174.197.195.52 | Date: 29 Aug 2020 02:56:30 UTC

Document completed by all parties on:

29 Aug 2020 02:56:30 UTC

Signed with PandaDoc.com

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Employer 5

EXHIBIT NO. E-5 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 6 DATE: 09-2-2021 REPORTER: Barrington Moxie

Unit Member Recall August 23, 2020

The Union and Gimme Coffee agree that Gimme Coffee shall, on August 23, 2020, recall Charles Curtis Cook to the shop located at 506 W. State Street and James Byrne to the shop located at 506 W. State Street. To the extent that this recall would be contrary to the current Collective Bargaining Agreement, the parties agree to modify the CBA for this recall only, which modification shall not set a precedent for future recalls.

For Gimme Coffee	For the Union
Colleen Anunu 08/22/2020	Jenna Burger 08/22/2020 Ava Mailloux 08/21/2020 Wendell Roth 08/21/2020 Bart Feberwee 08/21/2020 Margaret Lapinski 08/21/2020 Sam Mason

	08/21/2020

Signature Certificate

Document Ref.: LBA3U-ZVCFK-KRYDC-YASS3

Document signed by:

Sam Mason
Verified E-mail: [redacted]
IP: 67.241.72.5 | Date: 21 Aug 2020 22:18:39 UTC
Sam Mason

Ava Mailloux
Verified E-mail: [redacted]
IP: 174.197.213.16 | Date: 21 Aug 2020 22:20:29 UTC
Ava Mailloux

Bart Feberwee
Verified E-mail: [redacted]
IP: 107.77.223.237 | Date: 21 Aug 2020 22:23:07 UTC
Bart Feberwee

Wendell Roth
Verified E-mail: [redacted]
IP: 174.197.209.91 | Date: 21 Aug 2020 22:35:14 UTC
Wendell Roth

Document completed by all parties on:
22 Aug 2020 18:17:35 UTC

Signed with PandaDoc.com

PandaDoc is the document platform that boosts your company's revenue by accelerating the way it transacts.

Signature Certificate

Document Ref.: LBA3U-ZVCFK-KRYDC-YASS3

Document signed by:

Maggie Lapinski
Verified E-mail: [redacted]
IP: 68.175.143.2 | Date: 21 Aug 2020 22:35:22 UTC
Margaret Lapinski

Jenna Burger
Verified E-mail: [redacted]
IP: 67.249.140.50 | Date: 22 Aug 2020 16:46:44 UTC
Jenna Burger

Colleen Anunu
Verified E-mail: colleen.anunu@gimmecoffee.com
IP: 67.241.70.3 | Date: 22 Aug 2020 18:17:35 UTC
Colleen Anunu

Document completed by all parties on:
22 Aug 2020 18:17:35 UTC

Signed with PandaDoc.com

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Employer 6

EXHIBIT NO. E-6 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 24 DATE: 09-2-2021 REPORTER: Barrington Moxie

Gimme! Coffee
Retail Operation Updates

July 7, 2020

Agenda

- Recap of 2020 / 2021 Outlook (10)
- Gimme Ops and Planning (20)
  - Then and Now
  - COVID-19 Health and Safety Policies
- Retail Phased Re-opening (30)
- Additional Discussion (30)

You're Invited!

Re:Co Symposium

Live Streaming outside on the Krums lawn

July 16th and 17th

9am – 4pm

Bring a blanket

Wear a mask

Take your temp

Sign the log

RSVP

You’re Invited!

MLK St. Walkthrough

Any weekday

C’mover Cafe

Espresso and coffee chats in the Greens Lab

Recap of 2020 / 2021 Outlook

Triage Stage (First 3 months)

- Shelter in place, essential services only and stalled spending
- Immediate contraction of sales (~85%), worst case scenario planning
- Interim operating plan with short term goals, cross training, constant monitoring
- Achieve quick wins by refocusing remaining team

Transition Stage (June - Rest of 2020)

- Continued hesitancy on consuming coffee in a social manner, in home consumption new normal
- Sustained planning on 25% - 60% reduction in total sales, start of economic recession
- Focus on safe retail operations, adapted to new social and economic conditions
- Commitment to digitization (direct-to-consumer via eCommerce and Take Out)
- Take stock of our values and capabilities to plan for mid-term viability (Stronger Gimme! Coffee)
- Redefine workforce: upskill employees and define new hires
- Reduce reliance on large platforms as much as possible

Mid-term New Normal (2021 & 2022)

- Working through a steep recession with people resuming more of their daily lives (re: habits, confidence)
- Building on intermediate changes, make smart investments

What’s Happening in the Coffee World?

Locally:

- Ithaca Coffee Company permanently closed their downtown location
- Carriage House Café permanently closed
- Purity’s CNN interview
- Ithaca Bakery limiting staff in all locations, allowing customers inside
- Other service industry closures: Sweet Melissa’s PBA, John Thomas
- Other service industry scale backs: North Star, Café Dewitt

Nationally:

- Companies closing down entire regions of operations
- Multi-location 3rd wave companies opening only one or two locations

Internationally:

- Many supply chain issues (shipping delays, insufficient labor for harvesting, depressed market price)

PRIORITIES	PROJECTS	TIMELINE									
		M	A	M	J	J	A	S	O	N	D
1. Get the House in Order	Director of HR and People										
	Handbook and Ops Revision (ED&I Task Force)										
	Ops Working Groups										
	Third Party Consultations / Trainings										
2. Coffee Product Line	Coffee pricing revision										
	Sustainable sourcing guidelines & partnerships										
	Research new markets										
	Packaging Redesign										
3. 2021 Planning	Budget										
	Strategic Plan										
4. Special Projects	20th Anniversary										
	Upstate Lab remodel										
	Integrate E-commerce platform										
	CBA 2.0										

PRIORITIES	PROJECTS	TIMELINE									
		M	A	M	J	J	A	S	O	N	D
1. Get the House in Order	Director of HR and People										
	Foundations Overhaul (MVV & PP)										
	New Retail Program										
	Ops Working Groups										
	Third Party Consultations / Trainings										
2. Coffee Product Line	Coffee pricing revision										
	Sustainable sourcing guidelines & partnerships										
	Research new markets*										
3. 2021 Planning	Budget										
	Strategic Plan										
4. Additional Projects	Integrate E-commerce platform*										
	CBA Negotiation										

COVID-19 Health and Safety Policies

Business Safety Plan

- Visitor Log
- Sanitation Log
- Travel Policy

COVID-19 RSOP Supplement

- Sanitation SOP
- Mask SOP
- Food Handling and Beverage Prep SOPs
- Café Procedures (specific visitor log, sanitation log)
- Station Procedures (specific task list and sanitation list, guidance for workflow)

Employee Assistance Program (EAP)

Retail Phased Re-opening: Our Best Guess at a Timeline

Objective: To provide safe, healthy and predictable employment for as many people for as long as possible

	Triage				Transition				
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
MLK	Pilot			Phase 1					
Tburg				Phase 1					
CoCo / Cayuga					Phase 2	?			
CoCo / Cayuga						?	?	?	?
Gates						?	?	?	?

Pilot Phase

What Did We Accomplish?

- Collectively built a new model and resolved issues (nimble and responsive)
- Launch and debug online ordering platform
- Implementation of business safety plan and other safety procedures
- Reorganized store for new flow

What did we learn?

- Workflow will need to vary store to store (MLK vs Cayuga)
- Team structure can lead to silo-ing – communication and teaming is crucial
- Menu development and new products to optimize new work flow
- More de-escalation training for engaging with customers is needed

Pilot Phase MLK (Online Ordering for Curbside and Delivery)

Operating Hours: 8:00 – 11:00; 12:00 – 3:00
In-store Shifts: 7:45 – 3:45 with break in the 11:00 – 12:00 hour (8hr/shift)

		Mon	Tues	Weds	Thurs	Fri	Sat	Sun*
Team 1	Alexis	Driver	Expeditor			Driver	Driver	Barista
	Duncan	Expeditor	Barista					FoH
	Victoria	Barista						Expeditor
	Sandy*		Driver					
Team 2	Morgan			Barista	Expeditor	FoH	Barista	
	Dave			Expeditor	FoH	Barista	Expeditor	
	Kevin			Driver	Barista	Expeditor	FoH	

A Closer Look at In-store Stations (MLK only)

Barista

- Espresso and hot beverage prep (no hot or iced coffee)
- Order flow and time management
- Barista station sanitation management
- Updating orders in system*

Expeditor

- Receives incoming tickets
- Writes and distributes orders to Barista, self or FoH
- Fulfills dry goods orders
- Grinds coffee for bagged sales
- Answers the phone as back-up
- Assembly of finished orders*
- Fulfills or finishes iced drinks*
- Updating orders in system*

Front of House

- Safe customer interaction
- Answers the phone
- Communicates with barista about customer arrival
- Maintain hot drink temp
- Assembly of finished orders*
- Fulfills or finishes iced drinks*
- Updating orders in system*

Decision Criteria for Phase 1

Internal (Operations)

- Develop and Implement Business Safety Plan
- Create COVID-19 Supplement in RSOP
- Create new prepared beverage SOPs
- Review and align on Phase 1 Plan (schedule, transfer, operations and assessment)

External (Public Health and Economy)

- Stabilized Tompkins County COVID-19 cases
- Increase in customer demand

Phase 1 Scheduling

Store Operating Hours: 7:30a – 11a; 12p – 3p

- 1 shift per day
- Work in teams of 3 (MLK) or 2 (all other stores)

Employee Shifts: 7a – 3:30p; break 11:30a – 12p

- 7 in service, 8.5 total
- Bi-weekly rotation 4 days on, 3 days off / 3 days on 4 days off
- Avg 30 - 32 hrs / week
- Specific stations without cross over (6ft distance, contactless)

Phase 1: MLK (Order at Door and Online for pick up and delivery)

Pick-up Operating Hours: 7:30 – 11:00; 12:00 – 3:00
In-store Shifts: 7:00 – 3:30 with break in the 11:15 – 11:45 (8.5hr/shift)
Delivery Operating Hours: 8:30 – 11:30; 12:30 – 3:30
Delivery Shifts: 8 – 11:30; 12:30 – 3:30 (7.5hr / shift)

		Sun	Mon	Tues	Wed		Thurs	Fri	Sat
Team 1	MLK SM	B	E	FoH	B				
	MLK Barista 1	E	FoH	B	E				
	MLK Barista 2	FoH	B	E	FoH				
Team 2	Trainer					B	E	FoH	B
	CoCo SM					E	FoH	B	E
	MLK Barista 3					FoH	B	E	FoH
Drivers	Driver 1	D	D	D	D				
	Driver 2					D	D	D	D

Phase 1 – Tburg (Order at Door for Curbside Pick-up Only)

Operating Hours: 7:30 – 11:00; 12:00 – 3:00
In-store Shifts: 7:00 – 3:30 with break in the 11:00 – 12:00 hour (8.5hr/shift)

		Sun	Mon	Tues	Wed		Thurs	Fri	Sat
Team 1	Trainer	B	FoH	B	FoH				
	Tburg Barista 1	FoH	B	FoH	B				
Team 2	Tburg SM					B	FoH	B	FoH
	Tburg Barista 2					FoH	B	FoH	B

Phase 2

- Addition of a new store
- Updated decision criteria
- Potential expansion of operating hours and therefore teams.
- Additional delivery support if necessary
- Management less floor shifts, more LB support

Phase 2 – MLK (Curbside and Delivery)

Operating Hours: 7:30 – 11:00; 12:00 – 3:00
In-store Shifts: 7:00 – 3:30 with break in the 11:00 – 12:00 hour (8.5hr/shift)

		Sun	Mon	Tues	Wed		Thurs	Fri	Sat
Team 1	MLK Barista 1	B	E	FoH	B				
	MLK Barista 2	E	FoH	B	E				
	MLK Barista 3	FoH	B	E	FoH				
Team 2	Trainer					B	E	FoH	B
	MLK Barista 4					E	FoH	B	E
	MLK Barista 5					FoH	B	E	FoH
Drivers	Driver 1	D	D	D	D				
	Driver 2					D	D	D	D

Phase 2 – Tburg (Curbside Only)

Operating Hours: 7:30 – 11:00; 12:00 – 3:00
In-store Shifts: 7:00 – 3:30 with break in the 11:00 – 12:00 hour (8.5hr/shift)

		Sun	Mon	Tues	Wed		Thurs	Fri	Sat
Team 1	Tburg SM	B	FoH	B	FoH				
	Tburg Barista 1	FoH	B	FoH	B				
Team 2	Tburg Barista 2					B	FoH	B	FoH
	Tburg Barista 3					FoH	B	FoH	B

Phase 2 – CoCo or Cayuga (Curbside Only)

Operating Hours: 7:30 – 11:00; 12:00 – 3:00
In-store Shifts: 7:00 – 3:30 with break in the 11:00 – 12:00 hour (8.5hr/shift)

		Sun	Mon	Tues	Wed		Thurs	Fri	Sat
Team 1	SM	B	FoH	B	FoH				
	Barista 1	FoH	B	FoH	B				
Team 2	Trainer					B	FoH	B	FoH
	Barista 2					FoH	B	FoH	B

Discussion

Employer 7

EXHIBIT NO. E-7 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

Claire Christensen <claire.christensen@gimmecoffee.com>

Gimme! Coffee retail operations update on July 7th at 4:30 PM

Claire Christensen <claire.christensen@gimmecoffee.com> Fri, Jul 10, 2020 at 10:25 AM
n

[redacted]

Thanks to everyone who was able to attend the operations update! I've attached Colleen's slide deck for your reference, and for everyone who was not able to attend the meeting.

Best,
Claire
[Quoted text hidden]
--
Claire Christensen
COO
Pronouns: she/they

Gimme! Coffee
Celebrating 20 Years in Ithaca
gimmecoffee.com • 877-446-6325, Ext 104

Gimme Operations Update for Baristas_200707.pdf
394K

Employer 8

EXHIBIT NO. E-8 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 8 DATE: 09-2-2021 REPORTER: Barrington Moxie

Meeting Notes!

Thanks for coming! Request from negotiations team for update, Glad everyone is here
Review agenda
Invited to

1. Re:Co steaming
2. MLK walkthrough invite
3. C'mover cafe invite
    a. *We will make time for you, just let us know!*

Recap of 2020/2021

1. Offsite with SM's
    a. What's lacking
        i. use coffee as a platform to provide healthy and safe employment, de-escalation techniques, life skills
2. Review what WAS planned
    a. HR
    b. Handbook / ops task force
        i. Restructuring devisions

        c. Ops working groups
        d. 3rd party consultations/training
    3. Coffee product line *what would make our coffees more accessible*
        a. Pricing revision
        b. Sustainable sourcing guidelines & partnerships
        c. New markets
            i. Wholesale outreach
        d. Packaging redesign
    4. 2021 planning
        a. BUDGET!
        b. Strategic plan
    5. Special projects
        i. 20th anniversary party
        ii. Remodel upstate lab
        iii. MLK location
        iv. E-commerce platform
        v. CBA contract

NOW

1. Get house in order
    a. Mission and values
    b. New retail program
        i. Long haul effort
        ii. No in-person dining for a long time (vaccine!)
        iii. Ops working groups
            1. Community dev plan
            2. Working locally to restructure values
    c. Wholesale/web*
        i. Relieve pressure off of retail
    d. Integrate e-commerce platform
    e. CBA negotiations

Health and Safety

NYS is vague, we're following safest practices

1. Business safety plan
    a. Visitor log
    b. Sanitization log
        i. Masks
        ii. Logging!
    c. Travel policy
2. RSOP supplement
3. EAP

Best Guess Phased Reopening

1. Phased reopening
    a. Why?

        i. Grow in other areas to take the pressure off of retail
        ii. Safe and healthy employment for people for as long as people
            1. Predictable
            2. Wage
            3. How many people?
            4. For how long?
                a. Short term tactics for long term employment
    b. Tburg: controlled environment to recall baristas
        i. Prior to closing the unit held a vote that seniority was by store
            1. Ava says that is not the case, was not discussed between us
                a. Need to discuss in effects bargaining
        ii. Decision points that lead us to a phase 2 Aug/Dec
2. Pilot phase! *What did we accomplish*
    a. Built a new model
    b. Launched and debugged online platform
        i. Looking for others, we don't want square
    c. Reorganized store
    d. What did we learn
    e. Store needs to be varied from store to store
        i. Cayuga, small, etc
3. Teams!
    a. Team Puke
        i.
    b. Team Beige
        i. Separate space and time
4. Barista position
    a. No espresso
        i. Can't maintain quality
    b. Workflow wildly different
        i. 30 min window
        ii. No limit to how many drinks can come in at once
        iii. Coolers as heaters
            1. Allows us to get ahead by about 5 min
            2. Iced drinks, pre prep and put them in the cooler
        iv. Latte art a thing of the past
        v. Speed is everything
            1. Milk sharing
        vi. 3 group is down, now we only have the 2 group
            1. A little overwhelming
            2. Once you find the rhythm it's really good
            3. Time management is key
        vii. Can adjust the prep time
            1. Haven't had to use it that much thankfully

    c. ZERO customer service
        i. Some people really loved chatting over the espresso machine
            1. Those days are done
            2. More like being a prep cook
            3. Triage on the fly, more when needed then when scheduled
5. Expeditor
    a. Starts the order
    b. Puts order together
    c. At the ticket station, Name, Time, Drink
    d. Pastry orders
    e. Retail beans
    f. Answering the phone as backup
    g. Square stand
        i. In progress
        ii. Ready
        iii. Completed
        iv. Upcoming
        v. Tomorrow
    h. Custy service/BOH mash up
6. FOH
    a. Bluetooth headset
    b. Expo is setting up orders for you
    c. Table is a barrier in front of door, 6' distance, mask & gloves
        i. Customer gets instructions to call the store
        ii. Figure out which order is theres
        iii. What the heck is in their order
        iv. Where is their order?
    d. Very satisfying at the end of the day
    e. Can feel like complete insanity
    f. Walkup questions about ordering
    g. Can i just give you cash
        i. No. This is why
        ii. Putting out fires with customers
        iii. Communicating with staff members
    h. Communication:
        i. How to order
        ii. To barista "what's ETA"
            1. Here's ETA
            2. Go tell customer what their ETA is
            3. A,B,C,D,E are all here, what's the ETA on all of them
                a. Tries to deliver that in a way that satisfies the customers but rarely does
    i. Hot brew/cold brew/iced teas assemble those

7. Ava has a question
    a. Comparing a day there, how is it compared to a normal day at state street?
        i. 80% of sales with abbreviated hours, more retail bag sales,
    b. VH just to note the lack of support of bar makes it feel very different
8. Schedule
    a. Walk up ordering
    b. Operating hours
    c. Service hours vs working hours

DISCUSSION!

1. Susie Shelton: even with walk up no cash correct?
    a. Correct but we're trying to brainstorm it
2. Britney Cunha / Maggie Lapinski would like to see opening/scheduling outlook
    a. MLK phased recall
        i. 3 baristas to get them in
        ii. Delivery driver separate external hire
    b. Tburg recall
        i. 2 baristas
        ii. Couple of weeks to a month
3. Maggie Lapinski: if the info about scheduling would include when exactly 4-5 or 6 weeks that people would be rehired
    a. We want to take morgan off the floor so she can support 6 baristas
    b. ML: end of august?
    c. CC: phase 1 end of july, phase 2 end of august
4. Wendell Roth: just to clarify, there will only be FT hours and not PT hours correct?
    a. CA: we want to provide wage security, health and safety
5. Ava Mailloux: protocol if someone catches COVID
    a. CC: that worker goes home for min 14 days, they're paid for those 14 days
    b. Team workers also quarantined, and paid for those days
    c. Close the cafe for 2 days
    d. Deep clean cafe
        i. Spray down
        ii. Throw out any soft things
    e. Visitor log so important
6. Susie Shelton: are tips still a thing? If sent home what would the wage be?
    a. CC: yes, we set up auto-tip as 20%
    b. When baristas are recalled those tips are not split with management
    c. Re: wage will get back to you
7. Rebecca Lespier: do you all know what wages we will be hired back at?
    a. CA: thats part of the demands negotiation team, we need clairty in the CBA article, there's a request from you all, the CBA is vague
8. Ava Mailloux: if anyone has questions about wages or negotiations can contact Ava
9. James Byrne: will the driver position be advertised to furloughed baristas before hiring externally?

    a. It was in the first proposal that we agreed to that, but wasn't in the second, but yes, we would hire internally from furloughed positions first

10. Rebecca Lespier: wants to get back regular update meetings
    a. CA: can commit to bi-weekly update, mentioned in last negotiations meeting

RE:CO

MLK WALKTHROUGH: after 4 pm, to keep teams as teams

C'MOVER CAFE

Employer 9

EXHIBIT NO. E-9 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

Status Update as of 08-Sept									
	Store		start date	offer letter	paperwork	store ops training	cert status	upcoming review	review collab
Curt	MLK			☑	☑	☑	☑	review needed	AL & MB
James	MLK			☑	☑	☑	☑		
Sarah	MLK			☑	☑	☐	☑	review needed	AL & DAB
Aaron	MLK			☑	☑	☐	☑		
Jeneva	MLK			☑	☑	☐	☑	review needed	AL & MB
Maggie	MLK		9-10	☑	☑	☐	☑		
Jamie	MLK		9-15	☑	☐	☐	☑		
Susie	TBURG			☑	☑	☑	☑		
Gregg	TBURG		9-10	☑	☑	☐	☑	review needed	AL & DAB
Aidan	TBURG	call needed	9-15	☑	☐	☐	☐		
Tim	TBURG		October?	☐	☐	☐	☑		
Tahera	COCO	Called/Setup Onl	9-19	☑	☐	☐	☑	review needed	DT
Rebecca H	COCO	Called/Setup Onl	9-19	☑	☐	☐	☑	review needed	DT
Adonijah	COCO	Called/Setup Onl	9-15	☑	☐	☐	☑		
Wendell	COCO	Called/Setup Onl	9-15	☑	☐	☐	☐		

Employer 10

EXHIBIT NO. E-10 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 4 DATE: 09-2-2021 REPORTER: Barrington Moxie

Company Code	Payroll Name	File Number	Job Title	Hire Date	Rehire Date	Home Department Description
DSN	Berg Hanalei	000640	BAR S A	03/27/2017	07/16/2018	Cayuga
DSN	Darling Danielle	000686	BAR S A	05/07/2018		Cayuga
DSN	Hodge Francesca	000689	BAR S A	05/21/2018		Cayuga
DSN	Roach Benjamin	000720	BAR S A	04/08/2019		Cayuga
DSN	Burger Jenna	000730	BAR S A	06/14/2019		Cayuga
DSN	Dodges Hailey	000746	BAR S A	09/17/2019		Cayuga
DSN	Eginton Rachel	000752	BAR S A	10/22/2019		Cayuga
DSN	alosig Angelica	000664	BAR S A	08/28/2017	08/20/2018	CoCo
DSN	Crowell Elizabeth	000692	BAR S A	06/25/2018		CoCo
DSN	Myskiw Deanna	000702	BAR S A	09/25/2018		CoCo
DSN	Roth Mathew	000705	BAR S A	10/22/2018	09/17/2020	CoCo
DSN	Lee Chelsea	000724	BAR S A	05/09/2019		CoCo
DSN	Kassam ahera	000731	BAR S A	06/13/2019	09/19/2020	CoCo
DSN	Holzer Rebecca	000735	BAR S A	07/11/2019	09/19/2020	CoCo
DSN	Gabisan Gary	000743	BAR S A	09/03/2019		CoCo
DSN	Sharp Adonaijah	000753	BAR S A	10/24/2019	09/17/2020	CoCo
DSN	Wallace Nicole	000420	BAR S A	10/24/2011	10/01/2019	Gates
DSN	antillo Sophia	000654	BAR S A	06/12/2017	01/18/2019	Gates
DSN	Ho er Kelly	000665	BAR S A	08/29/2017	04/09/2018	Gates
DSN	Zgola Margo	000682	BAR S A	03/27/2018		Gates
DSN	Mailloux Ava	000688	BAR S A	05/15/2018		Gates
DSN	Salinas Benjamin	000697	BAR S A	08/06/2018		Gates
DSN	Covert Alyvia	000701	BAR S A	09/06/2018		Gates
DSN	Guerrieri Christopher	000708	BAR S A	01/17/2019		Gates
DSN	Feberwee Bart	000712	BAR S A	02/07/2019		Gates
DSN	Buckser Sarah	000716	BAR S A	03/06/2019		Gates
DSN	Sanchez Jesse	000726	BAR S A	06/03/2019		Gates
DSN	Briggs Violet	000737	BAR S A	07/29/2019		Gates
DSN	Jacks Georgie	000742	BAR S A	08/26/2019		Gates
DSN	Yajko Ashley	000745	BAR S A	09/09/2019		Gates
DSN	Strauss Rachel	000748	BAR S A	09/18/2019		Gates
DSN	Stewart aneal	000761	BAR S A	01/15/2020		Gates
DSN	Bassett Julianna	000764	BAR S A	02/09/2020		Gates
DSN	Aldrich Karen	000766	BAR S A	02/10/2020		Gates
DSN	Lambert Alexander an	000136	BAR S A	06/26/2006	11/04/2018	Lorimer
DSN	Munoz Daniela	000714	BAR S A	02/25/2019		Lorimer
DSN	Lisowski Ze yr	000721	BAR S A	04/15/2019		Lorimer
DSN	aylor Marley	000723	BAR S A	05/08/2019		Lorimer
DSN	rvine Gri in	000759	BAR S A	01/09/2020		Lorimer
DSN	Gibian Anya	000462	BAR S A	08/14/2012	10/30/2018	Mott
DSN	Holder Carl	000593	BAR S A	08/24/2015	01/15/2019	Mott
DSN	Johnson Kyleigh	000669	BAR S A	09/12/2017	03/06/2019	Mott
DSN	Kikta Lorry	000700	LEAD BAR S A	09/05/2018		Mott
DSN	Phillips Ben	000704	LEAD BAR S A	10/14/2018		Mott
DSN	Walker Jeanea	000706	LEAD BAR S A	12/10/2018		Mott
DSN	Owens Kailyn	000710	BAR S A	01/27/2019		Mott
DSN	Hoyne Amanda	000727	BAR S A	06/03/2019		Mott
DSN	Shun Grace	000729	BAR S A	06/10/2019		Mott
DSN	Ozoria Andy	000733	BAR S A	07/09/2019		Mott
DSN	Gaidis Joseph	000738	BAR S A	07/29/2019		Mott
DSN	Gottsegen Gardner	000744	BAR S A	09/03/2019		Mott
DSN	Riabova Polina	000747	BAR S A	09/16/2019		Mott
DSN	Ruan Linda	000749	BAR S A	09/30/2019	11/17/2019	Mott
DSN	Felix Anissa	000756	BAR S A	11/13/2019		Mott
DSN	Scipio Zavon	000757	BAR S A	12/20/2019		Mott
DSN	Waite Kendra	000763	BAR S A	02/05/2020		Mott
DSN	Brown Keon	000765	BAR S A	02/08/2020		Mott
DSN	Ewy aylor	000579	BAR S A	07/13/2015	04/18/2018	State
DSN	Cook Charles	000649	LEAD BAR S A	05/16/2017	09/26/2020	State
DSN	Byrne James	000681	LEAD BAR S A	01/10/2018	08/24/2020	State
DSN	Hebert Sasha	000684	BAR S A	04/02/2018		State
DSN	Reinhart Hannah	000685	BAR S A	04/10/2018		State
DSN	Verga Marie	000687	BAR S A	05/14/2018		State
DSN	Dellett Sarah	000690	LEAD BAR S A	05/30/2018	08/13/2020	State
DSN	Cowen Archer	000691	BAR S A	06/25/2018		State
DSN	ngram Benjamin	000694	BAR S A	07/16/2018		State
DSN	Oliver John	000699	BAR S A	09/04/2018		State
DSN	Stupak Matthew	000703	BAR S A	10/03/2018		State
DSN	Ellis Franklin	000709	BAR S A	01/21/2019	02/06/2019	State
DSN	Gutierrez Sara	000711	BAR S A	02/05/2019		State
DSN	Migdon Paige	000713	BAR S A	02/26/2019		State
DSN	Paulo Alyssa	000717	BAR S A	03/18/2019		State
DSN	Brogan imothy	000722	BAR S A	04/22/2019		State
DSN	Goodenough Aaron	000736	LEAD BAR S A	07/15/2019	08/29/2020	State
DSN	Long Jeneva	000740	BAR S A	08/11/2019	09/01/2020	State
DSN	Johnsen Aubrie	000750	BAR S A	10/07/2019		State
DSN	Braddy Mara	000754	BAR S A	10/30/2019		State
DSN	Lapinski Margaret	000755	BAR S A	11/01/2019	09/09/2020	State

DSN	Martinez Joshua	000758	BAR S A	12/30/2019		State
DSN	Cline Natalie	000762	BAR S A	01/28/2020		State
DSN	Baird Molly	000768	BAR S A	03/03/2020	09/12/2020	State
DSN	Bolton Lily	000605	BAR S A	03/31/2016	04/22/2019	rumansburg
DSN	Shelton Courtney Susie	000674	BAR S A	10/11/2017	09/06/2020	rumansburg
DSN	Stepp Gage	000696	BAR S A	08/07/2018		rumansburg
DSN	Kearns Gregg	000695	LEAD BAR S A	08/07/2018	09/09/2020	rumansburg
DSN	Cunha Brittany	000698	BAR S A	08/28/2018		rumansburg
DSN	Dunnam Ariel	000728	BAR S A	06/10/2019		rumansburg
DSN	Schildkraut Melis	000741	BAR S A	08/19/2019		rumansburg
DSN	Kaplan-Wright Aidan	000767	BAR S A	02/18/2020	09/19/2020	rumansburg

Employer 11

EXHIBIT NO. E-11 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 7 DATE: 09-2-2021 REPORTER: Barrington Moxie

NAME	HOME DEPARTMENT	JOB TITLE	TERMINATION DATE
Richards, Korbin	011001 - Gates	BARISTA - BARISTA	01/29/2018
Stinson, Walter	008001 - Roebling	BARISTA - BARISTA	01/29/2018
Francois, Ritza	008001 - Roebling	BARISTA - BARISTA	02/04/2018
Bianchi, Miranda	004001 - State	BARISTA - BARISTA	02/18/2018
Meyerhoff, Saia	008001 - Roebling	BARISTA - BARISTA	03/04/2018
Weir, Andrew	007001 - Mott	LEADBAR - LEAD BARISTA	03/28/2018
Hebert, Sasha	004001 - State	BARISTA - BARISTA	04/06/2018
Stephens, Amanda	004001 - State	BARISTA - BARISTA	05/10/2018
Engelhart, Evan	003001 - Cayuga	BARISTA - BARISTA	06/03/2018
Rollin, Joshua	007001 - Mott	BARISTA - BARISTA	07/09/2018
Hussain, Amir	007001 - Mott	BARISTA - BARISTA	07/17/2018
Braswell, Lia	007001 - Mott	BARISTA - BARISTA	07/20/2018
Hoffer, Kelly	011001 - Gates	BARISTA - BARISTA	08/03/2018
Reagan, Carolyn	004001 - State	BARISTA - BARISTA	08/05/2018
Russell, Charlotte	004001 - State	BARISTA - BARISTA	08/05/2018
Berg, Hanalei	003001 - Cayuga	BARISTA - BARISTA	08/21/2018
Zepeda, Alexandra	007001 - Mott	BARISTA - BARISTA	08/28/2018
Rutter-Bowman, Walker	011001 - Gates	BARISTA - BARISTA	08/31/2018
Castro, Pablo	007001 - Mott	BARISTA - BARISTA	09/02/2018
Oliver, John	004001 - State	BARISTA - BARISTA	10/02/2018
Crowell, Elizabeth	014001 - CoCo	BARISTA - BARISTA	10/03/2018
Ingram, Benjamin	004001 - State	BARISTA - BARISTA	10/04/2018
Roberson, Kendra	007001 - Mott	BARISTA - BARISTA	10/11/2018
Verga, Marie	004001 - State	BARISTA - BARISTA	11/13/2018
Zgola, Margo	011001 - Gates	BARISTA - BARISTA	11/28/2018
Gordon, Alison	003001 - Cayuga	BARISTA - BARISTA	12/09/2018
Ewy, Taylor	004001 - State	BARISTA - BARISTA	12/15/2018
Phillips, Ben	007001 - Mott	LEADBAR - LEAD BARISTA	12/21/2018
Stepp, Gage	005001 - Trumansburg	BARISTA - BARISTA	01/04/2019
Reinhart, Hannah	004001 - State	BARISTA - BARISTA	01/05/2019
Santiago, Ada	007001 - Mott	BARISTA - BARISTA	01/31/2019
Guerrieri, Christopher	011001 - Gates	BARISTA - BARISTA	02/05/2019
Ellis, Franklin	004001 - State	BARISTA - BARISTA	02/06/2019
Sundstedt, Wictor	011001 - Gates	LEADBAR - LEAD BARISTA	02/10/2019
Snowe, Megan	006001 - Lorimer	BARISTA - BARISTA	03/04/2019
Amendola, Greg	006001 - Lorimer	BARISTA - BARISTA	03/17/2019
Soules, Casey	004001 - State	BARISTA - BARISTA	03/18/2019
Lambert, Alexander Ian	006001 - Lorimer	BARISTA - BARISTA	03/31/2019
Munoz, Daniela	006001 - Lorimer	BARISTA - BARISTA	04/07/2019
Gibian, Anya	007001 - Mott	BARISTA - BARISTA	04/14/2019
Gutierrez, Sara	004001 - State	BARISTA - BARISTA	04/18/2019
Boze, Elizabeth	005001 - Trumansburg	BARISTA - BARISTA	04/28/2019
Stupak, Matthew	004001 - State	BARISTA - BARISTA	05/09/2019
Hodge, Francesca	003001 - Cayuga	BARISTA - BARISTA	05/22/2019
Talosig, Angelica	014001 - CoCo	BARISTA - BARISTA	05/23/2019
Cowen, Archer	004001 - State	BARISTA - BARISTA	05/26/2019
Arnold, Kathleen	004001 - State	BARISTA - BARISTA	06/15/2019
Darling, Danielle	003001 - Cayuga	BARISTA - BARISTA	06/15/2019
Covert, Alyvia	011001 - Gates	BARISTA - BARISTA	06/25/2019
Holder, Carl	007001 - Mott	BARISTA - BARISTA	07/05/2019
Lee, Chelsea	014001 - CoCo	BARISTA - BARISTA	07/10/2019
Salinas, Benjamin	011001 - Gates	BARISTA - BARISTA	07/11/2019
Walker, Jeanea	007001 - Mott	LEADBAR - LEAD BARISTA	07/28/2019

Harrington, Caleb	003001 - Cayuga	BARISTA - BARISTA	07/30/2019
Shun, Grace	007001 - Mott	BARISTA - BARISTA	07/31/2019
Tantillo, Sophia	011001 - Gates	BARISTA - BARISTA	08/01/2019
Myskiw, Deanna	014001 - CoCo	BARISTA - BARISTA	08/11/2019
Bolton, Lily	005001 - Trumansburg	BARISTA - BARISTA	08/15/2019
Buckser, Sarah	011001 - Gates	BARISTA - BARISTA	08/30/2019
Briggs, Violet	011001 - Gates	BARISTA - BARISTA	09/04/2019
Owens, Kailyn	007001 - Mott	BARISTA - BARISTA	09/08/2019
Johnson, Kyleigh	007001 - Mott	BARISTA - BARISTA	09/11/2019
Taylor, Marley	006001 - Lorimer	BARISTA - BARISTA	09/19/2019
Gottsegen, Gardner	007001 - Mott	BARISTA - BARISTA	09/25/2019
Strauss, Rachel	011001 - Gates	BARISTA - BARISTA	10/14/2019
Gabisan, Gary	014001 - CoCo	BARISTA - BARISTA	10/18/2019
Hoyne, Amanda	007001 - Mott	BARISTA - BARISTA	10/18/2019
Dunnam, Ariel	005001 - Trumansburg	BARISTA - BARISTA	10/19/2019
Dodges, Hailey	003001 - Cayuga	BARISTA - BARISTA	10/30/2019
Paulo, Alyssa	004001 - State	BARISTA - BARISTA	11/15/2019
Ruan, Linda	007001 - Mott	BARISTA - BARISTA	11/17/2019
Jacks, Georgie	011001 - Gates	BARISTA - BARISTA	11/22/2019
Braddy, Mara	004001 - State	BARISTA - BARISTA	11/29/2019
Riabova, Polina	007001 - Mott	BARISTA - BARISTA	12/05/2019
Wallace, Nicole	011001 - Gates	BARISTA - BARISTA	12/31/2019
Tapia, Jessica	007001 - Mott	BARISTA - BARISTA	01/04/2020
Roach, Benjamin	003001 - Cayuga	BARISTA - BARISTA	01/11/2020
Felix, Anissa	007001 - Mott	BARISTA - BARISTA	01/18/2020
Boyle, Rowan	006001 - Lorimer	BARISTA - BARISTA	01/19/2020
Cline, Natalie	004001 - State	BARISTA - BARISTA	02/11/2020
Test, Test	003001 - Cayuga	BARISTA - BARISTA	03/15/2020
Ashworth, Phillip	006001 - Lorimer	BARISTA - BARISTA	03/17/2020
Brown, Keon	007001 - Mott	BARISTA - BARISTA	03/17/2020
Burton, Stephen	006001 - Lorimer	LEADBAR - LEAD BARISTA	03/17/2020
Gaidis, Joseph	007001 - Mott	BARISTA - BARISTA	03/17/2020
Irvine, Griffin	006001 - Lorimer	BARISTA - BARISTA	03/17/2020
Kikta, Lorry	007001 - Mott	LEADBAR - LEAD BARISTA	03/17/2020
Lisowski, Zefyr	006001 - Lorimer	BARISTA - BARISTA	03/17/2020
McCarthy, Emma	006001 - Lorimer	BARISTA - BARISTA	03/17/2020
Ozoria, Andy	007001 - Mott	BARISTA - BARISTA	03/17/2020
Scipio, Zavon	007001 - Mott	BARISTA - BARISTA	03/17/2020
Waite, Kendra	007001 - Mott	BARISTA - BARISTA	03/17/2020
Aldrich, Kari	011001 - Gates	BARISTA - BARISTA	03/25/2020
Barid, Jaime	011001 - Gates	BARISTA - BARISTA	03/25/2020
Bassett, Julianna	011001 - Gates	BARISTA - BARISTA	03/25/2020
Brogan, Timothy	004001 - State	BARISTA - BARISTA	03/25/2020
Burger, Jenna	003001 - Cayuga	BARISTA - BARISTA	03/25/2020
Byrne, James	004001 - State	LEADBAR - LEAD BARISTA	03/25/2020
Carbaugh, Amanda	005001 - Trumansburg	BARISTA - BARISTA	03/25/2020
Cook, Curt	003001 - Cayuga	BARISTA - BARISTA	03/25/2020
Cunha, Brittany	005001 - Trumansburg	BARISTA - BARISTA	03/25/2020
Dellett, Sarah	004001 - State	BARISTA - BARISTA	03/25/2020
Eginton, Rachel	003001 - Cayuga	BARISTA - BARISTA	03/25/2020
Feberwee, Bart	011001 - Gates	BARISTA - BARISTA	03/25/2020
Goodenough, Aaron	014001 - CoCo	LEADBAR - LEAD BARISTA	03/25/2020
Holzer, Rebecca	014001 - CoCo	BARISTA - BARISTA	03/25/2020
Johnsen, Aubrie	004001 - State	BARISTA - BARISTA	03/25/2020

Kaplan-Wright, Aiden	014001 - CoCo	BARISTA - BARISTA	03/25/2020
Kassam, Tahera	014001 - CoCo	BARISTA - BARISTA	03/25/2020
Kearns, Gregg	005001 - Trumansburg	BARISTA - BARISTA	03/25/2020
Lapinski, Maggie	004001 - State	BARISTA - BARISTA	03/25/2020
Lespier, Rebecca	003001 - Cayuga	BARISTA - BARISTA	03/25/2020
Long, Jeneva	003001 - Cayuga	BARISTA - BARISTA	03/25/2020
Lukosavich, Brenden	003001 - Cayuga	BARISTA - BARISTA	03/25/2020
Mailloux, Ava	011001 - Gates	BARISTA - BARISTA	03/25/2020
Martinez, Joshua	004001 - State	BARISTA - BARISTA	03/25/2020
Mason, Samantha	003001 - Cayuga	BARISTA - BARISTA	03/25/2020
Migdon, Paige	004001 - State	BARISTA - BARISTA	03/25/2020
Roth, Matthew	004001 - State	BARISTA - BARISTA	03/25/2020
Sanchez, Jesse	011001 - Gates	BARISTA - BARISTA	03/25/2020
Schildkraut, Melis	005001 - Trumansburg	BARISTA - BARISTA	03/25/2020
Sharp, Adonaijah	014001 - CoCo	BARISTA - BARISTA	03/25/2020
Shelton, Courtney Susie	005001 - Trumansburg	BARISTA - BARISTA	03/25/2020
Stewart, Taneal	011001 - Gates	BARISTA - BARISTA	03/25/2020
Yajko, Ashley	011001 - Gates	BARISTA - BARISTA	03/25/2020
Long, Jeneva	004001 - State	BARISTA - BARISTA	11/14/2020

Termination Report

Report Runtime Settings The following settings were used to create this repo

Employees Included

Employee List
All Employees

Company Codes
-DSN-Gimme Coffee, Inc

Home Departments
All Home Departments

Locations
All Locations

Business Units
All Business Units

Home Cost Numbers
All Home Cost Numbers

Termination Date Range: 01/01/2018-08/26/2021

Fields Included
Co Code, Position ID, Name, Home Department, Job Title, Hire Date, Termination Date, Reason, Y

Sort Order
Co Code, Name

Group By
Co Code

Display Options
Employee Information displayed as of 08/26/2021

Note

Termination Report

Created on: 08/26/2021

ort

Years of Service, Reports To

Run Date:08/26/2021 03:14 PM EDT

EXHIBIT EXCLUDED

Leading Case Number: 03-RD-271639

Leading Case Name: GIMME COFFEE, INC.

Exhibit Number: E-12 thru E-13

Description: NOT OFFERED

The above-referenced exhibit is not included herein for the following reason:

1. Exhibit Withdrawn:
2. Exhibit Rejected:
3. Other (Explain):

Exhibit Retained By: COUNSEL

Barrington Moxie

Court Reporter

Employer 14

EXHIBIT NO. E-14 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 4 DATE: 09-2-2021 REPORTER: Barrington Moxie

Ba sta Na e	Ca yo co f w et e	If o t e Active Reca	Ca yo p ease co f	Ca yo p ease co f	Do yo ave a p efe e ce	If yo w s to et to	L otes o ocato	NO ES
S se S e to	Active Reca	a sb g	Co f ed	Co f ed	ea 1 p efe ed		O y B g	
a e a	Active Reca	Co ty Co e s	Co f ed	Co f ed	ea 1 o y	Ca we se e sabe as : st Coco		
e eva	Active Reca	MLK / State Cay ga St Gi	Co f ed	Co f ed	No p efe e ce	Is t e e a p a fo w e l be e ed?		
Magg e	Active Reca	MLK / State Co ty Cc	Co f ed	Co f ed	No p efe e ce	W we be to d w at t e ave age t p s a e g t ow?		
Aa o	Active Reca	MLK / State a sb g	Co f ed	Co f ed	ea 1 p efe ed		P efe e ce s Coco o State	
Ka	Wat L st							
Ado a a	U s e	MLK / State Co ty Cc	Co f ed	Co f ed	No p efe e ce		Cay ga Coco a d t e State	
Sa a D	Active Reca	MLK / State	Co f ed	Co f ed	ea 1 o y			
e a	Wat L st							S e t o g t s e w a s o t e Active Reca st b t w a ts to be o t e Wat L st a d t at s w at t s ay s s e s o so l g ess t at s a good
We de	Wat L st							
a a	Wat L st							
As ey	Wat L st							S e as ed w e s e d be e ed a d l sa d l w as t a be to spea to t at a d t at s e d be co tacted based o t e ag ee e t w t t e U o
esse	Wat L st							
	Active Reca	MLK / State a sb g	Co f ed	Co f ed	ea 1 p efe ed			sa d e t o g t e w a s o t e active eca st be ca se w e e f ed o t t e s vey e sa d e w a ted to co e b ac b t e s o a F ob t Nov so e w o t be a be to w o t t e He sa d e w a s co f sed by t e s vey a d t w a s t c e a
a es	Active Reca	MLK / State	Co f ed	Co f ed	ea 1 p efe ed			
Sa M	Wat L st							
G egg	Active Reca	a sb g	Co f ed	Co f ed	ea 2 p efe ed		P efe s b g	
C t	Active Reca	MLK / State a sb g	Co f ed	Co f ed	ea 2 p efe ed			
Ava	Wat L st							
Rebecca	Wat L st							
Rac e E	Wat L st							Is sc oo a d aybe ca wo o b e a s
a e	Active Reca	MLK / State Co ty Cc	Co f ed	Co f ed	ea 1 p efe ed	et g o se t t t e tested a d w be eady to wo		
A da	Active Reca	a sb g Co ty C	Co f ed	Co f ed	ea 1 p efe ed	He eve ece ved d t a g so e s w o de g f t at be cove ed w t w e e co e s b a c		
B e de	Wat L st							
Pa ge	Wat L st							

		Contact Number	List	MLK / State	Trumansburg	Community Corners	Cayuga St	Gates Hall
Charles (Curt) Cook		[redacted]	Active Recall					
Susie Shelton			Active Recall					
James Byrne			Active Recall					
Sarah Delett			Active Recall					
Gregg Kearns			Active Recall					
ahera-Ra ia Kassam			Active Recall					
Rebecca Holzer	le t message and called again and mailbox is ull x 3	[redacted]	Active Recall					
Aaron Goodenough			Active Recall					
Jeneva Long			Active Recall					
Adonaijah Sharp			Active Recall					
Maggie Lapinski			Active Recall					
Aidan Kaplan-Wright		[redacted]	Active Recall					
Jamie Baird			Active Recall					
Brenden Lukosovich			Wait list					
aneal Stewart	le t message x 2		Wait list					
Samantha Mason			Wait list					
Rebecca Lespier			Wait list					
Kari Aldrich			Wait list					
Paige Migdon			Wait list					
Josh Martinez	voicemail is ull/can't leave msg		Wait list					
Andi Carbaugh	le t message		Wait list					
im Brogan			Wait list					
Wendell Roth			Wait list					
Ava Mailloux			Wait list					
Bart Feberwee	no answer x 2		Wait list					
Jenna Burger			Wait list					
Rachel Eginton			Wait list					
Ashley Yajko			Wait list					
Jesse Sanchez			Wait list					
Julianna Bassett			Wait list					
Aubrie Johnsen	le t message x 2		Wait list					
Brittany Cuhna			Not Returning					
Melis Schildkraut			Not Returning					

Employer 15

EXHIBIT NO. E-15 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 4 DATE: 09-2-2021 REPORTER: Barrington Moxie

NAME	HIRE DATE	TENURE (SINCE LAST HIRE DATE) IN YEAR(S).MONTH(S) MONTHS ARE SHOWN AS .01 TO .11 TO REPRESENT 1 TO 11 MONTHS
Mason, Samantha	10/28/2014	5.05
Lespier, Rebecca	07/12/2016	3.08
Carbaugh, Amanda	08/01/2016	3.08
Cook, Charles	05/16/2017	2.10
Shelton, Courtney Susie	10/11/2017	2.05
Byrne, James	01/10/2018	2.02
Mailloux, Ava	05/15/2018	1.10
Dellett, Sarah	05/30/2018	1.10
Kearns, Gregg	08/07/2018	1.07
Cunha, Brittany	08/28/2018	1.07
Roth, Mathew	10/22/2018	1.05
Feberwee, Bart	02/07/2019	1.01
Migdon, Paige	02/26/2019	1.01
Brogan, Timothy	04/22/2019	0.11
Lukosavich, Brenden	05/13/2019	0.10
Sanchez, Jesse	06/03/2019	0.09
Kassam, Tahera-Rafia	06/13/2019	0.09
Burger, Jenna	06/14/2019	0.09
Holzer, Rebecca	07/11/2019	0.08
Goodenough, Aaron	07/15/2019	0.08
Long, Jeneva	08/11/2019	0.07
Schildkraut, Melis	08/19/2019	0.07
Yajko, Ashley	09/09/2019	0.06
Johnsen, Aubrie	10/07/2019	0.05
Eginton, Rachel	10/22/2019	0.05
Sharp, Adonaijah	10/24/2019	0.05
Lapinski, Margaret	11/01/2019	0.05
Martinez, Joshua	12/30/2019	0.03
Stewart, Taneal	01/15/2020	0.02
Bassett, Julianna	02/09/2020	0.01
Aldrich, Karen	02/10/2020	0.01
Kaplan-Wright, Aidan	02/18/2020	0.01
Baird, Molly	03/03/2020	0.00

Tenure

Report Runtime Settings The following settings were used to create this report

Employees Included

Employee List
All Employees

Company Codes
-DSN-Gimme Coffee, Inc

Home Departments
All Home Departments

Locations
All Locations

Business Units
All Business Units

Home Cost Numbers
All Home Cost Numbers

Archived employees are NOT included
Employees with payroll history are NOT included

Fields Included

Name, Job Title, Home Department,Status, Rate Type, Hire Date, Rehire Date, Tenure (Since last Hire Date) in Year(s) Month(s) Months are shown as 01 to 11 to represent 1 to 11 months

Sort Order

Tenure (Since last Hire Date) in Year(s) Month(s) Months are shown as 01 to 11 to represent 1 to 11 months

Group By

Display Options

Report Information displayed as of 03/17/2020

Note

Employer 16

EXHIBIT NO. E-16 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 4 DATE: 09-2-2021 REPORTER: Barrington Moxie

From: **Colleen Anunu** <colleen.anunu@gimmecoffee.com>
Date: Thu, Sep 3, 2020 at 4:44 PM
Subject: Re: Recall Communication/Bi-weekly meetings
To: Gimme Union <gimme.unionistas@gmail.com>
Cc: Claire Christensen <claire.christensen@gimmecoffee.com>

Hi All,

I've been out of office and away from my computer until this afternoon, so apologies for the delay.

The meeting is still on for next Wednesday at 4pm. Are there any specific agenda items you'd like covered?

We have plans to recall all baristas on the active list by 9/20 but currently have official paperwork for 5 folks. Based on our individual conversations with some baristas have deferred to work at their preferred store. In terms of who has been recalled, we have been asked by some baristas not to share this information. We are currently seeking legal advice about this. Just curious if there are ways to verify this on your end?

We will be reopening Trumansburg this weekend and will recall baristas mid-next week. We have plans to reopen Community Corners the weekend of September 18.

Thank you,

Colleen Anunu
Interim CEO

Pronouns: they/she

Gimme! Coffee
Celebrating 20 Years in Ithaca
gimmecoffee.com

On Thu, Sep 3, 2020 at 3:17 PM Gimme Union <gimme.unionistas@gmail.com> wrote:

> Hey Colleen and Claire,
>
> Just following up because we haven't heard from you. We heard some additional workers have been recalled and were wondering if you could please notify us when this happens? Who do have working at State Street right now? Do you have any updates about the Trumansburg location?
>
> Also, are we still on for a meeting next Wednesday at 4pm?
>
> Look forward to hearing from you.

Thanks,
The Negotiations Team
Ava
Bart
Jenna
Maggie
Sam
Wendell

> On Aug 31, 2020, at 3:38 PM, Gimme Union <gimme.unionistas@gmail.com> wrote:
>
> Hey Colleen and Claire,
>
> In order to maintain good communication and transparency, we were wondering if you could notify the Negotiations Team when baristas are recalled? We understand that you first need to notify the individual barista. We're just hoping we can be included as well so we know who's back on the floor and can adjust our lists accordingly.
>
> Also, in terms of bi-weekly meetings, in a previous email you had suggested Wednesdays at 4pm starting on September 9th. Is this date still available for you all? We'd like to confirm that time if it is and are happy to do Wednesdays at 4pm every other week following that.
>
> Let us know what you think.
>
> Thanks,
> Ava
> Bart
> Jenna
> Maggie
> Sam
> Wendell
>
>

EXHIBIT EXCLUDED

Leading Case Number: 03-RD-271639

Leading Case Name: GIMME COFFEE, INC.

Exhibit Number: E-17 thru E-18

Description: NOT OFFERED

The above-referenced exhibit is not included herein for the following reason:

1. Exhibit Withdrawn:
2. Exhibit Rejected:
3. Other (Explain):

Exhibit Retained By: COUNSEL

Barrington Moxie

Court Reporter

Employer 19

EXHIBIT NO. E-19 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 7 DATE: 09-2-2021 REPORTER: Barrington Moxie

From: **Colleen Anunu** <colleen.anunu@gimmecoffee.com>
Date: Tue, Sep 8, 2020 at 2:51 PM
Subject: Re: Recall Communication/Bi-weekly meetings
To: Gimme Union <gimme.unionistas@gmail.com>
Cc: Claire Christensen <claire.christensen@gimmecoffee.com>

Hi All,

Checking in about tomorrow's operations update meeting and making sure we're on the same page. Considering that rehired baristas will have their own ongoing operations meetings specific to team workflow etc, we were thinking that the bi-weekly Wednesday ops updates will be for waitlisted baristas only and the main agenda item is our progress through reopening MLK, Tburg and CoCo as well as whether there is new information on reopening Cayuga and Gates or hiring for other than full time positions. We would leave open to you all whether you'd want to add anything else ahead of time. That being said, is there anything you want added to the agenda for tomorrow? Please let us know so we can schedule accordingly. As of now, we are anticipating a 30min meeting.

Regarding letting you all know which baristas have been rehired and thinking about their privacy, we have not thought of a workaround on our end but don't know the union's administrative access points so maybe you have.

Thank you,

Colleen Anunu
Interim CEO

Pronouns: they/she

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gimmecoffee.com

On Mon, Aug 31, 2020 at 3:38 PM Gimme Union <gimme.unionistas@gmail.com> wrote:

> Hey Colleen and Claire,
>
> In order to maintain good communication and transparency, we were wondering if you could notify the Negotiations Team when baristas are recalled? We understand that you first need to notify the individual barista. We're just hoping we can be included as well so we know who's back on the floor and can adjust our lists accordingly.
>
> Also, in terms of bi-weekly meetings, in a previous email you had suggested Wednesdays at 4pm starting on September 9th. Is this date still available for you all? We'd like to confirm that time if it is and are happy

to do Wednesdays at 4pm every other week following that.

Let us know what you think.

Thanks,
Ava
Bart
Jenna
Maggie
Sam
Wendell

--
Claire Christensen
Co-Managing Director / Head of Operations
Pronouns: she/they

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gimmecoffee.com • 877-446-6325, Ext 104

Gimme Operations Meeting

Created by: colleen.anunu@gimmecoffee.com · Your response: ✔Yes, I'm going

Time

4pm - 4:30pm (Eastern Time - New York)

Date

Wed Sep 9, 2020

Where

https://us02web.zoom.us/j/84598827901?pwd=V2MwRlZ4Z0FEMmJKNmpnWmg0UEpBUT09

Guests

- ✔ Claire Christensen
- ✔ Colleen Anunu
- ✔ Victoria Hantout
- ⊘ Morgan Wilsea
  alexis.lopez@gimmecoffee.com
  David Torrey
  Gimme Union

Description

Hi Everyone,

We have agreed with the Negotiations Team to hold a bi-weekly retail voluntary operations update for all union members (active and wait listed) to talk about items related to recall. For all rehired baristas, this will be a separate meeting from our standing paid operations and team meetings.

The agenda will be updated before every meeting and minutes will be sent out for anyone who cannot attend.

Today's agenda is:

- Progress toward staffing MLK St, Trumansburg and Community Corners
- Bar certification process
- Tips
- Performance Reviews

See you there,

Colleen

Colleen Anunu is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting
https://us02web.zoom.us/j/84598827901?pwd=V2MwRlZ4Z0FEMmJKNmpnWmg0UEpBUT09

Meeting ID: 845 9882 7901
Passcode: 560518
One tap mobile
+16465588656,,84598827901#,,,,,,0#,,560518# US (New York)
+13126266799,,84598827901#,,,,,,0#,,560518# US (Chicago)

Dial by your location
+1 646 558 8656 US (New York)
+1 312 626 6799 US (Chicago)
+1 301 715 8592 US (Germantown)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
Meeting ID: 845 9882 7901
Passcode: 560518
Find your local number: https://us02web.zoom.us/u/kc3XwuOvhF

My Notes

Employer 20

EXHIBIT NO. E-20 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

From: **Wendell Roth** [redacted]
Date: Mon, Sep 7, 2020 at 11:13 AM
Subject: Recall
To: Colleen Anunu <colleen.anunu@gimmecoffee.com>, Morgan Bockus <morgan.bockus@gimmecoffee.com>

Hello my long lost friends!

I just wanted to send a heads up that I'm going to go back on the "recall" list, but only for Community Corners. This is because it feels safer to me (and Ali) to stay away from downtown as much as possible. Also, hailing now from Varna, it would be nice to have a shorter drive to work! I hope that this doesn't complicate anything surrounding plans you all had of who-works-where.
I hope to go back to the mad-house that is Sate St one day, this just feels safer for now. Please let me know if you have any concerns or thoughts regarding this.

All the best,
Wendell

Employer 21

EXHIBIT NO. E-21 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

From: **Josh Martinez** [redacted]
Date: Mon, Jan 4, 2021 at 2:00 PM
Subject: Returning to work
To: <colleen.anunu@gimmecoffee.com>

Hi Colleen, Its Josh Martinez, I was a barista at the cayuga street location until it closed down last year. I'm reaching out to let you know that I would like to return to work if there are any positions available at Gimme. I look forward to hearing back from you.

Best,
Josh

Employer 22

EXHIBIT NO. E-22 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 3 DATE: 09-2-2021 REPORTER: Barrington Moxie

From: **Victoria Hantout** <victoria.hantout@gimmecoffee.com>
Date: Thu, Jan 7, 2021 at 10:51 AM
Subject: Re: Gimme Wait List Update
To: Brenden [redacted], Colleen Anunu <colleen.anunu@gimmecoffee.com>, Claire Christensen <claire.christensen@gimmecoffee.com>

Hey Brenden,

I hope you've been well! Thanks for the update. I've copied them here.

Best,
Victoria
--
Victoria Hantout
Regional Manager
Pronouns: she/her/hers

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gimmecoffee.com • 607-273-0111

On Thu, Jan 7, 2021 at 10:43 AM Brenden [redacted] wrote:

> Hi Victoria,
>
> I just got off the phone with Claire and she advised me to let you and Colleen know that I'd like to be put on the return list for Cayuga Street. I haven't got Colleen's email to attach here, I was wondering if you could CC them please.
>
> Thanks,
> Brenden 〰️ 🔺 〰️

--
Claire Christensen
Co-Managing Director / Head of Operations
Pronouns: she/they

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Employer 23

EXHIBIT NO. E-23 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 4 DATE: 09-2-2021 REPORTER: Barrington Moxie

12.28.2020

- Colleen: didn't talk to lawyer yet, no counters, need more explanation
- Arbitration
    - Colleen: Why 30 days? What if they can't hear it?
        - Maggie: Goal is speediness. If the AAA can't hear the case, then might need a backup plan.
        - Colleen: So you're saying then go to FMCS? What happens if they can't hear it? Basically, my question is what is the consequence?
        - Jamie: Goal is to hear the case as soon as possible. If that's not met, then as soon as possible.
    - Claire: Earliest available date question? How is panel made?
        - Maggie: Goal is speed and skill, that's why there's mutual agreement in there
    - Claire: How is panel of five created?
        - Gary: Originally seeking permanent panel, finding people we can both agree to, locally or FMCS or etc. We would hear it in a timely way. Now, I think it could be the same way, seeking folks off AAA and make a permanent panel of five.
        - Claire: So, preselected and mutually agreeable?
        - Gary: Yes, we can ask would you serve on this panel? Ideally one could do it right away.
    - Colleen: Part of 5, could this be put under 1 for process steps? Requesting moving that claise
        - Maggie: Yes
    - Colleen: Part of 7, could we add settlement in here as well, this will be in our counter. Want to leave settlement option open even in the middle of arbitration.
        - Jamie: Can we add that now?
        - Colleen: Pending lawyer?
- Union activities at Gimme
    - Colleen: C, is this necessary to put into the document?
        - Maggie: This was kind of an addition to further clarify the role of stewards at Gimme. It might not be completely necessary to add, just to add and clarify. We did talk about this a lot as a committee and kind of going back and forth between putting in the contract or just in own procedures.
        - Colleen: We're obligated to treat the stewards are representing the whole. Despite uniqueness of stores / stewards coming from just one location.
        - Maggie: We're less interested in uniqueness of stores and more in a sense of representation, that everyone has their voices represented.
- Leaves of Absence
    - Claire and Colleen: just noting 9D also affects seniority
        - Claire: Statutory leaves of absence have job protections
        - Maggie: How does this interact with seniority protections?
        - Claire: Interacts differently with covid vs non covid

        - Maggie: Why rely on them?
        - Claire: Protections are different, protected class
        - Gary: Why having this conversation?
        - Claire: Clarify 9D as it relates to seniority recall
        - Colleen: Proposals are very far apart here to warrant continued discussion. We feel strongly that people who are on indefinite leave shouldn't be able to bump. Look at this again and come with a counterproposal.
- Seniority
    - Claire and Colleen explain how we're understanding their seniority proposal
    - Conversation about this generally, view of how seniority affects scheduling vs how pay rate works
    - Claire and Colleen: What in our b (transfers between stores) was rejected
        - Maggie: Didn't like SM approval in that proposal
        - Jamie: My concern was about wages, but I think it's been clarified for me now
        - Maggie: That person's hire date / anniversary date won't be changed
        - Susie: Picked up shifts at Tburg first, to see if it worked, before transferring.
        - Susie: Also affected by manager hiring, store setup, who hired you / who wanted you to work there.
        - Susie: Don't want subjectivity, but do want to acknowledge there are differences between stores
        - Jamie: Don't want to just be denied, but given tools to succeed
        - Richard: Want to make sure that people are happy, good for people to transfer. But also what happens when a manager wants them to go.
    - Maggie: What about this thing with management approval / having to reapply? We want to eliminate subjectivity as much as possible. I think we're on the same page re people being entitled to their job.
        - Colleen: I think we're on the same page there for a specific time of recall, but we're not on the same page about it being indefinite, we disagree that it should be indefinite.
        - Maggie: A priority for us is making sure that this job offer is made. It's not out of the realm of possibility that someone still wants to return to Gimme.

Employer 24

EXHIBIT NO. E-24 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 17 DATE: 09-2-2021 REPORTER: Barrington Moxie

TEMPLATE

Topic		Time	Who?	Notes
QC/ED				
Retail				
Gimme				

Retail Ops Meeting
"The One for Everyone"
Weekly Wednesdays @ 4:00p

Objective: An informational meeting for SMs, baristas and drivers to catch up on some cross-store and cross-functional updates and goings on.

1/26

Topic		Time	Who?	Notes
QC/Ed				
	Maintenance Schedule	5	Kevin	Weekly & daily maintenance update NEW SOP KW working with Tomas to update RSOP for weekly cleaning and maintenance SOP Some store specific items too! ~ eta 1-1.5 wks Questions? List: -milk wash / steam wands -grindz -spray heads on bunn brewer -sightglass on bunn urn --mlk portal to hell --coco pitcher rinser
Retail				
	Loyalty	10	Victoria	Some issues on Square end, seems to be resolved now. Wasn't loading customers profile Better luck today getting customers signed up Merging customers! - SOP to be published Customer facing video? How to redeem? Wendell loves it, thinks it's great

				Tburgers are happy Can we make these individual items as 3 pts?: Lg Oat X Ch - still only 2 points ? Red eye - still only 2 points ?
Gimme				
	Gates!	5	Victoria	Soft open W 2/03 - F 2/05 coffee service only Full service M 2/8

1/19

Topic		Time	Who?	Notes
QC/Ed				
	Syrups!	5	Morgan or QC/Ed	Vanilla: bakery doing scaling up testing Chocolate: one round of samples sent to all stores, got feedback, will send another round of samples soon
	Labs	5	Colleen	Reminder! Optional for drivers; please take the open shifts in your Wednesday off week if you want to attend.
Retail				
	Loyalty program	5	Claire	Revision!
	Inauguration day?			Cup o Joe? No go Joe.
Gimme				

Points	Those Points Are Equivalent To ...	Reward Options (Pick One, or Hold Onto Points For The Next Tier)
18	9 brewed coffees 9 pastries	Free brewed coffee Free pastry 50% off an espresso

		drink
27	14 brewed coffees 14 pastries 9 espresso drinks	Free espresso drink 25% off whole bean
36	18 brewed coffees 18 pastries 12 espresso drinks 6 batch drinks 4 whole bean	50% off batch drinks
45	8 batch drinks 5 whole bean	50% off whole bean
54	9 batch drinks 6 whole bean	Free batch drink
63	7 whole bean	25% off coffee gear and filters
72	8 whole bean	X% off merch
81	9 whole bean	Free whole bean

1/12

Topic		Time	Who?	Notes
QC/Ed				
	Laminated SOP sheets	5	Sandy	How's that working? A slight adjustment, but excited to have more consistency!
	Blends revision	5	Sandy	Basic heads up that this is coming! Feb rollout mid-month instead of first week. Rally turning into 3 blends: Eternal Flame - replace darkness

				Pangea - Deep Disco 50/50 light/dark Peru - can try it as espresso at Greenstar
Retail				
	Loyalty program	5	Victoria	Rolling out Friday 1/15
	Square Gift Cards	5	Victoria	Resolved?
Gimme				

1/5/2021 Agenda

Topic		Time	Who?	Notes
QC/Ed				
	Grinder Calibration	5	Sandy	Kevin came around last Thursday and did sieve tests. Some cafe grinders were yielding coarser results than in the past, Tomas and Kevin will go around and adjust. New grinder dial info, but may be revised again when Tomas and Kevin adjust.
	Syrup / Milk sheets	5	Sandy	Updated measurements and memo will come out with this info! Sent by the end of the week.
Retail				
	Loyalty program	10	Claire	Rollout dependent on Square being fixed in re customer menu. Expect to see memo, signage, and also some info from Square.
	SQUARE!!!!	5	Claire	Square customer menu either crashing or disappearing entirely. Affects charging gift cards on file and also Square loyalty. Hopefully fixed tonight.
Gimme				
	Labs!	5	Colleen	February 10th and February 17th. Mandatory. Coffee roster overview, talking about new coffees and certifications. After that, working on monthly lab calendar.

12/29 Agenda

Topic		Time	Who?	Notes
QC/Ed				
	Syrup updates	5		D/C hazelnut 12/31 Honey memo and syrup sheet update coming soon with milk weights/simple/honey for FOH use
Retail				
	Memos, etc	5	Victoria	Free mini biscotti NYD QC feedback for drip coffee Local first coupon book 1/1 Gift card memo
	Gift Cards: How to tell apart	5	Victoria	2 memos, one visual one with steps
	Door Service: How's It Going?	5	Victoria	JB: no complaints
Gimme				
	NY Covid-19 Leave	5	Claire	NY Covid-19 leave only covers starting on day 6 so we added in 5 days of leave to cover time off until day 6 of NYC-19 Leave. Will appear in your ADP time off policies list on 1/1, 5 days of leave. More complicated than FFCRA, restrictions and guidelines. FFCRA extended to 3/31, not mandatory for businesses to offer but we will continue this program. MEMO COMING SOON

12/15 Agenda

Topic		Time	Who?	Notes
Gimme				
	App Update	5	Claire	Apple was difficult, but back on track! You can download now and take a look, but employee code does not work. Testing next week! Rolling out Loyalty Program with the Gimme! App. Hopefully testing end of next week depending on how testing goes! (saturday?)
Retail				
	Positive Test	5	Colleen	Tburg update! Last week another positive test, asymptomatic, feeling fine! Coming out of quarantine this week. Colleen has some guidance for stocking in stores and will be writing a memo here shortly. Don't stock a lot

				of bunn filters up front! Keep alt milks as necessary. Not necessary to quarantine if getting tested without symptoms as routine testing.
	Door Service: How's It Going?	5	Victoria	SD: really likes walkup service, decreases call volume, easier workflow. ML: agrees, customers are used to the carts, like a bank teller! Good workflow. KA: mostly walkups, not a lot of online orders, customers think its a clever system, noisy environment but people are happy. AL: at first customers were happy we were comfortable inside. WR: lots of positive feedback of us being safe and warm, customers are secure in their ordering, decrease of online orders DT: new drop off window at coco, warmer for baristas! MB: lots of good customer feedback, great long term solution, hard to hear sometimes but customers are getting used to that.
	W2W notifications	5	Victoria	Signed everyone up for notifications in W2W! You'll be receiving them via email.
	Gift Card remaining balance	5	Victoria	Preferred to poof the remaining balance as "cash"
	Winter Storm Wed/Th	5	Victoria	

12/1 Agenda:

Attending:

Topic		Time	Who?	Notes
QC and Education				
	Temping drinks without espresso	5	Sandy	Now that weather is changing, let's check temps on drinks that don't require espresso to ensure drinks are going out to customers at the correct temperature. Specifically hot chocolates and chais! Should have thermometers on top of espresso machines, if not let us know! We will send one down.
	LABS!	2	Colleen	Changing again and will reschedule. December is a busy month for us. Sorry about all the changes!
Retail				
	December rollout update	5	Claire	HLP late again, likely will be in stores on Monday or Tuesday depending on the delivery schedule. Sumatra out today! Stores should have it this week. We're very excited about this new coffee. It's the Coffee of the Month for December.
	New Prius status	5	Claire	Many things keep happening with the Prius. It got a flat

				while pulling out of the shop. Tomas went to get the spare and the trunk was filled with water. Should be down next week, but TBD.
	Square Teams rollout (yesterday)	5	Victoria	JB has positive feedback! Super easy once you get in there to update the pars.
	Square Loyalty	5	Claire	What we're looking at is a point based system. Stamp card information can be put into the system for anyone who has an existing stamp card. We will find a way for customer disposal of the stamp cards. Each category and type of drinks will have a different point value, but it's still the basic "buy 9 get 1" system. Deals get better with the points you save, so we're working on how to communicate to customers that the more points you save the better discount you will get. JB better value for what they're purchasing and what they can redeem it for WR signage with icons for what you get at each stage of points value CC there's a huge shortage of chuck'e'cheese tickets right now! People are HOARDING tickets! Will they go bankrupt because the tickets? CA will it be confusing for customers? JB customers would lose drink cards, so maybe they'll be happy now!
	Mobile Cart feedback	5	Victoria	James nominated a Tburg staff member! AL customers love it! Biggest challenge is getting it into the doorway. Difficult with drinks in trays. Keeps it REAL warm! WR biggest issue is that people cant see the pastry window at the pickup window. Have a laminated sign in the window. CA Suz had a (pokemon?) card holder to display tags WR would need to access that for when we run out VH made a laminated sign for the pastry sheet KW if you need to find a pokemon card holders they have them at walmart and target DT build a simple shelf that goes against the glass, can put beans on one shelf and pastries on another. What would be REALLY cool would be if there was a ticket holder or the pokemon card holder you can pop the tags in and out CA or a ticket holder? DT yes, similar.
Gimme				
	New SM at Tburg! Kari	5	Victoria	
	Gates Store Manager	5	Victoria	Gates reopens in Jan! If you or someone you know would like to apply, do so ASAP! We're excited to be back in the Cornell community.

11/24 Agenda:

Attending:

Topic		Time	Who?	Notes
QC and Education				
Retail				
	December rollout, Fri 11/26	10	VH	HLP (will late - probably next Monday) FTO Sumatra (replacing JBB) Ginger Snap latte (goodbye, clove) - let Morgan know if there are ways to make this process better! Coffee Toffee Tins Eggnog: week of Christmas only Closed on Christmas
	Bag returns on Tuesdays	5	Claire	Terracycle bag returns every Tuesday.
	What do you need?			Cambro box
	Queen bee?			Low key queen bee with cinnamon and honey - feel free to do this for free since it's not quite the queen bee (missing other spices). But also push the seasonal drink. Morgan: also lowkey plug for seasonal drink working group!
	New Prius!			
Gimme				
	Covid trends	5	Claire	Be aware that Covid tests are taking longer to book - the leave while waiting for the test to happen, and then the test results, is covered by FFCRA.

11/17 Agenda:

Attending:

Topic		Time	Who?	Notes
QC and Education				
	Honey Syrup	5	Sandy	Will be a syrup produced in advance to avoid the annoyance of squeezing honey bears. Will be free and in the "sugar options" not "syrup options" online. Expect deets / measurements via memo.

	LABS!	?	Colleen	Will have to find a separate time for Team 2 to have Lab, bargaining meeting during the time, potentially 1-2:30
Retail				
	Seasonal Drink	5	Morgan	Ginger Snap, syrup to be made in stores! Ingredients ordered in bulk from MarketMan. Whole cinnamon sticks 1#, whole clove 1#, ground ginger 1#, molasses jug, dark brown sugar 1#. Airtight containers for spices and squeeze bottles for molasses will be sent to stores as well as one bottle of syrup that's already made! Memo to come with instructions.
	Deal Calendar: How's it going?	5	Claire	Just a check in to see how it's going. Any issues? Lots of customers using it online, very few using it in person. No need to push, just as long as it's easy for people to understand.
	Square Loyalty & App	5	Claire	Still in process! Talking through final details of how many points you get for what. Will likely be giving a different point system for drip coffee versus espresso drinks. How do you feel about it? We can give talking points. 2 pt - drip 3 pt - espresso drink 9 pt - retail bag of coffee Also pastries, etc. Can apply this for a % off of an item. Customers do have to sign up for this linked to their phone number. One thing we're still working out is rewards get better when they have more points. Please send us some feedback if you have any thoughts on how customers will react to the tiered discounts with loyalty. If you've already been a customer it will send you an email and ask you to sign up when we switch.
	Holidays	5	Colleen	All holidays land on Team 2, thanksgiving, christmas, new years. It is paid time and a half, could we do a switch day to divy up the holidays?
	Square Teams	5	Claire & Victoria	Why won't square allow baristas to have a pin to update inventory? They just created this tool to allow for folks to update inventory on the fly. No more need for a manager code. Expect a memo soon!
Gimme				
	Gates Hall Manager hiring	5	Victoria	Opening by mid/late January. If you or someone you know wants to apply, please do! If you have questions, reach out. Potentially single coverage with the Eversys. Online ordering only? Behind bar in full plexi, totally separate from customers.

11/10 Agenda:

Attending: VH, MB, JJ 4:15 - 4:30

Topic	Time	Who?	Notes

QC and Education				
	Lab time changing	5	Victoria	Labs are changing to December!
Retail				
	Seasonal Drink	5	Morgan	Gingersnap
	Current Deal!	5	Victoria	15FAIRBEAN 15% off all Fairtrade coffee in store and online. Customer must tell us about the deal to get the deal (reference a post, verbalize coupon code) and it's a modifier
	Square Loyalty	5	Victoria	We're going to be switching to Square Loyalty. Close to getting app setup and finalized. Finally approved by Apple.

11/03 Agenda:

Topic		Time	Who?	Notes
QC and Education				
	Labs next week	5	Sandy?	Due to coffee revisions we wanted to revisit the cert lab, lots of material. We're moving towards certified coffee in the roster so we wanted to touch on that again. It'll be on wednesday, 11/11 & 11/18 10:30am-12:00, paid time. Different FT certifier, "Fairtrade" not "Fair Trade" Sign up in W2W No labs in December. Regular labs coming (hopefully) in Jan!
Retail				
	Coupons for the holidays	5	Claire	Historically WB coffee has been online only (complicated) but now folks can order online. Lets talk through options! Will this work? CC goes out on Social and Mailing list, in Square as discount (scroll for discount in item) Calendar with discount. Customers will give you coupon code, or someone describing the deal. No signage for this, only if you see deal via mailing list or social media. *-seems like it would work, reasonable, good presence here in Ithaca* Hopefully we will have the app out at this time when deals are coming so we can advertise via app deals! Is it COOPON or QPON?
	Cold Weather Proofing	5	Colleen	We've been thinking through plans past few weeks, got quotes, *ridic stupid* cost, so we adapt and pivot. Here's the deal: Mobile service carts.building mobile carts, castors can be locked, frame in window to top of cart. Cart fits up to interior frame of door. Move in during day, remove at night. COLLEEN USED A COUPON and got a really

				good deal. Drawer for pens and goods. Bottom drawer will be a weight to counter balance window.Plexi barrier on half of customer facing side with "no draft speak throughs" Hopefully MLK end of week, then coco, then Tburg (need dif sourcing for tburg) *-looks amazing!* This is possible to upgrade if it doesn't work for workflow versus replacing a whole window that might not work well. Mail slot for cash tips? Flashing lights or music? Assessing Coco, if we need to remove that knee wall. *-super excited!* Weather stripping around window. Any feedback welcome! Paint it? Wood burning? Let us know!
	Tburg Store Manager	5	Victoria	Getting ready to reopen Gates, doing interviews this and next week, GET THE WORD OUT!
Gimme				
	Health Insurance Enrollment deadline	5	Claire	Deadline is Nov 9th. Need to have in all of that paperwork in to Janet by then for health insurance and vision/dental. If you have insurance through us it doesn't auto enroll you, you need to fill it all out again :)
	Production Roaster job	5	Claire?	Sadly, Brandon is leaving us :(moving to another city. Hiring for Prodo roaster, coffee roasting as well as QC, regular cupping, roast profile, no experience needed! Some coffee experience. FT @Krums location. Learning and growth opportunities!

10/21 Agenda:

Topic		Time	Who?	Notes
QC and Education				
	~~October~~ November Lab:	5	Colleen	Reboot of cert labs! Larger discussion of product line. Starts in Nov, possibly day after election day. TBD.
Retail				
	What to do about election day?	5	Claire	In past, promo of "vote sticker" = free coffee, showing up for community. Ensuring staff has time to vote, brainstorming ideas. Day after election day: Team 1 wednesday. What could we be doing in the cafe? How are you all feeling about election day? Day after free 8oz coffee with purchase (reduce buildup/wait time/better for planning)? Possibly a button for the free coffee. Bakery? Free mini chocolate chip cookies? SIGNAGE/social posts! **Day of: free 8 oz with purchase. Day after: free**

				mini cookie? Cannot be applied to any other item. Could add syrup: last minute modifier, or add in options.
	Tburg Update	5	Victoria	
Gimme				
	Health Insurance Open Enrollment	5	Claire	Info in a memo, replaces this meeting next week. Will have to fill out paperwork if you were previously enrolled. 30 hours or more qualifies you for insurance. Booking 1:1 time with human services coalition to discuss individual options on Wednesdays over the next few weeks. Have until end of Nov.
	Project Equity reminder	5	Colleen!	
	Rollout Preview			not a lot of new merch, possibly short run items on December. Dame washed! Holiday blend: base layer. Calendar of discounts: signage to math online days. Holiday boxes x3, angel bb's return December: HLP,NEW Honduras, premium box/diamond/platinum

10/7 Agenda:

Topic		Time	Who?	Notes
QC and Education		5		
	Training Updates		Sandy	Expect a memo re: pitcher rinser and new COVID-safe protocol.
	October Lab!		CA	Overview of coffee roster, changes, and also an experiential component. Proposal: cupping cups, hand grinder, thermometer, spoon, timer
Retail		15		
	Square Permissions		Claire	No possibility to turn on inventory adjustment permissions with a PIN. There are no pre-built solutions that push to the Square App. We are talking to a 3rd party that would build an API for this - eta: a while but hopefully fairly quickly. Phone tree: SM, Victoria, Claire or Bakery. Can baristas use own cell phone? Yes! Please disregard previous memo re cell phone use.
	Plans for Cold Weather		Colleen	MLK: Replace front side windows; CoCo: Replace front

				side windows; Tburg: Install awning and think about ordering system. IDEA! Order window with a speaker system, pick up window with a sliding system.
Gimme		10		
	Status on Bags		Claire	Current bags are erroneous, we are working on a short term and long term solution. 6 weeks away from the LT solution :(We are looking into 100% home compostable bags, block bottom and printed in the US.
	Project Equity Meeting 2		Colleen	We will host an all-company meeting with Project Equity on October 20 to discuss the questions that arose from the anonymous survey and discuss the next phase of work on the conversion to employee ownership. There will be a memo this week with a save the date and a call for people who want to be part of the transition team Note: if you asked a question in the interest survey that you do not want us to answer in the full group meeting, please drop us a line. We can answer privately instead.

9/30 Agenda:

Topic		Time	Who?	Notes
QC and Education		5		
	Drip Coffee Log		Sandy	Digital form on ipads/chromebook, 1 page, roasters appreciate this feedback! Please fill out for each shift!
	Optional Labs		Colleen	Opportunity to talk about new coffee items and product line. Monthly labs, on Wednesdays, 2 weeks in a row for T1/T2 rotation. In-person/tele Start: mid October Schedule TBD for Nov/Dec/Jan
	Training Updates		Sandy	KW doing check ins, let us know if you want or need some refresh for on-bar Training new hires: splitting bar training between back bar at MLK and krums
Retail		15		
	October Rollout		Colleen	Monday 10/5 Dame dabaya- natural (org) Kenya Stargazer: YEAR round coffee! -retail bags (org) with ethiopia component -in store brewing keeping guracho to run through

				(conventional/ stargazer classic)
	W2W		Victoria	TO requests, please update availability preferences in W2W
	Square Tips Issue		Claire	Square broke their “tip” option, tips show up in a separate category, manually sorting to add tips into the tip pool during Monday payroll (every other week) Reclassifying delivery orders (accidental pickup but wanted delivery) send receipt to Claire/Morgan and we will move tips to driver
	Payment Methods		Victoria	Currently operating as card only and not looking to change this system. Options: buy a gift card, exact change cash box? Why can’t we accept cash? No cash drawer; distance between customers and baristas (safety issue). If you accept cash please change your gloves. Arcade machines for gift cards.
	Loyalty Program		Claire	
Gimme		10		
	FFCRA Requests		Claire	Families First Coronavirus Response Act (Federal) All staff has 2 weeks available Covers when isolation is needed, when scheduling a systematic test you’ll need to quarantine, write down that you are covered by that situation (no screenshot or documentation) just email your supervisor saying you’re under medical request to quarantine, covers time when you have symptoms to when you receive your request. Paid for anytime you are scheduled to work, it goes into your next paycheck as if you took PTO. Covers other quarantine: going to a restricted state
	Project Equity Update		Colleen	8 survey responses/12 (thanks!) Scheduling time mid-Oct to further discuss next steps 80% positivity rate to move into the next phase with Project Equity, we’re finalizing phase 1 (feasibility), next is to form a Transition Team, how long will it take? About 9 months, discuss bylaws, buy-in, governance, sale structure. Will be announcing next week with meeting time with Project Equity. Not set in stone, lots to discuss, need feedback from everyone.

Need the boombox from Cayuga for MLK (done)
Certification of coffee: can we send out a memo?

9/23 Agenda:

- What’s new in QC / Education?
    - Toddy Across the Board
    - Updates on check ins and the status of bar certification
    - Talking coffee - new blends and new certs

            - Retroactive coffee memos will be going out soon!
- What’s new in Retail Ops?
    - We’re open!
    - When 2 Work
    - Loyalty program
    - Payment methods
    - Cash Tips
    - Return of the Memo
    - Scheduling Performance Reviews
- What’s new in Gimmeland
    - Website and App development

Employer 25

EXHIBIT NO. E-25 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 4 DATE: 09-2-2021 REPORTER: Barrington Moxie

Upstate Store Manager Meeting Agenda 01/27

QC/ED:

- Maintenance schedule (KW)
  - Rundown- Inconsistencies in when/ how often to complete certain tasks. Reached out to Tomas to add cleaning tasks to training book
  - SMS- anything store specific to add to your store?- Email VH or KW to add store specific items

Retail:

- Coffee of the Month!
  - Burundi delayed until April rollout
  - Deep Disco!?
    - All Sms- Sure!
- Last few days for the drip coffee QC challenge!
  - One person from each store will get a prize!
  - QC bowser?
- Square loyalty
  - Merging duplicates]
    - Able to merge
  - Square creating multiple profiles for customers
    - Idk. passing up to team ¯_(ツ)_/¯
    - Keep an eye on duplicates- has to do with where you are ordering from
- Update to Back Bar hours:
  - M-R 8:30-12:30
  - F 8:30-1:30
  - Sat 9:00 - 3:00
  - Sun 9:00 -1:30
- OOS Coffee communication?
  - Trello?
  - Krums feedback thread?
  - Monthly Rollout memo?
    - Most obvious for all staff to see.- KA/DT/AL
- Cream measurements
  - Using the
    - Comments about not being able to pour an accurate pour out of jugs. Easier to ue milk/creamer pitchers
    - Check in with baristas. Feel free to go in this direction if baristas prefer.

Gimme:

- Gates!
  - Opening 2-3 shortened hours, limited menu
  - 2-8 full menu
  - Monday-friday 8-11:15 12-3

    - Single coverage
    - Eversys will be there! Training soon.

- Cayuga?
    - Bunch of things that need to be worked through before we can open.
    - Sales drop during winter, anticipate sales picking up in warmer weather. Had a greater decrease than anticipated.
    - Thinking about workflow in store. Not a great space to have more than two people. Figuring out doing p/u only in space
    - Likely pushed back later than march. No solid plan yet

- Sales in Review (few weeks)

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 3

In the Matter of:

GIMME COFFEE, INC., Case No. 03-RD-271639

Employer,

and

COURTNEY SUSAN SHELTON,

Petitioner,

and

WORKERS UNITED LOCAL 2833,

Union.

BOARD EXHIBITS

Place: Buffalo, New York (via Zoom Videoconference)

Dates: September 3, 2021

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Phoenix, AZ 85020
(602) 263-0885

Board Exhibit No.	1 (a)	Decision Overruling Objection and Order Directing Hearing and Notice of Hearing on Challenged Ballots dated August 6, 2021
	1 (b)	Affidavit of Service of 1 (e) above dated August 6, 2021
	1 (c)	Index and description of formal documents

Board Exhibit 1 (c)

EXHIBIT NO. B-1(c-a) RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 6 DATE: 09-2-2021 REPORTER: Barrington Moxie

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME COFFEE, INC.

Employer

and **Case 03-RD-271639**

COURTNEY SUSAN SHELTON

Petitioner

and

WORKERS UNITED LOCAL 2833

Union

DECISION OVERRULING OBJECTION AND ORDER DIRECTING HEARING AND NOTICE OF HEARING ON CHALLENGED BALLOTS

AFFIDAVIT OF SERVICE OF: Decision Overruling Objection and Order Directing Hearing, dated August 6, 2021.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 6, 2021, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Ian Hayes, ESQ.
Creighton, Johnsen & Giroux
1103 Delaware Avenue
Buffalo, NY 14209
ihayes@cpjglaborlaw.com
Fax: (716)854-0004

Gary J. Bonadonna JR.
Rochester Regional Joint Board
750 East Ave
Rochester, NY 14607-2100

Workers United Local 2833
115 E State St.
Ithaca, NY 14850

Paul E. Wagner, ESQ.
Stokes Wagner
903 Hanshaw Rd Ste 1
Ithaca, NY 14850-1530
pwagner@stokeswagner.com
Fax: (607)257-6293

Colleen Anunu, CEO
Gimme Coffee, Inc.
3201 Krums Corners Rd. Ithaca, NY 14850
Ithaca, NY 14850
colleen.anunu@gimmecoffee.com

Courtney Susan Shelton
77 W Main St
Trumansburg, NY 14886
cs2424@nau.edu

Date: August 6, 2021

Vallana M. Harris
Designated Agent of NLRB
Name

/s/ Vallana M. Harris
Signature

Board Exhibit 1 (b)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

GIMME COFFEE, INC.

Employer

and **Case 03-RD-271639**

COURTNEY SUSAN SHELTON

Petitioner

and

WORKERS UNITED LOCAL 2833

Union

DECISION OVERRULING OBJECTION AND ORDER DIRECTING HEARING AND NOTICE OF HEARING ON CHALLENGED BALLOTS

Based on a petition filed on January 22, 2021[1] and pursuant to a Stipulated Election Agreement, an election was conducted on February 23, 2021 to determine whether a unit of employees of Gimme Coffee, Inc. (the Employer) wish to be represented for purposes of collective bargaining by Workers United Local 2833. That voting unit consists of:

> All full-time, part-time, and variable hour employees with the job title "Barista" including Lead Baristas, employed by Gimme! Coffee at its facilities in Ithaca and Trumansburg, excluding Store managers, confidential employees, professional employees, and supervisors as defined in the National Labor Relations Act, and all other non-barista employees.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 31 eligible voters, four votes were cast for and seven votes were cast against the Union, with 10 challenged ballots, a number that is sufficient to affect the results of the election.

THE CHALLENGED BALLOTS

The names of the challenged voters, the stated reason for each challenge, and the party or person who made the challenge are as follows:

NAME	CHALLENGED BY	REASON
Jenna Burger	Employer	Not employed/no reasonable expectation of recall
Brittany Cunha	Employer	Not employed/no reasonable expectation of recall

[1] All dates are in 2021 unless otherwise indicated.

Board Exhibit 1 (a)

NAME	CHALLENGED BY	REASON
Rachel Eginton	Employer	Not employed/no reasonable expectation of recall
Bart Feberwee	Employer	Not employed/no reasonable expectation of recall
Rebecca Lespier	Employer	Not employed/no reasonable expectation of recall
Brenden Lukosavich	Employer	Not employed/no reasonable expectation of recall
Ava Mailloux	Employer	Not employed/no reasonable expectation of recall
Samantha Mason	Employer	Not employed/no reasonable expectation of recall
Jesse Sanchez	Employer	Not employed/no reasonable expectation of recall
Ashley Yajko	Employer	Not employed/no reasonable expectation of recall

THE OBJECTION

On March 23, the Union timely filed one objection to conduct affecting the results of the election. The Union's objection states as follows:

> On or around November 30, 2020 and/or thereafter, following an unsuccessful decertification filed by Petitioner Courtney Susan Shelton, Gimme Coffee, Inc. (hereinafter "Employer") terminated the recall rights of fourteen (14) employees who were on temporary layoff and who had placed themselves on a waitlist to be recalled to work, pursuant to the parties' collective bargaining agreement and an agreement between the parties entitled Effects Bargaining and COVID-19 Agreement, and the Memorandum of Agreement August 27, 2020. In terminating the waitlisted employees' recall rights, the Employer attempted to prevent employees on the waitlist from being able to vote in the decertification election, knowing that the majority of employees on the waitlist were supporters of the Union. By these same actions, the employer knowingly and deliberately fostered division between employees who had already been recalled to work, and employees who were on the waitlist, the majority of whom were Union supporters. Furthermore, the Employer's actions further entrenched the impression that being on the waitlist meant supporting the Union, and discouraged actively working employees from voting for the Union in the instant election.

CONCLUSION AND ORDER

I have concluded that the evidence described in the offer of proof submitted by the Union in support of its objections cannot be grounds for overturning the election if introduced at a hearing. It is well established that "only conduct occurring after the petition's filing date may be the subject of an objection." *Flamingo Las Vegas Operating Co., LLC*, 360 NLRB 243, 246 (2014), citing *Ideal Electric & Mfg. Co.*, 134 NLRB 1275, 1278 (1961). The Board will only consider prepetition conduct "insofar as it lends meaning and dimension to related postpetition conduct." *Parke Coal Co.*, 219 NLRB 546, 547 (1975). In the instant case, the Union's objection relates solely to events occurring prior to the filing of the petition in the instant case. As such, I am overruling the Union's objection.

However, I have concluded that the challenged ballots raise substantial and material issues of fact that can best be resolved by hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised with respect to the challenges and objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the challenges and objections.

NOTICE OF HEARING

Starting at **10:00 a.m. on September 2, 2021**, via videoconference hearing, the hearing on challenges and objections as described above will be conducted before a hearing officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

Dated: August 6, 2021.

/s/ Linda M. Leslie

LINDA M. LESLIE
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATED ELECTION AGREEMENT

Gimme Coffee, Inc. **Case 03-RD-271639**

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Gimme Coffee, Inc., a New York State corporation with its principal offices located at 3201 Krums Corners Rd., Ithaca, NY 14850, and facilities located at 430 N Cayuga St., Ithaca, NY 14850, 903 Hanshaw Rd., Ithaca, NY 14850, 5016 W. State St., Ithaca, NY 14850, 7 E. Main St., Trumansburg, NY 14886, Bill and Melinda Gates Hall, Campus Road, Cornell University, Ithaca, NY 14853, the sole facilities involved, is engaged in the retail sale of coffee, food and beverages. In the past 12 months, a representative period of time, the Employer derived gross revenue in excess of $500,000 and purchased and received at its Ithaca and Trumansburg, New York facilities, goods valued in excess of $5,000, which goods were shipped directly to the Employer's Ithaca and Trumansburg, New York facilities directly from points located outside the State of New York.

3. LABOR ORGANIZATION. Workers United Local 2833 is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 3, at **4:30 p.m.** on **Tuesday, February 23, 2021**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 3 office by close of business on **Tuesday, March 16, 2021**. The mail ballots will be counted by videoconference at the Region 3 office located at 130 S. Elmwood Ave. Ste 630, Buffalo, NY 14202-2465 at **2:00 p.m.** on **Wednesday, March 17, 2021**.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 03 office by no later than **5:00 p.m.** on **Tuesday, March 2, 2021** in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **Included:** All full-time, regular part-time and variable-hour employees with the job title "Barista," including Lead Baristas, employed by the Employer at its Ithaca and Trumansburg, New York facilities.

Initials: _____

Board Exhibit 2

EXHIBIT NO. B-2 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 5 DATE: 09-2-2021 REPORTER: Barrington Moxie

Excluded: Store managers, confidential employees, professional employees and supervisors as defined in the Act, and all other non-barista employees.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending January 31, 2021**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective-bargaining by Workers United Local 2833?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: Colleen Anunu,

Initials: _____

CEO, Gimme! Coffee, 3201 Krums Corners Road, Ithaca, NY 14850; (607) 273-0111; colleen.anunu@gimmecoffee.com

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

Gimme Coffee, Inc.
(Employer)

By: /s/ Colleen Anunu 2/9/21
(Signature) (Date)

Print Name: Colleen Anunu, CEO

Courtney Susan Shelton
(Petitioner)

By: /s/ Courtney Shelton 2/9/21
(Signature) (Date)

Print Name: Courtney Shelton

Workers United Local 2833
(Union)

By: /s/ Ian Hayes 2/9/21
(Signature) (Date)

Print Name: Ian Hayes, Counsel

Recommended: /s/ Thomas A. Miller 2/9/21
Thomas A. Miller, Field Examiner (Date)

Date approved: 2/10/2021

/s/ Paul J. Murphy
Regional Director, Region 3
National Labor Relations Board

FORM NLRB-760
(7-10)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Board Exhibit 3

Gimme Coffee, Inc.
Employer

and

Courtney Susan Shelton
Petitioner

and

Workers United Local 2833
Union

Case No. 03-RD-271639

Date Filed 1/22/21

Date Issued 3/17/2022

City Buffalo

State New York

Type of Election:
(Check one:)

☒ Stipulation
☐ Board Direction
☐ Consent Agreement
☐ RD Direction Incumbent Union (Code)

(If applicable check either or both:)

☐ 8(b) (7)
☒ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 31
2. Number of Void ballots 0
3. Number of Votes cast for Workers United Local 2833 4
4. Number of Votes cast for
5. Number of Votes cast for
6. Number of Votes cast against participating labor organization(s) 7
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 11
8. Number of challenged ballots 10
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 21
10. Challenges ***are*** sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Gimme Coffee, Inc.
Paul E. Wagner Esq. participated by video conference due to pandemic.

For Courtney Susan Shelton
Did not participate

For Workers United Local 2833
Ian Hayes Esq. participated by video conference due to pandemic.

Board Exhibit 3

EXHIBIT NO. B-3 RECEIVED x REJECTED _____

CASE NO 03-RD-271639 CASE NAME GIMME COFFEE INC

NO OF PAGES 2 DATE: 09-2-2021 REPORTER: Barrington Moxie